

WEST RICHLAND CITY COUNCIL MEETING
TUESDAY, AUGUST 16, 2016
7:00 p.m.
PRELIMINARY AGENDA

1. MEETING CALLED TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

5. PRESENTATIONS

- a. Caden Slade, Eagle Scout Project – Veterans Memorial at Flat Top Park
- b. Second Quarter 2016 Financial Report

6. CONSENT AGENDA

- a. Approve Payment of Bills
- b. Approve Minutes of Regular City Council Meeting and Workshop of July 19, 2016 and Special Meeting of July 26, 2016
- c. ORD - Relating to Transportation and Park Impact Fee Deferral Process & RES - Adding Administrative Fee for Impact Fee Deferrals to the Master Fee Schedule
- d. Accept Belmont Blvd. Phase 3 & 4 Project as Complete
- e. Award Police Building Repairs Contract Project
- f. Accept LED Street Light Retro-fit Project as Complete
- g. Execute Agreement for Optical Ethernet, Fiber Internet, SIP Trunking and Coax Phone with Charter for the Municipal Services Facility, Wastewater Treatment Plant and Police Building
- h. RES - Amending Personnel Summary for the 2015-2016 Biennium Budget
- i. Motion Authorizing the Public Works Director to Apply for Transportation Improvement Board Grants
- j. RES – Authorizing the Mayor to Execute an Interlocal Agreement for Special Investigations Unit to Investigate Officer Involved Incidents

7. ORDINANCES, RESOLUTIONS, MOTIONS AND PUBLIC HEARINGS

- a. ORD – Amending the 2015-2016 Biennial Budget

8. UNFINISHED BUSINESS

9. NEW BUSINESS

10. CITIZENS PUBLIC COMMENT

11. STAFF AND COUNCIL ANNOUNCEMENTS, REPORTS AND COMMENTS

- a. Staff Reports
- b. Council Reports

12. EXECUTIVE SESSION

13. ADJOURNMENT



Quarterly Financial Report

Second Quarter 2016

August 16, 2016

Overview

The Quarterly Financial Report provides a summary budget to actual comparison of revenues and expenditures for each fund through the end of the most recently completed fiscal quarter. The information contained in this report is unaudited and prepared on a cash basis. Furthermore, the information contained in this report is preliminary and adjustments may need to be made in accordance with the Budgeting, Accounting and Reporting System (BARS) in preparation of the annual financial report.

The financial condition and economic trends continue to be relatively positive for the City of West Richland through the second quarter 2016. The number of single family permits issued in 2016 did decline by 14% (a difference of 8 permits) compared to 2015. Staff will continue to monitor this very closely for any signs of weakness. Growth related activity is crucial to providing the funding necessary to support programs and services for the community.

According to the most recent labor data issued by the Bureau of Labor Statistics, the unemployment rate in the Kennewick-Pasco-Richland metropolitan statistical area is currently estimated at 6.3% for June, which is an increase of 0.50% compared to June 2015. The state preliminary unemployment rate is at 5.8% and the national unemployment rate is 4.9% for June 2016. Non-farm employment in the Tri-Cities was up roughly 2,797 jobs in June when compared to June 2015. Industries that have contributed to this growth include education and health services, leisure and hospitality, transportation and utilities, professional and business services, financial activities and government.

General Fund 001 Revenues

Summary

The City's General Fund is the primary fund used to account for the City's general purpose revenues such as utility, property and sales taxes. General Fund revenues typically pay for citywide services such as public safety, community development, parks, and administration. Comparing total actual to total anticipated revenues through June 30th, the General Fund is 77% of the 2015-2016 biennial budget. Total revenues collected in the General Fund increased 19% compared to the previous biennium.

Retail sales and use tax increased 22% compared to the prior biennium. The City experienced gains in most major business sectors including construction, retail, whole sale trade, and accommodation and food service.

The City processed 253 new business licenses through second quarter 2016 compared to 183 in 2015. As of June 30, 2016 there are a total of 1,315 active city business licenses.

Intergovernmental revenues include PUD privilege tax, city assistance, liquor excise tax and liquor control board profits. These revenues increased 22% compared to the 2013-2014 biennium. The increase was mainly due to increases in city assistance and liquor excise tax revenues. City Assistance revenues increased 22% compared to 2013-2014 biennium.

The City experienced an increase in liquor excise tax revenues due to the reinstatement of the full distribution of liquor excise revenues in 2015. In 2013, the state legislature temporarily eliminated liquor excise tax revenues with cities. Furthermore, the state legislature approved cutting liquor excise tax revenues shared with cities in half in 2013 and permanently diverting these funds to the state general fund. Fortunately, the legislature approved restoring these funds to cities in 2015. West Richland received its first full distribution of liquor excise tax in October of 2015. A total of \$70,395 has been collected from liquor excise tax revenues through second quarter 2016 compared to \$21,098 in the prior biennium.

Building activity is an important key indicator of growth. Through second quarter 2016, the City has processed eight fewer single family permits than in the prior year. The City processed two new commercial permits through second quarter 2016. Other permits increased 29% compared to the prior year. The City experienced a significant increase in permit valuation in 2016 because of a permit issued to the Richland School District for a new middle school at Belmont and Keene. The permit valuation for the middle school is \$25,600,000.

New Construction Activity			
	2015 Jan - Jun	2016 Jan - Jun	% Change
Single Family Permits	58	50	-14%
New Commercial Permits	1	2	100%
Other Commercial Permits	8	11	38%
Other Permits	161	208	29%
Total Permits	228	271	19%
Permit Valuation	\$ 23,629,975	\$ 45,611,935	93%
Building Permit Fees	\$ 171,891	\$ 233,949	36%

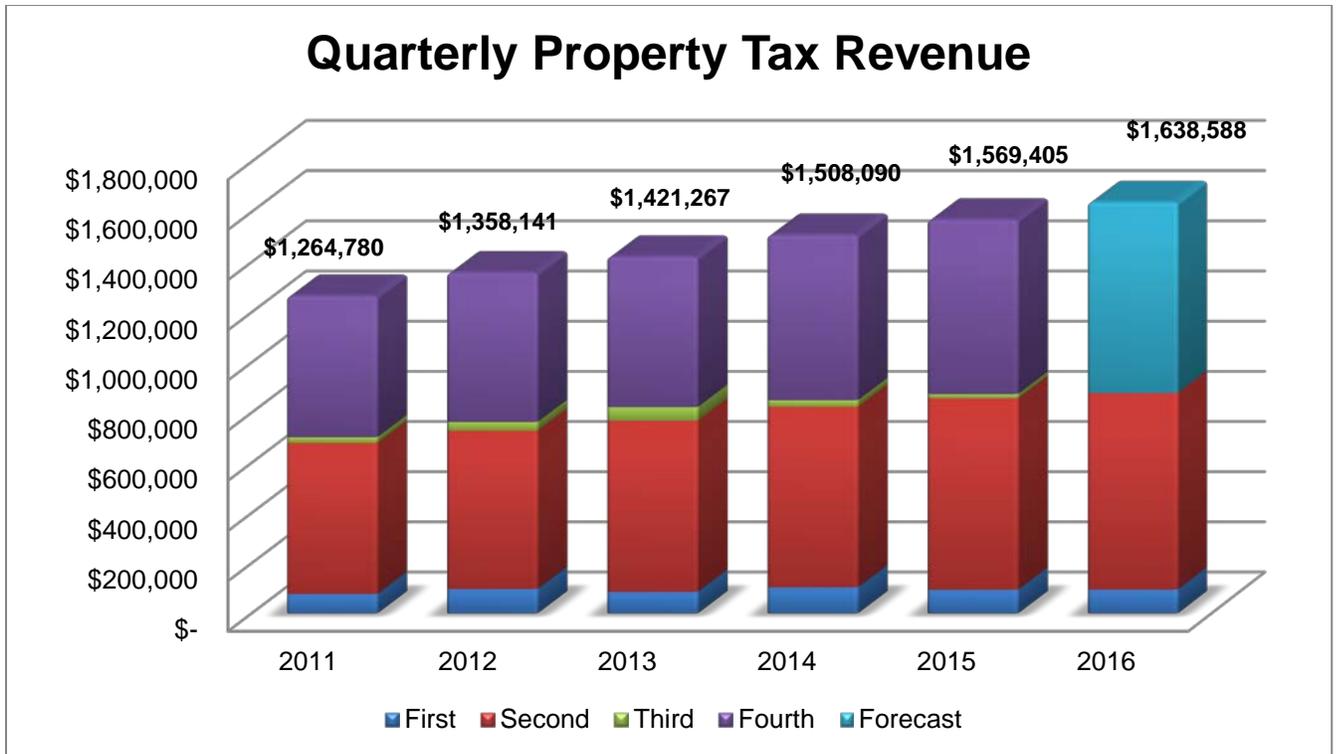
The following table shows the amended biennial budget and actual revenues collected through June 30, 2016 and compares this information with 2013 and 2014 biennial budget actuals through June 30, 2014.

General Fund 001 Revenues

General Fund 001		2015-2016 Biennial Budget				
Revenue Category	01/01/2013 - 06/30/2014 Actual	01/01/15 - 06/30/16 YTD Actual	% Change from Prior Year	2015-2016 Amended Budget	2015-2016 % Received	2015-2016 Remaining
Property Tax	2,244,776	2,460,374	10%	3,207,993	77%	747,619
Sales Tax	1,010,507	1,231,204	22%	1,496,984	82%	265,780
Utility Taxes	2,658,327	2,747,546	3%	3,686,236	75%	938,690
Other Taxes	12,962	15,053	16%	21,868	69%	6,815
Building Permits	443,232	618,633	40%	747,055	83%	128,422
Other Licenses & Permits	191,856	245,746	28%	307,038	80%	61,292
Intergovernmental Revenue	425,067	519,682	22%	673,312	77%	153,630
Grants - Federal/State/Local	181,807	16,299	-91%	-	#DIV/0!	(16,299)
Charges for Services	852,438	1,085,040	27%	1,340,424	81%	255,384
Fines and Forfeitures	320,376	350,000	9%	441,870	79%	91,870
Transfer In	10,000	302,385	2924%	589,767	51%	287,382
Miscellaneous & Other Revenues	38,273	383,231	901%	387,221	99%	3,990
Total Revenues	8,389,621	9,975,192	19%	12,899,768	77%	2,924,576

General Fund Major Revenue Sources

Property Tax: Property tax revenues are typically received during the second and fourth quarters of the year. Total property tax collections through second quarter 2016 totaled \$783,657. The table below reflects quarterly property tax collections from 2011 to 2016.



Retail Sales and Use Tax: The sales tax base is the selling price of tangible personal property and selected food and services. The current sales tax rate for West Richland is 8.6%. For every \$100.00 in applicable sales in West Richland, the consumer pays \$8.60. Of the \$8.60 in sales tax paid, the City receives approximately 85¢ for general fund services. The remaining \$7.75 is distributed to the state and county.

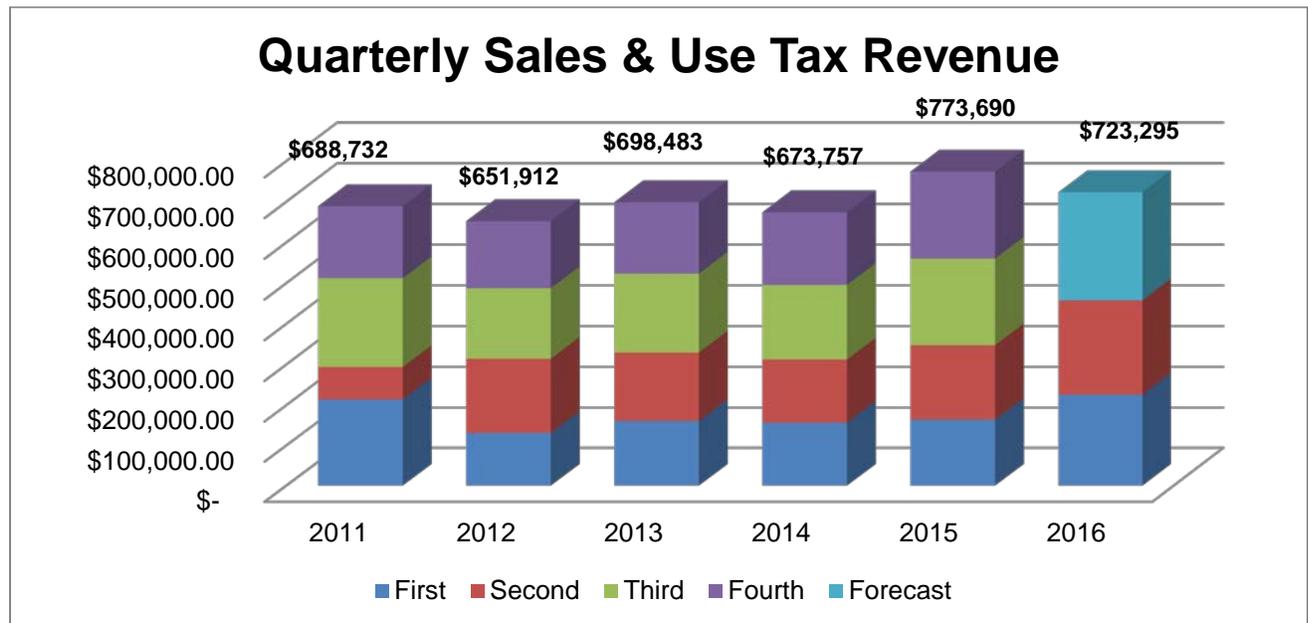
In 2016, sales tax revenue increased 32% compared to the prior year. All business sectors experienced growth except for manufacturing. West Richland has a heavy reliance on construction sales tax revenue, which is considered a one-time revenue source. Construction experienced a 77% increase compared to 2015 and consisted of 31% of the total sales tax revenue collected in 2016. Sales tax collections from retail experienced an 18% increase and consisted of 30% of total sales tax revenue collected in 2016.

Sales tax collections fluctuate from quarter to quarter due to seasonal activity. The City typically receives more sales tax revenue in the second half of the year. The following table compares 2016 with 2015 retail sales and use tax revenue through June 30th and includes a breakdown by business sector.

Business Sector	Revenue (Jan - Jun)		% Change	% of Total	
	2016	2015		2016	2015
	Construction	\$140,278	\$79,350	77%	31%
Manufacturing	\$10,933	\$12,054	-9%	2%	3%
Wholesale Trade	\$34,320	\$26,436	30%	8%	8%
Retail	\$135,750	\$114,686	18%	30%	33%
Telecommunications & Other Information Services	\$30,314	\$28,457	7%	7%	8%
Finance, Insurance, Real Estate, Administrative Support Services, & Public Administration	\$55,461	\$44,971	23%	12%	13%
Accommodation and Food Services	\$26,557	\$21,803	22%	6%	6%
All Other Sectors	23,900.3	\$19,541	22%	5%	6%
Total	\$457,514	\$347,298	32%	100%	100%

Note: Totals for the quarter listed by sector may slightly differ from the retail sales tax revenue actually received due to adjustments made by the DOR between the time the detailed sales tax reports are received by the City and when the revenue is actually received.

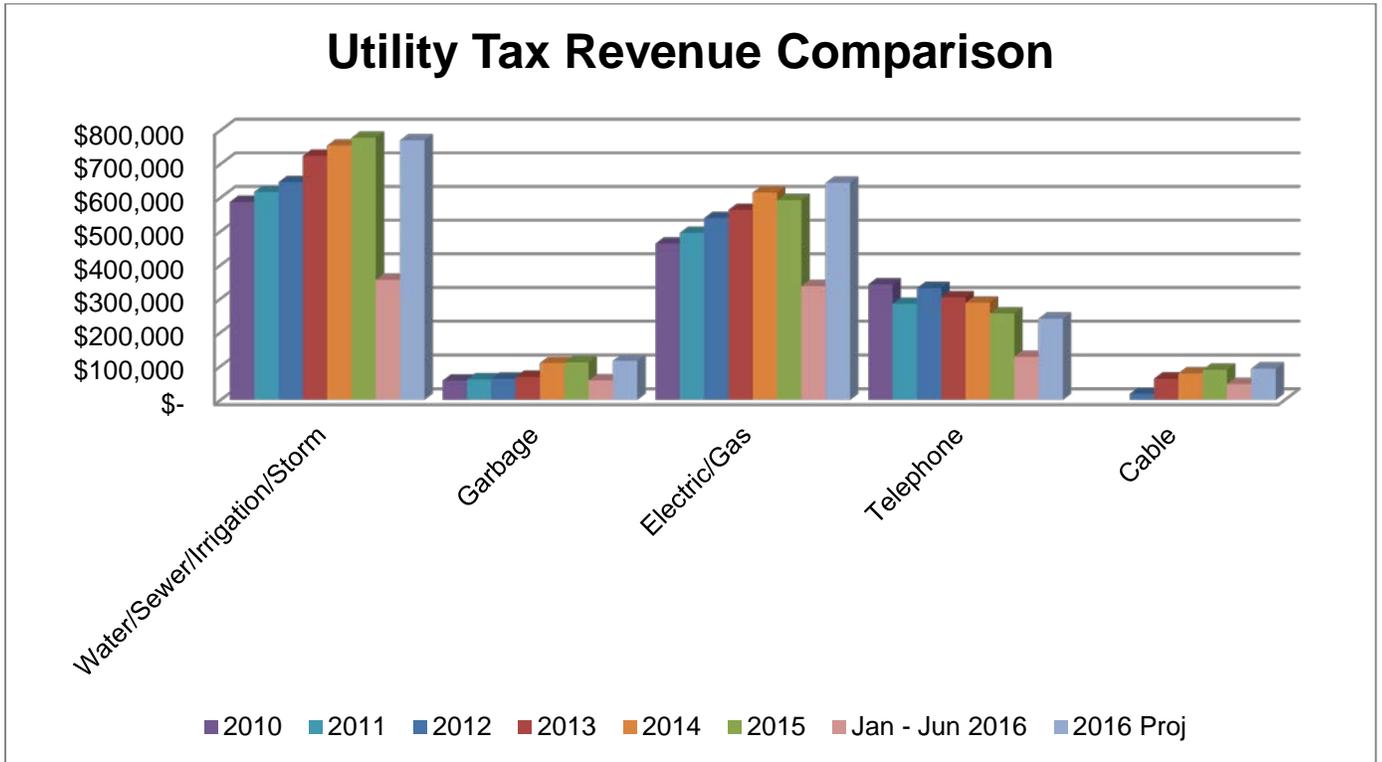
The chart below displays the quarterly retail sales and use tax collected since 2011.



Utility Taxes: The City collects both internal and external utility taxes. Internal taxes are paid by the City’s utility funds to the General Fund. External taxes are paid by providers of telephone, electric, gas, garbage collection and cable services in the city. Total utility tax revenues increased 3% through second quarter 2016 compared to the 2013-2014 biennium.

Revenues collected from telephone utilities decreased 2% compared to 2015. Utility tax collections for electric increased 6% compared to the prior year.

The following table reflects utility tax revenue received for years 2010-2015 and January through June 2016.



General Fund 001 Expenditures

Total General Fund expenditures were 63% of the 2015-2016 biennial budget. General Fund expenditures totaled \$8,677,486. This is a 13% increase over the prior year. Part of the increase is attributed to a transfer approved by Council during the March 3, 2015 budget amendment to transfer unanticipated fund balance from the General Fund to the Cumulative Reserve Fund. The capital expenditure for the General Fund’s portion of the Municipal Services Facility is also budgeted in 2015-2016.

2016 Project/Program Highlights:

City Clerk

- The City Clerk has been working on improving and upgrading the City’s IT and network systems.

- The Clerk coordinated implementation of MobileGuard for text message archiving.
- The Clerk installed Open Office on all police department laptops, and upgraded Autocad and Civil 3d for engineers.
- The Clerk assisted with planning and preparation of IT infrastructure at the future municipal services facility.

Finance Department

- In second quarter 2016, the Finance Department assisted with providing information to the Library Blue Ribbon Committee to assist with finding a solution to the library funding challenge. The Finance Department also coordinated a town hall on library funding in June.
- The Department worked on filling 3 vacant department positions.
- Finance staff prepared and submitted the 2015 Annual Financial Report to the WA State Auditor's Office.
- City departments have been very successful obtaining federal, state and local grants and low interest loans. The Finance Department assisted departments with accounting and reimbursement requests for projects funded through grants and loans.
- The Finance Department began preparation of the 2017-2018 budget.

Community Development

- Community Development developed design standards for the Belmont property which were approved by Council.
- The Department has been working on updating the City's Comprehensive Plan including the transportation element.
- Community Development has been working on marketing the Belmont property.
- Staff has been working regionally on a way finding signage program.

Police Department

- The Police Department is working with City Civil Service Commission and Public Safety Testing to test and review applicants for two vacant police officer positions.
- The Department has completed its second quarter of the four Patrol squad structure and having four Sergeants supervising operations. This has been found to be very beneficial for staff and the public.
- The 2016 Citizens Academy began in April and was very successful with approximately 30 participants.

Public Works - Engineering Department

- Coordinated and/or drafted and negotiated several inter-local agreements with agencies including:

- Benton County for Joint City/County Plan for Solid Waste Management per RCW 70.95.080;
 - City of Richland for water and sewer service at the intersection of Kennedy and Keene and street lights on Van Giesen's Yakima River Bridge on Richland's portion;
 - Richland School District on N. 62nd Ave Storm Water Retro-fit Project and on Paul Keith Wetland Pathway Project; and
 - Benton County for S. 38th Ave/Mt. Adams View Drive Project.
- The Department drafted and negotiated a franchise agreement ordinance with PocketiNet for fiber services.
 - Public Works coordinated Strategic Energy Management Funding Agreement with Benton REA regarding potential energy savings at the City's waste water treatment plant.

The following table shows the amended biennial budget and expenditures through June 30, 2016 and compares this information with 2013-2014 expenditures through June 30, 2014. The table also includes the General Fund ending fund balance on June 30, 2016.

001 General Fund Expenditures

General Fund 001	2015-2016 Biennial Budget					
Expenditure Category	01/01/2013 - 6/30/2014 Actual	01/01/2015 - 6/30/2016 YTD Actual	% Change from Prior Year	2015-2016 Amended Budget	2015-2016 % Expended	2015-2016 Remaining
Council	104,244	109,848	5%	148,646	74%	38,798
Mayor	18,584	22,702	22%	33,751	67%	11,049
City Clerk	173,098	192,845	11%	262,047	74%	69,202
Finance	808,612	1,000,273	24%	1,405,289	71%	405,016
Police	3,704,376	4,366,513	18%	6,545,044	67%	2,178,531
Community Development	1,111,924	1,001,428	-10%	1,635,013	61%	633,585
Public Works*	1,058,769	906,620	-14%	1,333,962	68%	427,342
Non-Departmental	403,459	651,270	61%	1,890,718	34%	1,239,448
Transfers Out	329,959	425,989	29%	425,989	100%	-
Total Expenditures	7,713,025	8,677,486	13%	13,680,459	63%	5,002,973
Ending Fund Balance 6/30/16	3,893,301					

*Public Works includes Engineering Services, Polo Dewatering System, Fire Hydrant Maintenance, Senior Center and Parks

Other Fund Revenues

Other funds include General Cumulative Reserve and Real Estate Conservation and Management Funds, Special Revenue Funds, Capital Funds, and Enterprise Funds. Other fund revenues totaled \$27,383,757 in the 2015-2016 biennium through second quarter 2016.

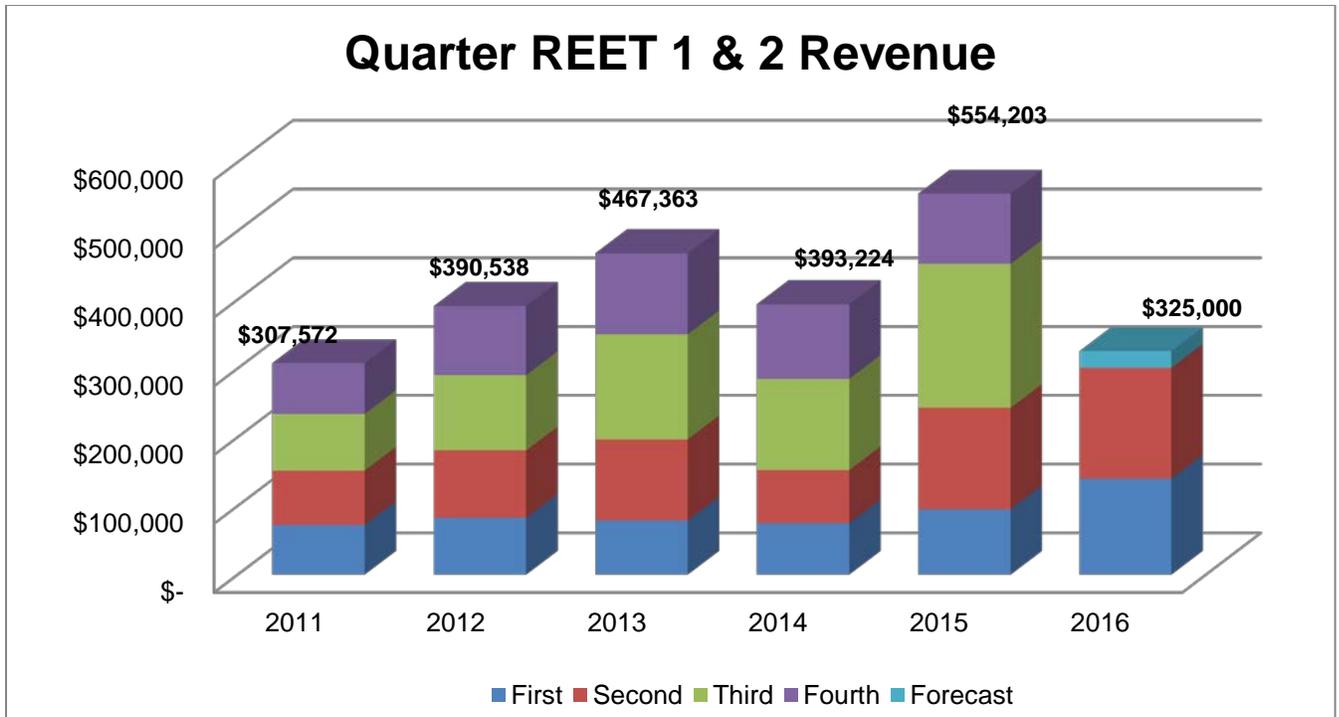
Of note are the following revenues through second quarter 2016 for other funds compared to 2015:

- The Street Fund's main operating revenue source is the **fuel tax** which increased 6% through second quarter 2016 compared to the prior year and was 74% of the projected revenue anticipated for the biennium. Collections totaled \$429,181 through the 2015-2016 biennium. Fuel tax is tied to the number of gallons sold, not the price per gallon. The fuel tax is collected at the state level and distributed to cities based on percent of population as compared with the State.

- **Park impact** fee collections increased 6% in 2016 compared to the prior year and collections totaled \$55,520 for 2016.
- Criminal Justice Tax Revenues
 - County-wide sales tax collections dedicated for **criminal justice** increased 9% in 2016 compared to 2015 and a total of \$133,946 was collected in 2016.
 - In August of 2014, voters showed their support to strengthen public safety in Benton County by approving **Proposition 14-5 which increases local sales taxes by 0.3 percent**. These funds are receipted into the Criminal Justice Fund 105 and a portion of these funds are transferred to the General Fund to be used as defined in RCW 82.14.340. In 2016, \$199,381 was collected from this sales tax.
- Total **Library** revenues were 69% of the biennial budget and increased 3.7% in second quarter compared to 2015. The City of West Richland contracts with Mid-Columbia Libraries (MCL) for library services. Of the 8.5% of gas, telephone, and electric utility tax revenues collected by the city, 2.5% is dedicated to fund library services including the contract fee for service with MCL, as well as maintenance and capital costs for the library facility.
- **Real Estate Excise Tax:** Real Estate Excise Tax (REET) in the amount of one-quarter of one percent of the selling price is imposed on property sales in the City of West Richland. The tax is deposited into the Capital Improvement REET 1 Fund and is restricted to fund any capital purpose identified in a capital improvement plan and local capital improvements including those listed in RCW 35.43.040.

There is an additional one-quarter of one percent real estate excise tax on real estate sales within the city limits. According to state law, cities planning under GMA have the authority to levy a second quarter percent tax (REET 2). Funds from REET 2 are placed in the Capital Improvement REET 2 dedicated to street preservation projects.

REET collections through second quarter increased 24% compared to 2015. The chart below demonstrates quarterly fluctuations in REET collections since 2011.



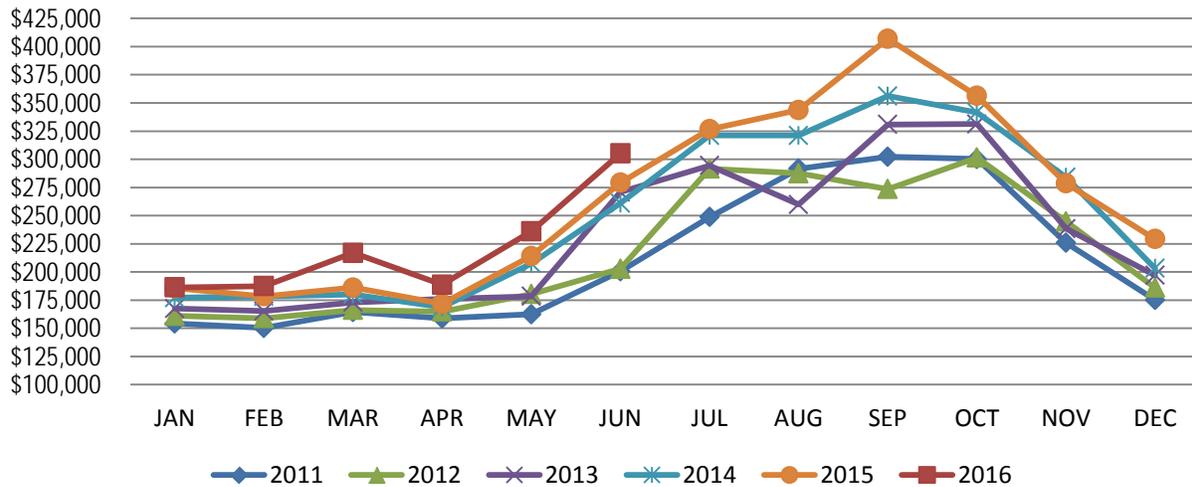
- Transportation impact fee revenues, in **Fund 355 Transportation Improvement Program**, totaled \$71,778 through second quarter 2016 and were 102% of the budget for the biennium. The City experienced an increase in TIP fees in 2015 with the construction of the new middle school at Keene and Belmont, as well as from the SSC North America Project and construction of the City’s Municipal Services Facility.

It is important to note, these funds are used for capital transportation projects. Collections may fluctuate based on the number of transportation mitigation agreements executed by City Council.

Utilities

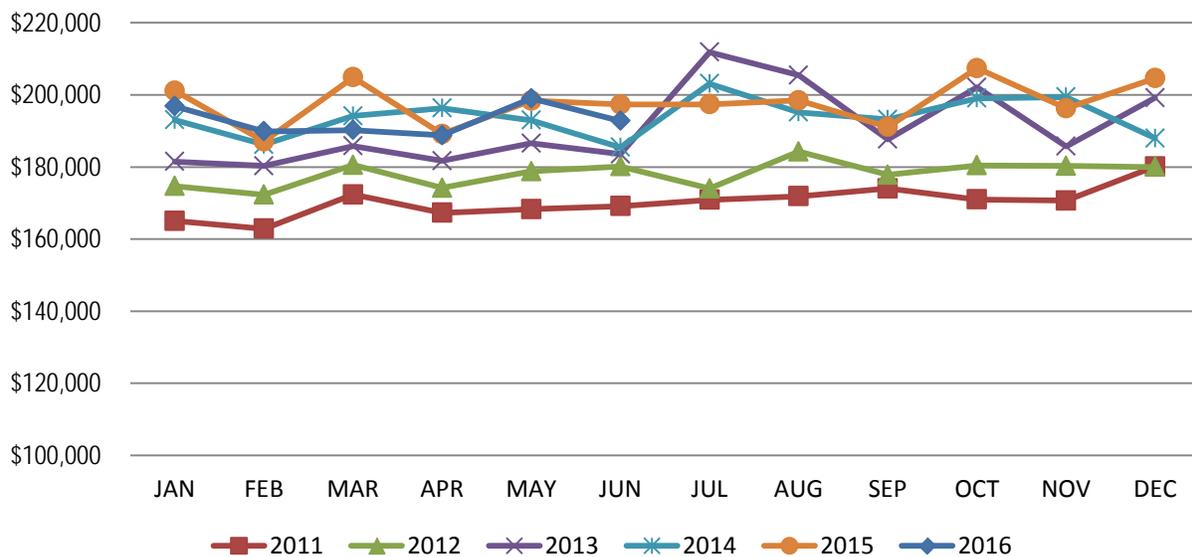
- **Water** collection revenue increased 10% through second quarter 2016 compared to 2015 and was 74% of the biennial budget. As of June 30, 2016, there were 4,621 water accounts billed (excludes city and hydrant rental accounts).

Water Collections By Month



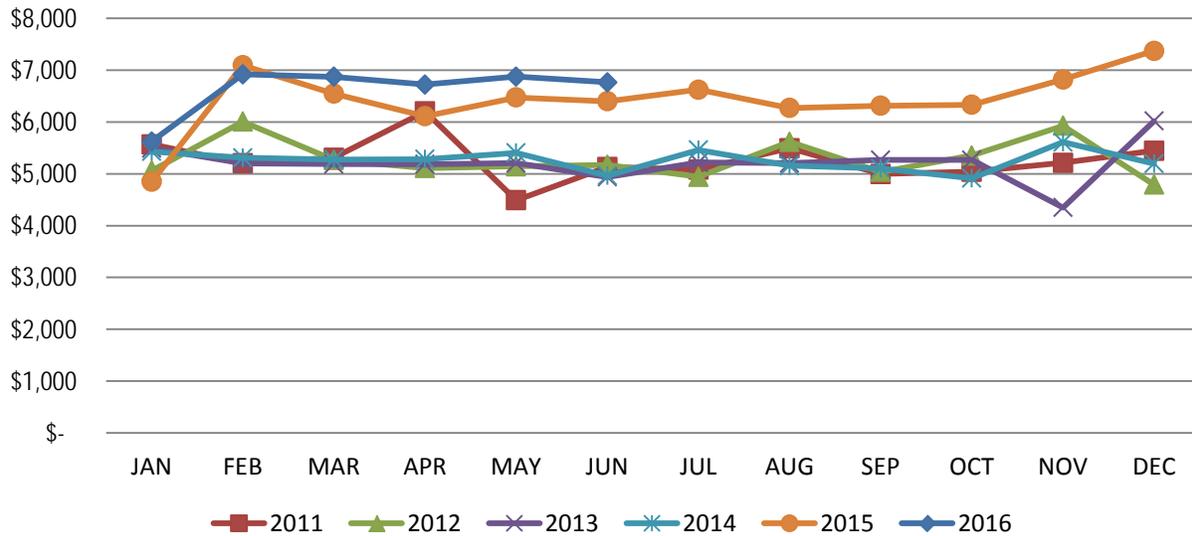
- Sewer** collection revenue, which is based primarily on a fixed rate structure, was 74% of the budgeted revenue for the biennium and decreased 2% compared to 2015. This decline is attributed to a reduction in the base sewer rate which became effective December 22, 2015.

Sewer Collections By Month



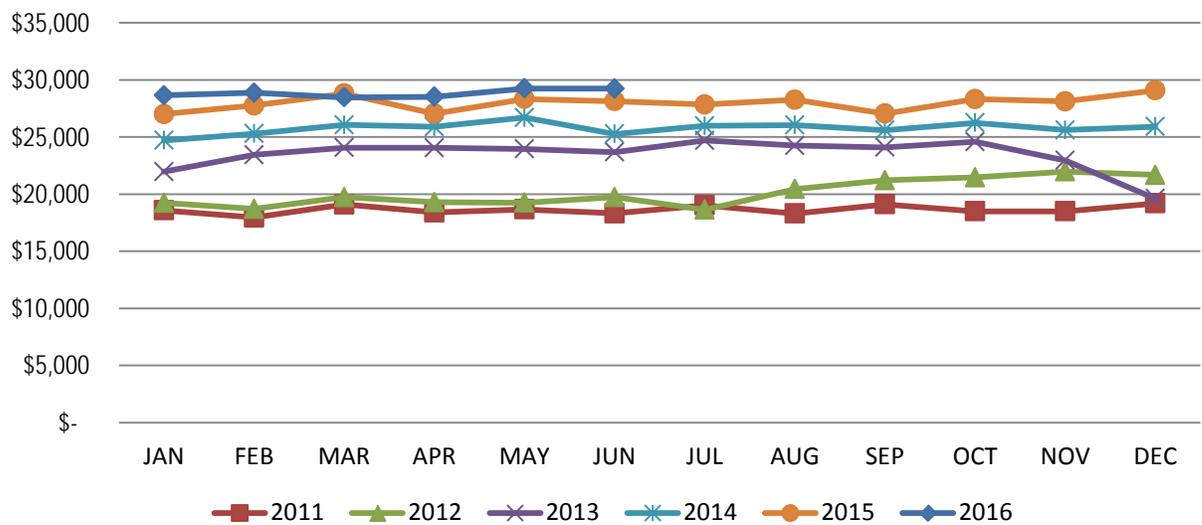
- Irrigation** revenue collections increased 8% compared to the prior year and were 71% of the biennial budget. This increase is attributed to a rate increase which went into effect December 22, 2015.

Irrigation Collections By Month

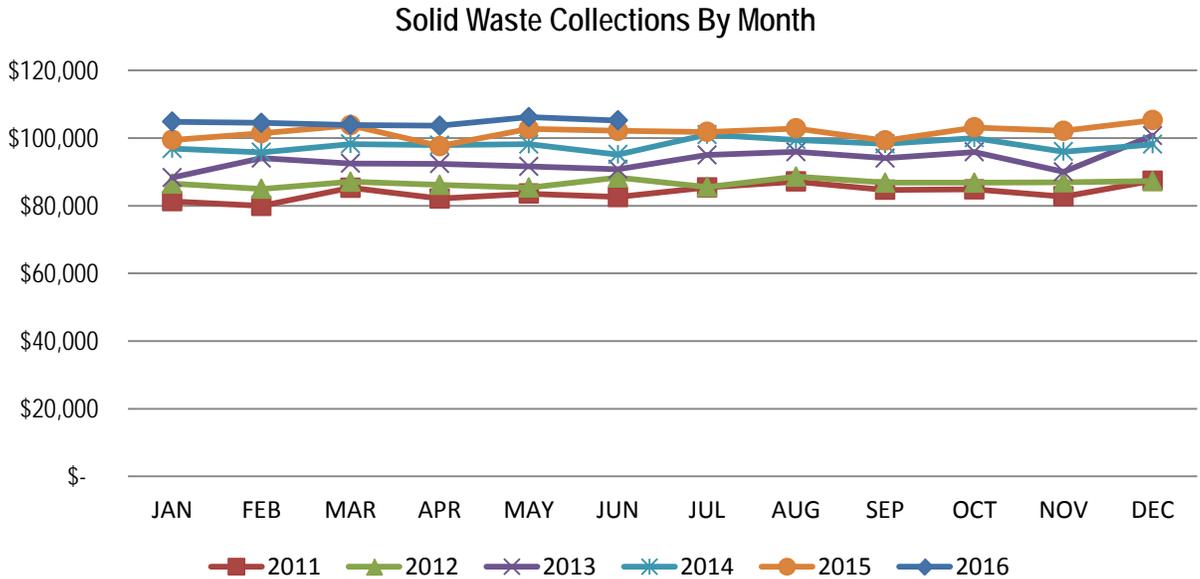


- **Stormwater** collections increased 4% in 2016 compared to 2015 and was 75% of the budgeted revenue for the biennium.

Stormwater Collections By Month



- **Solid waste** collections were 75% of the budgeted revenue for the biennium. Solid waste revenue increased 3% compared to the prior year.



- **Water system development** fee revenue collected through second quarter 2016 totaled \$145,465. Approximately 90% of the revenue budgeted for the 2015-2016 biennium has been collected.
- **Sewer system development** fee revenue collected through second 2016 totaled \$151,746. Approximately 83% of the revenue budgeted for the 2015-2016 biennium has been collected.

The following table shows the amended biennial budget and actual revenues collected through June 30, 2016 for other funds and compares this information with 2013-2014 actuals.

Other Fund Revenues

Revenues by Fund		2015-2016 Biennial Budget					
Fund	Description	01/01/2013 - 6/30/2014 Actual	01/01/2015 - 6/30/2016 YTD Actual	% Change from Prior Year	2015-2016 Amended Budget	2015-2016 % Received	2015-2016 Remaining
002	General Cumulative Reserve	509,667	340,610	-33%	250,476	136%	(90,134)
003	Real Estate Cons/Mgmt.	36,481	37	-100%	5,100	1%	5,063
101	Street	549,595	1,811,350	230%	1,933,915	94%	122,565
104	Park Impact	141,428	164,948	17%	164,000	101%	(948)
105	Criminal Justice	656,044	1,170,272	78%	1,433,493	82%	263,221
121	Library Services	584,716	561,728	-4%	819,565	69%	257,837
301	Cap Imp - REET 1	310,511	428,272	38%	325,810	131%	(102,462)
302	Cap Imp - REET 2	484,689	427,853	-12%	327,000	131%	(100,853)
309	Cap Imp - Yakima River Gateway	25,000	528,787	2015%	1,609,519	33%	1,080,732
312	Paul Keith Wetland Restoration	-	60,832	#DIV/0!	125,832	48%	65,000
320	Cap Imp - CERB/Shelby	183,556	999,938	445%	1,252,310	80%	252,372
355	Cap Imp - Transportation Imp Program	386,537	1,944,369	403%	2,286,481	85%	342,112
374	Cap Imp - Van Giesen Redev Ph 1	1,123	198	-82%	350	56%	153
401	Water/Sewer Operating	8,140,826	9,695,032	19%	13,710,583	71%	4,015,551
402	Irrigation Utility	94,448	118,651	26%	165,335	72%	46,684
404	Storm Water Utility	718,374	639,389	-11%	1,499,900	43%	860,511
405	Solid Waste Utility	1,704,571	1,850,296	9%	2,468,558	75%	618,262
441	Water System Development	711,096	1,520,053	114%	7,360,998	21%	5,840,945
442	Sewer System Development	574,269	3,431,027	497%	5,062,057	68%	1,631,030
451	Water Line Development	24,669	54,000	119%	16,200	333%	(37,800)
452	Sewer Line Development	11,372	23,190	104%	10,400	223%	(12,790)
461	Cap Imp - PW Maintenance Facility	-	3,398	#DIV/0!	2,311,850	0%	2,308,452
482	Cap Imp - Street Decant Facility	-	1,609,528	#DIV/0!	2,014,000	80%	404,472
	Total Revenues	15,848,974	27,383,757	73%	45,153,732	61%	17,769,975

Other Fund Expenditures

2016 Project/Program Highlights:

Through second quarter 2016, the Public Works Department has been very busy working on a number of transportation and utility projects many of which are funded with grant revenue. The City has been very successful over the past several years in obtaining several state and federal grants for transportation, water, sewer and stormwater projects.

2016 Transportation Projects Include:

- Completed construction of Belmont Blvd Phase 3&4 Project
- Completed design and 50% of the road right row acquisitions for S. 38th Ave/Mt. Adams View Drive Project
- In process of designing and obtaining environmental permits for Paul Keith Wetland Pathway Project
- Updated Six-Year Transportation Improvement Program 2017-2022
- Completed Annual Street Striping Project
- Drafted and negotiated Transportation Impact Fee Mitigation Agreement for Westwood Estates Phase 4 Development.
- Successfully completed a Federal / WSDOT Project Management Review for Paradise Way / Belmont Blvd Widening Project.
- In process of drafting ordinance to update WRMC section associated with street cut / road permits per WCIA guidance.

2016 Water Projects Include:

- Completed the drilling of Well #11. Currently in process of pump testing new well to determine capacity and water quality.
- Completed the environmental permitting and Engineering Report for the Brotherhood Reservoir Project for review and approval by Department of Health. Once approved, the design of the reservoir can be completed.
- Completed construction of the Well #9 H2S Oxidation Improvement Project.
- Drafted and negotiated Water Main upsizing agreements with Westwood Estates Phase 4 and Sunset Heights Phase 1.
- Updated Water Use Efficiency goals per WAC 246-290.
- In process of updating Water System Financial Plan with consultant assistance.
- In process of updating Comprehensive Water System Plan for submittal to Department of Health.

2016 Sewer Projects Include:

- Completed construction of Biosolids Facility Project.
- Construction of Industrial Process Water Treatment Facility Project scheduled to be completed in August 2016.
- In process of updating Sewer System Financial Plan with consultant assistance.
- Amended Industrial Wastewater User Agreements for Red Mtn. Estates and Vinmotion Wines.
- In process of in-house design of new RV Dump.

2016 Storm Water Projects Include:

- Construction of N. 62nd Ave Stormwater Retro-fit Project scheduled to be completed in August 2016.
- In process of completing environmental permitting and in-house designing of Ironton Drive Stormwater Retro-fit Project.
- Completed construction of Street Sweeping Decant Facility.

2016 Park Projects:

- Yakima River Gateway Project –Scheduled to rebid in Oct/Nov of 2016 with construction estimated to be completed by November 2017.

2016 Facility Projects:

- Construction of Municipal Services Facility scheduled to be completed in April 2017.
- Completed construction of replacement roofs on the Police Building and Public Works / Community Development Building.
- Completed construction of the CERB Project.
- Currently in process of awarding contract to complete water damage repairs to Police Building.

The following table shows the amended biennial budget and expenditures through June 30, 2016 and compares this information with 2013-2014 actuals. The table also includes ending fund balances on June 30, 2016 for other funds.

Other Fund Expenditures

Expenditures by Fund		2015-2016 Biennial Budget						
Fund	Description	01/01/13 - 6/30/2014 Actual	01/01/15 - 6/30/16 YTD Actual	% Change from Prior Year	2015-2016 Amended Budget	2015-2016 % Expended	2015-2016 Remaining	Ending Fund Balance 6/30/2016
002	General Cumulative Reserve	304,331	124,945	-59%	166,557	75%	41,612	546,988
003	Real Estate Cons/Mgmt.	3,411	-	-100%	29,000	0%	29,000	28,948
101	Street	487,891	1,585,838	225%	2,018,206	79%	432,368	344,021
104	Park Impact	4,409	330,838	7404%	365,647	90%	34,809	275,077
105	Criminal Justice	646,123	1,007,159	56%	1,383,934	73%	376,775	467,919
121	Library Services	604,441	627,440	4%	879,740	71%	252,300	86,549
301	Cap Imp - REET 1	276,764	202,623	-27%	346,246	59%	143,623	526,613
302	Cap Imp - REET 2	387,144	590,131	52%	666,117	89%	75,986	403,033
309	Cap Imp - Yakima River Gateway	25,000	494,660	1879%	2,037,383	24%	1,542,723	461,992
312	Paul Keith Wetland Restoration	-	4,211	#DIV/0!	125,832	3%	121,621	56,621
320	Cap Imp - CERB/Shelby	183,168	1,000,394	446%	1,252,310	80%	251,916	-
355	Cap Imp - Transportation Imp Program	288,781	1,917,821	564%	2,373,666	81%	455,845	281,545
374	Cap Imp - Van Giesen Redev Ph 1	-	142,515	#DIV/0!	276,775	51%	134,260	134,139
401	Water/Sewer Operating	7,955,159	8,803,748	11%	15,713,225	56%	6,909,477	6,282,076
402	Irrigation Utility	133,386	115,140	-14%	183,436	63%	68,296	67,015
404	Storm Water Utility	774,152	567,968	-27%	1,603,662	35%	1,035,694	476,110
405	Solid Waste Utility	1,533,168	1,718,331	12%	2,475,448	69%	757,117	311,770
441	Water System Development	547,450	1,626,869	197%	7,820,029	21%	6,193,160	1,122,214
442	Sewer System Development	434,333	3,944,964	808%	5,877,382	67%	1,932,418	584,357
451	Water Line Development	8,113	30,780	279%	47,742	64%	16,962	56,381
452	Sewer Line Development	138	347	152%	81,923	0%	81,576	94,367
461	Cap Imp - PW Maintenance Facility	-	825,791	#DIV/0!	4,601,175	18%	3,775,384	1,466,933
482	Cap Imp - Street Decant Facility	-	1,609,513	#DIV/0!	2,014,000	80%	404,487	15
	Total Expenditures	14,597,363	27,272,025	87%	52,339,435	52%	25,067,410	14,074,680



3801 W. Van Giesen Street * West Richland, WA 99353 * www.westrichland.org
 Administration & Finance Department * (509) 967-3431 * FAX (509) 967-5706

We, the undersigned City Council of West Richland, Benton County, Washington, do hereby certify that the merchandise or services hereinafter specified have been received and that the following are approved for payment this 16th day of August 2016:

Accounts Payable Checks	16387-58429	\$1,372,161.86
AP Void Checks	58419	(\$559.29)
Payroll Checks	16387-16389	\$1,299.62
Direct Deposits		\$243,860.02
Electronic wire payments	01.07.2016 – 19.07.2016	\$299,050.07
		\$1,915,812.28

COUNCILMEMBER

001	General	\$589,647.58
101	Streets	\$44,847.23
105	Criminal Justice	\$14,583.67
121	Library Services	\$34,693.33
309	Yakima River Gateway Improvements	\$7,839.95
312	Paul Keith Wetland Restoration	\$152.49
355	Transportation Improvement Program	\$118,933.14
374	Cap. Improvements – Van Giesen Redev Ph. 1	\$535.98
401	Water/Sewer	\$233,631.79
402	Irrigation	\$4,757.74
404	Storm Water	\$14,362.46
405	Solid Waste	\$88,609.52
441	Water System Development	\$131,463.71
442	Sewer System Development	\$455,229.79
461	Public Works Operations Facility Construction	\$164,140.93
621	Treasurer's Trust	\$1,021.17
631	Treasurer's Agency	\$11,361.80
	TOTAL	\$1,915,812.28

**CITY OF WEST RICHLAND
CITY COUNCIL MEETING
TUESDAY, JULY 19, 2016**

1. **Call to Order** – Mayor Gerry called the meeting to order at 7:00 p.m.
2. **Roll Call** – Mayor Brent Gerry and Mayor Pro Tem Rich Buel were present. Council Members Richard Bloom, Gail Brown, Don Engelman, John Smart, Ken Stoker, and Scott Whalen were also present. Staff members present were Community Development Director Aaron Lambert, Police Chief Brian McElroy, Finance Director Jessica Platt, Public Works Director Roscoe Slade, City Attorney Bronson Brown, and City Clerk Julie Richardson.
3. **Pledge of Allegiance** – Councilmember Engelman led the Council, staff, and audience in the recitation of the Pledge of Allegiance.
4. **Approval of Agenda** – *Upon motion by Councilmember Engelman, seconded by Councilmember Brown, Council unanimously approved the agenda as presented.*
5. **Presentations** –
 - a. **West Richland Police Department Award Presentations** – Chief McElroy presented Officer Jared Kelly with a Life Saving Award and Officer Edwardo Magana with a Chief’s Commendation for their efforts on June 20th when a woman’s life was saved at the Bombing Range Sports Complex.
 - b. **Merje Design Presentation** – Lauren Hilliard, from Merje Design, presented Wayfinding design concepts.
6. **Consent Agenda** – *Upon motion by Councilmember Whalen, seconded by Councilmember Bloom, Council unanimously approved the consent agenda as presented.*
 - a. **Approve Payment of Bills**
 - b. **Approve Minutes of Regular City Council Meeting, Special Meeting and Workshop of June 21, 2016 and Special Meeting of June 28, 2016**
 - c. **Authorize Mayor to Execute Strategic Energy Management Funding Agreement with Benton REA**
 - d. **Award Police Building Repairs Contract Project**
 - e. **RES – Terminating Amended and Restated Debt Participation Agreement for Jail and District Court Expansion**

RESOLUTION 24-16 - A RESOLUTION OF THE CITY OF WEST RICHLAND, WASHINGTON, TERMINATING THE AMENDED AND RESTATED DEBT PARTICIPATION AGREEMENT FOR JAIL AND DISTRICT COURT EXPANSION

7. **Ordinances, Resolutions, Motions, and Public Hearings – 7a. ORD – First Reading**

- Relating to Transportation and Park Impact Fee Deferral Process – Public Works Director Slade presented an ordinance for first reading and discussion. He noted that Engrossed Senate Bill 5923 requires cities and counties to adopt a deferral system for the collection of impact fees for new single family residential construction (law does not apply to other non-single family development). Under the new law, cities must adopt a deferral system for the collection of impact fees that, upon developer's request, delays payment until the time of either final building permit inspection, issuance of certificate of occupancy and/or at the closing of the first sale of the property. West Richland has the option of selecting the time of payment from the aforementioned options.

The ordinance will be presented to Council for action on August 16, 2016.

- 8. Unfinished Business – a. RES – Establishing Brokerage Fees (continued from 6-28-16) – Mayor Gerry** said that this item is a continuance of final action on resolution 23-16, establishing brokerage fees. The revisions council discussed on June 28th are included in the proposed revised resolution.

Councilmember Engelman moved to amend the motion from June 28th approving resolution 23-16 to include the revisions discussed on June 28th, seconded by Councilmember Bloom. The motion carried unanimously.

The motion made during the June 28, 2016 council meeting (Councilmember Brown moved to approve resolution 23-16, seconded by councilmember Bloom) carried unanimously.

- 9. New Business –** There was no new business.

10. Citizens Public Comment

Peggy Panisko referring to the Levy LID Lift discussed during the workshop prior to this meeting, said she would like to see the word "permanent" included. She also commented that she has not seen anything showing the cost of the city running its own library. She asked if the 2 ½% utility tax will go away if the voters do not approve the Levy LID Lift. Further, referring to a comment from the attorney stating the city has to remain neutral on the Levy LID Lift, she asked who constitutes the city.

Dan Richey commended Caden Slade's Eagle Scout project at the Veterans Memorial in Flat Top Park. He thanked the Police Chief and officers for their service and said he, and everyone he knows, supports law enforcement.

Lisa Richmond asked council to ban fireworks, and said this was the worst year yet.

11. Announcements, Reports & Comments - a. Staff Reports

Community Development Director Lambert reported: The Yakima Gateway Project has all needed permits issued; There will be a joint Park Board and Economic Development Board meeting on the Comprehensive Plan on Monday, July 25th; a building and grading permit for Double Canyon Winery has been issued.

Finance Director Platt will be presenting the quarterly financial report on August 16th.

Public Works Director Slade announced a utility committee meeting following this meeting.

Clerk Richardson announced the August 2, 2016 meeting is canceled for National Night Out. There will be a special meeting on Tuesday, July 26th at 6:00 p.m.

Chief McElroy advised there is a consultant performing a staff analysis of police administration this week and she will do an analysis of the patrol section in the future. The consultant was provided by a grant from the State Auditor's Office.

b. Council Reports

Councilmember Stoker commended Caden Slade for his Eagle Scout Project.

Councilmember Engelman reported on the Port of Kennewick meeting. He also announced the Tri-Cities Food Bank will be adding a fourth food bank location and it will be in West Richland.

Councilmember Smart would like to look at night sky lighting compliance in the future.

Councilmember Bloom reported he did a police ride-a-long on July 1st. He proposed having people sign a permit when purchasing fireworks stating they know the rules. He also reported that Ben Franklin Transit will be holding workshops to roll out their new routes and better improve service. He said Ben Franklin Transit buses will no longer be loading and unloading in the front Benton Franklin Fair parking lot, but will do so in the back lot.

Mayor Pro Tem Buel urged everyone to be careful during Water Follies next weekend.

Mayor Gerry reported on the ground breaking for the new Municipal Services Facility that was held this morning.

12. Executive Session – There was no executive session.

13. Adjournment – The meeting was adjourned at 8:20 p.m.

Brent Gerry, Mayor

Julie Richardson, City Clerk

**CITY OF WEST RICHLAND
CITY COUNCIL WORKSHOP
Tuesday, July 19, 2016
6:00 P.M.**

- 1. Call to Order** – Mayor Gerry called the meeting to order at 6:00 p.m.
- 2. Roll Call** – Mayor Brent Gerry and Mayor Pro Tem Rich Buel were present. Council Members Richard Bloom, Gail Brown, Don Engelman, John Smart, Ken Stoker and Scott Whalen were also present. Staff members present were Community Development Director Aaron Lambert, Finance Director Jessica Platt, Public Works Director Roscoe Slade, and City Clerk Julie Richardson.
- 3. City Council Subcommittee Recommendation for Funding Library Services** – Finance Director Platt noted that during the work session on June 21, 2016, a city council subcommittee was formed to further discuss and review library funding options. Following review and discussion of the funding options, the Council Subcommittee recommends a levy lid lift. This is similar to the Library Blue Ribbon Committee's second recommendation except instead of maintaining the existing utility tax structure the Council Subcommittee recommends eliminating the 2.5% utility tax and funding library services solely through a levy lid lift. The Council Subcommittee is also recommending the levy lid lift proposition be placed on the November 8, 2016 ballot.

Council discussion ensued, including maintenance costs being included in the Levy LID Lift, option to issue all residents Richland Library cards, what happens if the Levy LID Lift is not approved, why shifting totally to property tax, and why a permanent Levy LID Lift.

Mark Greenough, from Foster Pepper, provided an overview of the requirements for doing a Levy LID Lift and timelines.

This topic and a resolution will be included on the agenda for the special meeting on July 26th.

- 5. Adjournment** – The workshop was adjourned at 6:48 p.m.

Brent Gerry, Mayor

Julie Richardson, City Clerk

**CITY OF WEST RICHLAND
SPECIAL CITY COUNCIL MEETING
TUESDAY, JULY 26, 2016**

1. **Call to Order** – Mayor Gerry called the meeting to order at 6:00 p.m.
2. **Roll Call** – Mayor Brent Gerry and Mayor Pro Tem Rich Buel were present. Council Members Richard Bloom, Gail Brown, Don Engelman, John Smart, Ken Stoker, and Scott Whalen were also present. Staff members present were Community Development Director Aaron Lambert, Police Chief Brian McElroy, Finance Director Jessica Platt, Public Works Director Roscoe Slade, City Attorney Mike Rio, and City Clerk Julie Richardson.

Mayor Gerry announced that item 3c will be moved in front of item 3a because there are members of the Library Blue Ribbon Committee in attendance and they will be able to leave after that item.

3. **Ordinances, Resolutions, Motions and Public Hearings**

- c. **RES – Relating to the City Library and Providing For a Ballot Proposition for the November 8, 2016 General Election – Finance Director Platt** noted that long term sustainable funding is needed in order to keep the current library service level. Due to declining utility tax revenues which fund the library, staff estimates the library fund will be depleted by the spring of 2017. A levy lid lift would provide a more sustainable funding source for library services than the current utility tax. The attached resolution provides for a levy lid lift ballot proposition for the November 8, 2016 general election which replaces the 2.5% utility tax for telephone, electric, and gas with a property tax levy lid lift at \$0.45 per \$1,000 assessed valuation. Information pertaining to a \$0.47 per \$1,000 assessed levy lid lift which includes a building maintenance reserve is also included. If Council wanted to approve the levy lid lift with a building maintenance reserve, the resolution would need a motion for an amendment.

Lynn Neitzel-Cleavenger, Library Blue Ribbon Committee member, supports the subcommittee's recommendation and encourages council to approve the resolution.

KyriAnne Boothroyd, Library Blue Ribbon Committee member, supports either the \$0.45 or \$0.47 option.

Pam Richey, Library Blue Ribbon Committee member, supports the resolution.

Dave DeRosa thanked council for working together to find a solution for keeping Mid-Columbia Libraries in West Richland.

Kyle Cox, from Mid-Columbia Libraries, said Mid-Columbia Libraries supports whatever course the city take to continue to work together on library services in West Richland.

Kayla Nield, Library Blue Ribbon Committee member, supports the resolution.

RESOLUTION 25-16 – A RESOLUTION OF THE CITY OF WEST RICHLAND, WASHINGTON, RELATING TO THE CITY LIBRARY; PROVIDING FOR THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY AT THE

NOVEMBER 8, 2016 GENERAL ELECTION OF A PROPOSITION TO REPLACE THE EXISTING 2.5% ADDITION TO THE ELECTRIC, TELEPHONE, AND GAS UTILITY TAXES AND AUTHORIZING A PERMANENT INCREASE IN THE REGULAR PROPERTY TAX LEVY IN EXCESS OF THE INCREASE OTHERWISE ALLOWED BY CHAPTER 84.55 RCW; PROVIDING FOR ONGOING FUNDING TO MAINTAIN CURRENT LEVELS OF LIBRARY SERVICE AND PROVIDE LIBRARY MAINTENANCE FUNDS; SETTING FORTH THE BALLOT PROPOSITION; REQUESTING THAT THE BENTON COUNTY AUDITOR PLACE THE PROPOSITION ON THE NOVEMBER 8, 2016 BALLOT; AND, DIRECTING ACTS CONSISTENT WITH THE AUTHORIZATIONS HEREIN

Councilmember Stoker moved to pass resolution 25-16, relating to the city library and providing for a ballot proposition for the November 8, 2016 general election, seconded by Councilmember Bloom. Following debate, the motion carried unanimously.

There was discussion regarding what would happen if the Levy LID Lift doesn't pass.

Finance Director Platt responded that current projections show library funds will be depleted by spring, 2017. If the levy doesn't pass, council will need to look at other funding sources, cutting services or other options.

Following an inquiry, Finance Director Platt responded that the Levy specifies the funding will be for library services, but it doesn't specify Mid-Columbia Libraries.

- a. **ORD - Amending 2015-16 Biennial Budget and Motion to Authorize Change Order for the Municipal Services Facility – Public Works Director Slade and Finance Director Platt** presented a recommendation from staff and the utility committee to Staff and Utility Committee recommends Council adopt an ordinance amending the 2015-16 Biennial Budget and authorize the Public Works Director to execute a change order to the contract with TW Clark to construct facade improvements/unfinished office space for the Finance Department in an amount not to exceed \$453,350 increasing the total contract amount to \$4,878,039.80.

Dan Richey commented he has watched this project grow from inception. The optics of the cost don't look good when raising park fees, transportation impact fees and library. He encouraged an attitude of caution and judiciousness with spending.

ORDINANCE 12-16 – AN ORDINANCE OF THE CITY OF WEST RICHLAND, WASHINGTON, AMENDING THE BUDGET FOR THE CITY FOR THE BIENNIUM ENDING DECEMBER 31, 2016

Councilmember Bloom moved to approve ordinance 12-16 amending the 2015-2016 biennial budget, seconded by Councilmember Brown. Following debate, the motion carried unanimously.

Councilmember Bloom moved to authorize the Public Works Director to execute a change order to contract with TW Clark to construct facade/unfinished office space in an amount not to exceed \$453,350 increasing the total contract amount to \$4,878,039.80, seconded by Councilmember Brown. Following debate, the motion carried unanimously.

- b. **Motion to Amend Architect Services Contract for Municipal Services Facility – Public Works Director Slade** presented a recommendation from staff and the utility committee to authorize the Mayor to sign an amendment to the architect service agreement with Terence Thornhill Architect for professional architect services in an amount not to exceed \$65,000 increasing the total agreement amount to \$505,480. The purpose is complete the design of unfinished office space for the Finance Department.

Councilmember Engelman moved to authorize the Mayor to execute an amendment to architectural services agreement with Terence Thornhill Architects for professional architect services in an amount not to exceed \$65,000 increasing the total agreement to \$505,480, seconded by Councilmember Bloom. The motion carried unanimously.

13. **Adjournment** – The meeting was adjourned at 7:18 p.m.

Brent Gerry, Mayor

Julie Richardson, City Clerk

WEST RICHLAND AGENDA ACTION ITEMS

AGENDA ITEM:	6c	TYPE OF ACTION NEEDED			
MEETING DATE:	August 16, 2016	<i>Execute Contract</i>		<i>Consent Agenda</i>	X
SUBJECT:	ORD__-16 – Relating to Transportation and Park Impact Fee Deferral Process & RES__-16 Adding Administrative Fee for Impact Fee Deferrals to Master Fee Schedule	<i>Pass Resolution</i>	X	<i>Public Hearing</i>	
		<i>Pass Ordinance</i>	X	<i>1st Discussion</i>	
Prepared by:	Roscoe C. Slade III, PW Director 	<i>Pass Motion</i>		<i>2nd Discussion</i>	
Reviewed by:	Brent Gerry, Mayor 	<i>Other</i>		<i>Other</i>	

STRATEGIC FOCUS AREA:

SFA #3 – Financial & Operational Effectiveness, Stability and Accountability.

Goal #1 – Conduct City operations using best management practices.

ATTACHMENTS:

- Draft copy of Ordinance relating to Transportation and Park Impact Fee.
- Draft copy of Resolution adding \$75 non-refundable administrative fee for impact fee deferral applications.
- MRSC article dated July 7, 2015 – Legislature adopts changes to Washington’s Impact Fee Law.
- Final Bill Report ESB 5923 (executive summary).
- Engrossed Senate Bill 5923.
- Draft Park and Transportation Impact Fee Deferral informational flyer.
- Draft Impact Fee Deferral Application Form.
- Draft agreement for lien for development impact fees.
- Draft release of lien document.

BACKGROUND INFORMATION:

The 2015 Legislature enacted changes to how impact fees are to be collected by Washington counties and cities. Engrossed Senate Bill (ESB) 5923 requires cities and counties to adopt a deferral system for the collection of impact fees for new single family residential construction. The deadline for compliance with ESB 5923 is September 1, 2016.

A first reading of the draft Ordinance relating to Transportation and Park Impact Fee Deferral Process occurred on July 19, 2016.

SUMMARY:

Engrossed Senate Bill 5923 requires cities and counties to adopt a deferral system for the collection of impact fees for new single family residential construction (law does not apply to other non-single family development). Under the new law, cities must adopt a deferral system for the collection of impact fees that, upon developer’s request, delays payment until the time of either final building permit inspection, issuance of certificate of occupancy and or at the closing of the first sale of the property. West Richland has the option of selecting the time of payment (chose one or more of the aforementioned options).

Other highlights of ESB 5923 include:

- Limits the term of deferral to 18 months from issuance of the building permit.
- Applicants seeking a deferral must grant and record a lien against their property in favor of municipality.
- Municipalities may collect reasonable administrative fees from applicants seeking a deferral. A \$75 non-refundable administrative fee is proposed by staff.
- Municipalities can limit deferral to the first 20 single-family residential building permits, annually, per applicant. Staff is proposing not to limit deferral.

West Richland Municipal Code currently provides for deferral of impact fees until final inspection / issuance of certificate of occupancy for only non-residential developments (180 degrees from ESB 5923). The proposed ordinance would provide for park and transportation impact fee deferral for all types of development; not just single-family residential development.

The proposed ordinance also provides the following amendments and changes:

WRMC Sections 16.14.040(C) and (D) are amended to increase the term by which impact fee payments are required to be expended and if not refunded from 5 years to 10 years to be consistent with state law.

WRMC Sections 16.14.090 and 16.14.190 are amended to delete provisions for land division applicants to pay impact fees in installments over a five year period with interest.

WRMC Sections 16.14.240(C) and 16.14.270(A) are amended to increase the term by which transportation impact fee payments are required to be expended and if not refunded from 6 years to 10 years to be consistent with state law. Park impact fee section was previously corrected to 10 years.

RECOMMENDATION:

Staff recommends Council adopt Ordinance __-16 adopting transportation and park impact fee deferral process. Staff also recommends Council to pass Resolution __-16 adding a non-refundable \$75 administrative fee for impact fee deferral applications to the Master Fee Schedule.

ALTERNATIVES:

Options on time of deferral were provided above. Council can select one or more the options provided.

FISCAL IMPACT (Indicate amount, fund and impact on budget):

Administrative costs to administer, process and regulate impact fee deferral system. Proposed \$75 non-refundable administrative fee is estimated to be reasonable and cover said costs.

MOTION:

I move to adopt Ord. __-16 adopting transportation and park impact fee deferral process.

&

I move to pass Res. __-16 adding a non-refundable \$75 administrative fee for impact fee deferral applications to the City's Master Fee Schedule.

When Recorded Please Return To:
City of West Richland
3801 W. Van Giesen
West Richland, WA 99353

ORDINANCE NO. __-16

AN ORDINANCE OF THE CITY OF WEST RICHLAND, WASHINGTON, RELATING TO TRANSPORTATION AND PARK IMPACT FEES, ADDING SECTIONS 16.14.095 AND 16.14.195, AMENDING SECTIONS 16.14.040(C), 16.14.040(D), 16.14.090, 16.14.190, 16.14.240(C), AND 16.14.270(A) OF THE WEST RICHLAND MUNICIPAL CODE.

THE CITY COUNCIL FOR THE CITY OF WEST RICHLAND, WASHINGTON, do hereby ordain as follows:

Section 1. Section 16.14.095 Option for deferred payment of Park Impact Fee of the West Richland Municipal Code is hereby added to read as follows:

Section 16.14.095 Option for deferred payment of Park Impact Fee.

An applicant may request, at any time prior to building permit issuance, and consistent with the requirements of this section, to defer to final inspection the payment of Park Impact Fee for a residential development unit, multi-family development, or any other type of residential development. The following shall apply to any request to defer payment of Park Impact Fee:

A. The applicant shall submit to the city a written request to defer the payment of Park Impact Fee for a specifically identified building permit. The applicant's request shall identify, as applicable, the applicant's corporate identity and contractor registration number, the full names of all legal owners of the property upon which the development activity allowed by the building permit is to occur, the legal description of the property upon which the development activity allowed by the building permit is to occur, the tax parcel identification number of the property upon which the development activity allowed by the building permit is to occur, and the address of the property upon which the development activity allowed by the building permit is to occur. All applications shall be accompanied by a non-refundable administrative fee as set forth by the City Council in the Master Fee Schedule.

B. The Park Impact Fee amount due under any request to defer payment of said impact fee shall be based on the schedule in effect at the time the applicant provides the city with the information required in subsection A of this section.

C. Prior to the issuance of a building permit that is the subject of a request for a deferred payment of Park Impact Fee, all applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign a deferred impact fee payment lien in a form acceptable to the city attorney. The deferred impact fee payment lien shall be recorded against the property subject to the building permit and be granted in favor of the city in the amount of the deferred Park Impact Fee. Any such lien shall be junior and subordinate only to one mortgage for the purpose of construction upon the same real property subject to the building permit. The applicant must record the deferred impact fee payment lien with the Benton County Auditor's Office and is responsible for any fees associated with the recording of the lien and for complying with the requirements of the Benton County Auditor's Office.

D. The city shall not conduct a final inspection and or issue temporary certificates of occupancy until the Park Impact Fee identified in the deferred impact fee payment lien is paid in full.

E. In no case shall payment of the Park Impact Fee be deferred for a period of more than 18 months from the date of building permit issuance.

F. Upon receipt of final payment of the deferred impact fee as identified in the deferred impact fee payment lien, the city shall execute a release of lien for the property. The property owner may, at his or her own expense, record the lien release with the Benton County's Auditor's Office.

G. In the event that the deferred impact fee is not paid within the time provided in this section, the city shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW.

Section 2. Section 16.14.195 Option for deferred payment of Transportation Impact Fee of the West Richland Municipal Code is hereby added to read as follows:

Section 16.14.195 Option for deferred payment of Transportation Impact Fee.

An applicant may request, at any time prior to building permit issuance, and consistent with the requirements of this section, to defer to final inspection the payment of Transportation Impact Fee for a residential development unit, multi-family development, commercial development, industrial or any other type of development. The following shall apply to any request to defer payment of Transportation Impact Fee:

A. The applicant shall submit to the city a written request to defer the payment of Transportation Impact Fee for a specifically identified building permit. The applicant's request shall identify, as applicable, the applicant's corporate identity and contractor registration number, the full names of all legal owners of the property upon which the development activity allowed by the building permit is to occur, the legal description of the property upon which the development activity allowed by the building permit is to occur, the tax parcel identification number of the property upon which the development activity allowed by the building permit is to occur, and the address of the property upon which the development activity allowed by the building permit is to occur. All applications shall be accompanied by a non-refundable administrative fee as set forth by the City Council in the Master Fee Schedule.

B. The Transportation Impact Fee amount due under any request to defer payment of said impact fee shall be based on the schedule in effect at the time the applicant provides the city with the information required in subsection A of this section.

C. Prior to the issuance of a building permit that is the subject of a request for a deferred payment of Transportation Impact Fee, all applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign a deferred impact fee payment lien in a form acceptable to the city attorney. The deferred impact fee payment lien shall be recorded against the property subject to the building permit and be granted in favor of the city in the amount of the deferred Transportation Impact Fee. Any such lien shall be junior and subordinate only to one mortgage for the purpose of construction upon the same real property subject to the building permit. The applicant must record the deferred impact fee payment lien with the Benton County Auditor's Office and is responsible for any fees associated with the recording of the lien and for complying with the requirements of the Benton County Auditor's Office.

D. The city shall not conduct a final inspection and or issue temporary certificates of occupancy until the Transportation Impact Fee identified in the deferred impact fee payment lien is paid in full.

E. In no case shall payment of the Transportation Impact Fee be deferred for a period of more than 18 months from the date of building permit issuance.

F. Upon receipt of final payment of the deferred impact fee as identified in the deferred impact fee payment lien, the city shall execute a release of lien for the property. The property owner may, at his or her own expense, record the lien release with the Benton County's Auditor's Office.

G. In the event that the deferred impact fee is not paid within the time provided in this section, the city shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW.

Section 3. Section 16.14.040(C) and (D) Voluntary payment agreements as alternatives to dedication and improvements of the West Richland Municipal Code are hereby amended to read as follows:

C. The payment shall be expended in all cases within ~~five~~ ten years of collection, unless otherwise agreed to by the developer.

D. Any payment not so expended shall be refunded to the property owners of record at the time of the refund with interest at the rate applied to judgments at the time of the refund. However, if the payment is not expended within ~~five~~ ten years due to delay attributable to the developer, the payment shall be refunded without interest; provided, property owners entitled to a refund with or without interest under the provisions of this chapter may voluntarily and in writing waive their right to a refund for a specified period of time in the interests of providing the designated capital improvement or any other capital improvement identified by the property owner.

Further, at the time a developer enters into a voluntary agreement pursuant to this section, the developer may voluntarily and in writing waive, on behalf of the developer and subsequent purchasers, the right to interest and/or refund in order to facilitate completion of an improvement. Under no condition shall such waiver be required as a condition of approval. Such waiver shall be binding on subsequent owners.

Section 4. Section 16.14.090 Timing of Park Impact Fee payment of the West Richland Municipal Code is hereby amended to read as follows:

A. The city shall collect Park Impact Fees, based on the city's Master Fee Schedule, from any applicant seeking a building permit from the city.

B. Park Impact Fees shall be collected from the applicant prior to issuance of the building permit unless the use of an independent fee calculation has been approved or unless the applicant applies for deferred payment of Park Impact Fees pursuant to WRMC 16.14.095. The Park Impact Fee shall be calculated based on the city's Master Fee Schedule in effect at the time the building permit is issued unless otherwise required pursuant to WRMC 16.14.095.

C. The city shall not issue the required building permit unless and until the Park Impact Fee set forth in the city's Master Fee Schedule has been paid.

~~The city shall collect park impact fees from an applicant at the time of building permit application with the following exceptions:~~

~~A. For land division applications, residential subdivisions and residential short plats, park impact fees shall be paid at the time of final plat application or at the time of building permit application, at the developer's option.~~

~~1. Payment at Final Plat Application. Developer shall be given further the option to pay the park impact fee in a lump sum, without interest, or by installments with 12 percent interest over a period not to exceed five years. Installment payments by the developer shall be annual unless amended by city council. The city shall require security for the obligation to pay the park impact fee by installments, in the form of a recorded agreement, deed of trust, letter of credit, or other instrument determined satisfactory by the city. Under this option, the developer locks in the rate of the current park impact fee at the time of final plat application or short plat application.~~

~~2. Payment at Building Permit Application. If the developer of a residential subdivision or residential short plat elects to pay the park impact fee at the date of building permit application, the option to pay the park impact fee by installments as authorized by subsection (A)(1) of this section is deemed to have been waived by the developer. The park impact fee current at the time of building permit application shall be the rate that is paid.~~

~~B. For multifamily residential developments, park impact fees shall be paid at the time of building permit application or with the certificate of occupancy, at the developer's option.~~

~~1. Payment at Building Permit Application. The park impact fee current at the time of building permit application shall be the rate that is paid.~~

~~2. Payment with Certificate of Occupancy. The park impact fee current at the time of certificate of occupancy shall be the rate that is paid.~~

~~C. For residential developments not requiring a final plat or building permit, the park impact fee shall be paid with the certificate of occupancy.~~

Section 5. Section 16.14.190 Timing of Transportation Impact Fee payment of the West Richland Municipal Code is hereby amended to read as follows:

A. The city shall collect Transportation Impact Fees, based on the city's Master Fee Schedule, from any applicant seeking a building permit from the city.

B. Transportation Impact Fees shall be collected from the applicant prior to issuance of the building permit unless the use of an independent fee calculation has been approved or unless the applicant applies for deferred payment of Transportation Impact Fees pursuant to WRMC 16.14.195. The Transportation Impact Fee shall be calculated based on the city's Master Fee Schedule in effect at the time the building permit is issued unless otherwise required pursuant to WRMC 16.14.195.

C. The city shall not issue the required building permit unless and until the Transportation Impact Fee set forth in the city's Master Fee Schedule has been paid.

~~The city shall collect transportation impact fees from an applicant at the time of building permit application with the following exceptions:~~

~~A. For land division applications, residential subdivisions and residential short plats, transportation impact fees shall be paid at the time of final plat application or at the time of building permit application, at the developer's option.~~

~~1. Payment at Final Plat Application. Developer shall be given further the option to pay the transportation impact fee in a lump sum, without interest, or by installments with 12 percent interest over a period not to exceed five years. Installment payments by the developer shall be annual unless amended by the city council. The city shall require security for the obligation to pay the transportation impact fee by installments, in the form of a recorded agreement, deed of trust, letter of credit, or other instrument determined satisfactory by the city. Under this option, the developer locks in the rate of the current transportation impact fee at the time of final plat application or short plat application.~~

~~2. Payment at Building Permit Application. If the developer of a residential subdivision or residential short plat elects to pay the transportation impact fee at the date of building permit application, the option to pay the transportation impact fee by installments as authorized by subsection (A)(1) of this section is deemed to have been waived by the developer. The transportation impact fee current at the time of building permit application shall be the rate that is paid.~~

~~B. For multifamily residential, commercial and industrial developments, transportation impact fees shall be paid at the time of building permit application or with the certificate of occupancy, at the developer's option.~~

~~1. Payment at building permit application. The transportation impact fee current at the time of building permit application shall be the rate that is paid.~~

~~2. Payment with certificate of occupancy. The transportation impact fee current at the time of certificate of occupancy shall be the rate that is paid.~~

~~C. For developments not requiring a final plat or building permit, the transportation impact fee shall be paid with the certificate of occupancy.~~

Section 6. Section 16.14.240(C) Establishment of transportation impact fee fund of the West Richland Municipal Code is hereby amended to read as follows:

C. Transportation Impact Fees shall be expended or encumbered within six ten years of receipt.

Section 7. Section 16.14.270(A) Refunds of the West Richland Municipal Code is hereby amended to read as follows:

A. If the city fails to expend or encumber the transportation impact fees within six ten years of collection, the current owner of the property for which transportation impact fees have been paid shall receive a refund of said fees. In determining whether transportation impact fees have been expended or encumbered, transportation impact fees shall be considered expended or encumbered on a first in, first out basis.

Section 8. This ordinance shall be in full force and effect five days following the date of its passage and publication in the official newspaper of the City.

PASSED by the City Council for the City of West Richland, Washington, this _____ day of _____, 2016.

Brent Gerry, Mayor

ATTEST:

Julie Richardson, City Clerk

APPROVED AS TO FORM:

Bronson Brown, City Attorney

RESOLUTION NO. ___-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
WEST RICHLAND, WASHINGTON UPDATING THE MASTER FEE SCHEDULE FOR THE
PUBLIC WORKS DEPARTMENT**

WHEREAS, it is the general policy to update fees that are reflective of the cost of services provided by the City; and

WHEREAS, the City Council finds that the following fee schedule sets forth fees that are reasonable and necessary;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Master Fee Schedule – Schedule E – is updated to include the following fee:

Impact Fee Deferral Administrative Fee - \$75.00 non-refundable

PASSED by the City Council for the City of West Richland, Washington, this 16th day of August, 2016.

Brent Gerry, Mayor

ATTEST:

Julie Richardson, City Clerk

APPROVED AS TO FORM:

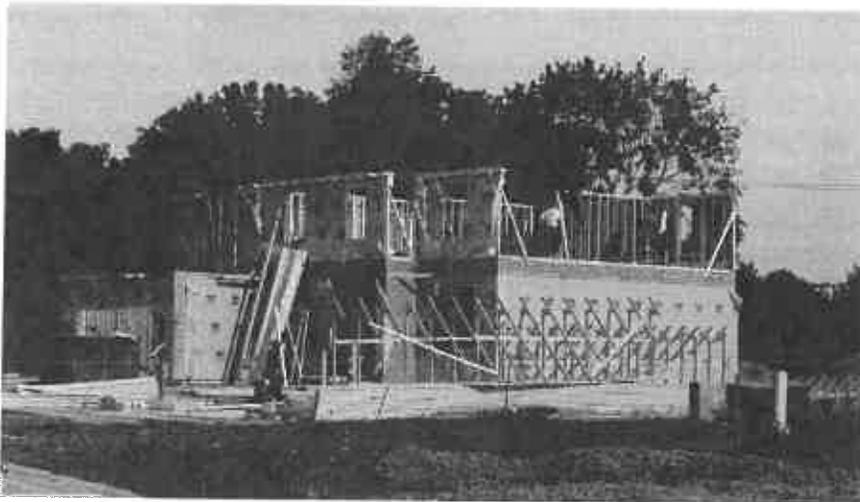
Bronson Brown, City Attorney



Legislature Adopts Changes to Washington's Impact Fee Law

July 7, 2015 by [Steve Butler \(/Home/Stay-Informed/MRSC-Insight.aspx?aid=147\)](#)

Category: [Impact Fees \(/Home/Stay-Informed/MRSC-Insight.aspx?catID=189&cat=Impact Fees\)](#)



After several years of discussion and debate, the 2015 Legislature has enacted changes to how [impact fees \(/getdoc/8d2993d5-6454-47dc-8e85-004f6cb34938/Impact-Fees.aspx\)](#) are to be collected by Washington counties, cities, and towns. [ESB 5923](#)

<http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/Senate/5923.SL.pdf> requires counties, cities, and towns to adopt a deferral system for the collection of impact fees for new single-family detached and attached residential construction, a change that developers contended would address the financial burden of paying fees at the early stages of the process, before a development project is generating any revenues. While many counties and cities were worried that a deferral system would make it harder to collect impact fees and stymie planning for new infrastructure, the lengthy deliberations and revisions over several legislative sessions resulted in a final product that addresses many, if not all, of their concerns.

The deadline for most of the new law's provisions is more than one year away (September 1, 2016), so local governments have time to develop a deferral system that best meets statutory requirements and local objectives.

Description of New Law

Under the new law, counties, cities, and towns must adopt a deferral system for the collection of impact fees that, upon developer request, delays payment until the time of:

1. Final inspection;
2. Issuance of the certificate of occupancy or equivalent certification; or
3. The closing of the first sale of the property.

For the first two options, cities are authorized to delay issuance of the certification until the impact fees have been paid. For the third option, the new law states that the seller has strict liability for payment of impact fees and that such payment must be made from the seller's proceeds (unless there is an agreement to the contrary between the seller and the buyer). It is up to each municipality, however, to choose one or more of the three options it wants to use.

Other highlights of the new law include:

- The term of deferral is 18 months from issuance of the building permit.
- The amount of impact fees that may be deferred is determined by the fees in effect at the time the applicant applies for a deferral.
- Deferral of impact fees can be limited to the first 20 single-family residential building permits, annually, per applicant.
- An applicant seeking a deferral must grant and record a lien against the property in favor of the municipality in the amount of the deferred impact fee.
- Municipalities may collect reasonable administrative fees from applicants seeking a deferral.
- To limit the "spin-off LLC" issue, "applicant" is defined to include "an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant."
- Limited grandfathering is authorized for an existing deferral system (in effect on or before April 1, 2015), even if it does not fully match the new state requirements, as long as all impact fees are deferred.
- Municipalities and school districts are authorized to institute foreclosure proceedings if impact fees are not paid.
- The Department of Commerce must develop an annual report, beginning December 1, 2018, on the payment and collection of impact fees from school districts, counties, and cities for single-family residential construction.

The new law also contains provisions where local choices should be made, including but not limited to: (a) at what juncture impact fees are collected; (b) whether to impose a reasonable administrative fee; and (c) whether to limit the deferral to the first 20 building permits or to a greater number of building permits.

The timing of impact fee collection under a deferral system will be the key decision to be made by counties, cities and towns. Presumably, most builders would prefer the "time of sale" option, since it extends out the time when payment would be due. However, local governments have direct involvement with final inspections and certificate of occupancy issuance (the first two options), so choosing either of those points would allow them to know exactly when the deferred payment is due. In addition, under the "time of sale" option, there is the possibility that a newly constructed single-family residence could be rented out and not sold, resulting in no impact fee payment. In the end, the final decision on when to require payment of impact fees is a local one.

Tips and Suggested Actions

- Be proactive in preparing your local codes, procedures, and staff for this new change. Take the time necessary to develop and adopt an impact fee deferral system before the statutory deadline of September 1, 2016.
- Decide which local options are best for you, such as:
 - Timing of payment of the deferred impact fee(s).
 - Imposition of an administrative fee.

- Expansion of deferrals beyond the first 20 building permits (with a decision on expansion to be made only after consultation with any affected school district).
- For those municipalities that already have an impact fee deferral process - Review it carefully for consistency with the new law's requirements and amend the existing process if needed.

Of course, no action is required for those counties, cities, and towns that don't impose impact fees.

Finally, it should be noted that, while a municipality must adopt and administer an impact fee deferral system, it is up to the applicant to decide whether or not to use that process.

Photo courtesy of Dwight Burdette

https://commons.wikimedia.org/wiki/File:New_house_under_construction_Pittsfield_Township_Michigan.JPG



About Steve Butler

Steve joined MRSC in February 2015. He has been involved in most aspects of community planning for over 30 years, both in the public and private sectors. Steve has served as president of statewide planning associations in both Washington and Maine, and was elected to the American Institute of Certified Planner's College of Fellows in 2008.

[VIEW ALL POSTS BY STEVE BUTLER](#) ▶ </Home/Stay-Informed/MRSC-Insight.aspx?aid=147>

[Leave a Comment](#) -

Comments

0 comments on Legislature Adopts Changes to Washington's Impact Fee Law

Blog post currently doesn't have any comments.

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Park and or Transportation Impact Fee Deferral

Pursuant to Revised Code of Washington (RCW) 82.02.050(3) and City of West Richland Ordinance No. ___-16, a developer / applicant may request that payment of park and or transportation impact fees be deferred until final inspection but prior to the issuance of the Certificate of Occupancy or equivalent certification; provided that the term of the impact fee deferral shall not exceed 18 months from the date of building permit issuance.

IMPACT FEE DEFERRAL PROCESS

1. The applicant may begin the fee deferral process at any time in advance of building permit issuance. The process begins by requesting a calculation of the impact fee(s) from Public Works staff at the Public Works / Community Development counter. The park and transportation impact fee is calculated based on the City's master fee schedule in effect at the time this application is submitted to the City. Impact fees do not vest and are subject to change.

2. The applicant must grant and record a deferred impact fee lien, on a form provided by the City, against the property in favor of the City in the amount of the deferred impact fee(s). This lien will be released upon payment of the impact fee(s). The lien must include the legal description of the property, tax parcel number and address of the property. The lien must also be notarized and signed by all of the individuals listed on the title to the property. The applicant must provide the City with a copy of a current Title Report (created within 30 days of the recording of the lien) for verification.

If the property is owned by a company, partnership, corporation, or other entity, then the lien must be signed by an authorized company representative and documentation must be provided verifying this individual's authority to sign. The applicant must record the lien with the Benton County Auditor's Office and is responsible for any fees associated with the recording of the lien and for complying with the requirements of the Benton County Auditor's Office.

3. The applicant may then submit the Impact Fee Deferral Request form along with a copy of the recorded lien and pay a non-refundable administration fee per the city's master fee schedule at the Public Works / Community Development counter.

4. Payment of the impact fee(s) are due at the Public Works / Community Development counter prior to final inspection and or issuance of a temporary Certificate of Occupancy or equivalent certification; provided that the term of the impact fee(s) deferral shall not exceed 18 months from the date of building permit issuance. Once payment is received, the City will issue a lien release document that the applicant may file with the Benton County Auditor's Office. The applicant is responsible for any fees associated with releasing the lien.

THINGS TO KNOW

- Impact fees do not vest and, therefore, are subject to change. To check the current impact fee amount for parks and transportation impact fees, please call: (509) 967-5434.
- Buildings cannot be occupied until impact fees are paid and final inspection has occurred. Temporary certificates of occupancy will NOT be issued until any deferred impact fees are paid.
- In the event that the deferred impact fee(s) are not paid within the 18-month timeframe, the City may pursue foreclosure proceedings under the process set forth in Chapter 61.12 RCW. The property owners will be responsible for all costs incurred in foreclosure proceedings, including reasonable attorneys' fees.

(this section to be completed by City staff)

Impact Fee Calculation
Park Impact Fee:
Transportation Impact Fee:
Total Impact Fee due:
Staff Signature:

Date:

Building Permit Issued Date:

Impact Fee Due Date:

IMPACT FEE DEFERRAL APPLICATION FORM

Ownership information

Property Owner(s)/Lien Grantor(s) (list full legal name(s)/corporate identities of all owners listed on the title):

Preferred contact person: _____

Mailing address: _____

Telephone: _____ Email: _____

Applicant Name: _____

Contractor registration number: _____

Mailing address: _____

Telephone: _____ Email: _____

Property Information

Property Address: _____

Building permit number: _____ Parcel Number: _____

Legal description of the property (please attach as Exhibit A)

WHEN RECORDED, RETURN TO:

**City of West Richland
3801 W. Van Giesen
West Richland, WA 98040**

AGREEMENT FOR LIEN FOR DEVELOPMENT IMPACT FEES

Lien for Benefit of Grantee: City of West Richland, a municipal corporation

Person(s) Indebted to Grantee ("Grantor(s))": _____

Reference Number(s) of Related Document(s): _____

Impact Fee Deferral Application Number: _____

Principal Amount of the Lien for Development Impact Fees: _____

Assessor's Tax Parcel Number: _____

Legal Description (Abbreviated): _____

Full legal description: See Exhibit A attached.

This AGREEMENT FOR LIEN FOR DEVELOPMENT IMPACT FEES ("Agreement") is made and entered into this ____ day of _____, 2016, by and between _____ ("Grantor") and the CITY OF WEST RICHLAND, a Washington municipal corporation ("City" or "Grantee").

I/we hereby request deferral of payment of transportation and or park impact fees associated with building permit # _____ and agree that impact fees of \$ _____ are due to the City of West Richland prior to final building inspection conducted by the City; provided that the term of the impact fee deferral shall not exceed 18 months from the date of building permit issuance.

The City of West Richland hereby claims a Lien for Development Impact Fees (which may include park and/or transportation impact fees), against the above described real property.

This agreement runs with the land and creates an obligation on behalf of the Grantor and owners of the affected real property. The agreement is binding on successors and assigns of the Grantor. The Grantor shall record this agreement in the Benton County property records and submit copy of recording to the City.

The Grantor agrees and acknowledges that the City will not perform a final inspection on the property until the impact fees are paid. The Grantor acknowledges that the building cannot and will not be occupied prior to final inspection and issuance of a certificate of occupancy. The Grantor also acknowledges that the City may pursue foreclosure proceedings if the impact fees are not paid.

The lien amount is due and owing to the City prior to final building inspection conducted by the City. The term of the impact fee deferral shall not exceed 18 months from the date of building permit issuance. All payments shall be made payable to the City of West Richland, 3801 W. Van Giesen, West Richland, WA 99353.

Upon payment of the impact fees, the City agrees to execute a Release of Lien, substantially in the form attached hereto as Exhibit B. The Grantor may, at his or her own expense, record the Release of Lien.

DATED this _____ day of _____, 20__.

CITY OF WEST RICHLAND, GRANTEE/LIENHOLDER

By: _____

Title: Public Works Director

DATED this _____ day of _____, 20__.

GRANTOR(S)

Signature

Signature

Address: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF BENTON)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated he/she was authorized to execute the instrument and acknowledged it as his/her free and voluntary act and deed, for the uses and purposes stated therein.

Dated: _____

Notary Name: _____

NOTARY PUBLIC in and for the State of

Washington, residing at _____

My commission expires: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF BENTON)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated he/she was authorized to execute the instrument and acknowledged it as his/her free and voluntary act and deed, for the uses and purposes stated therein.

Dated: _____

Notary Name: _____

NOTARY PUBLIC in and for the State of

Washington, residing at _____

My commission expires: _____

EXHIBIT A

(Full Legal Description of Property)

EXAMPLE OF RELEASE OF LIEN FORM TO BE FILED AFTER PAYMENT OF IMPACT FEES

EXHIBIT B

WHEN RECORDED, RETURN TO:

City of West Richland
3801 W. Van Giesen
West Richland, WA 99353

RELEASE OF LIEN FOR DEVELOPMENT IMPACT FEES

Lien for Benefit of Grantee: City of West Richland, a municipal corporation

Person(s) Indebted to Grantee ("Grantor(s))": _____

Reference Number(s) of Related Document(s): _____

Impact Fee Deferral Application Number: _____

Amount Released: _____

Assessor's Tax Parcel Number: _____

Legal Description (Abbreviated): _____

Full legal description: See Exhibit A attached.

THIS RELEASE OF LIEN FOR DEVELOPMENT IMPACT FEES (the "Release") is made as of this ____ day of _____, 20__, by the City of West Richland (the "City").

The City recorded a Lien for Development Impact Fees dated _____ and recorded under Benton County Recording No. _____ (the "Lien") with _____ ("Grantor / Property Owner") to provide for deferred payment of certain Impact Fees. Except as otherwise specifically defined in this Release, all capitalized terms shall have the same meaning as provided in the Lien.

Grantor / Property Owner has completed construction of the home which was the subject of the Lien and which is located on the real property legally described as _____ (the "Property").

Upon receipt of the payment of the impact fee, the City hereby releases and discharges Grantor from the obligations described in the Lien. Upon recording of this Release, all of the Grantor / Property Owner obligations under the Lien shall be deemed fully and completely satisfied and the Lien shall have no further force or effect.

DATED this _____ day of _____, 20__.

FINAL BILL REPORT

ESB 5923

C 241 L 15
Synopsis as Enacted

Brief Description: Promoting economic recovery in the construction industry.

Sponsors: Senators Brown, Liias, Roach, Dansel, Hobbs, Warnick and Chase.

Senate Committee on Trade & Economic Development
House Committee on Technology & Economic Development
House Committee on Local Government

Background: The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. GMA establishes land use designation and environmental protection requirements for all counties and cities.

Planning jurisdictions may impose impact fees on development activity as part of the financing of public facilities needed to serve new growth and development. Impact fees may be collected and spent only for qualifying public facilities that are included within a comprehensive plan.

Legislation adopted in 2013 – ESHB 1652 – obligated counties, cities, and towns to adopt deferral systems for the collection of impact fees from applicants for residential building permits through a covenant-based process, or through a process that delays payment until final inspection, certificate of occupancy, or equivalent certification. The legislation was vetoed in its entirety by the Governor on May 21, 2013.

Summary: Counties, cities, and towns that collect impact fees must adopt a system for the deferred collection of impact fees from applicants for residential building permits by September 1, 2016. The deferral system must include one or more of the following options including deferral of the collection of impact fees until final inspection, certificate of occupancy, or upon the first sale of the property.

An applicant seeking a deferral must grant and record a deferred impact fee lien against the property in favor of the local jurisdiction. The amount of impact fees that may be deferred is determined by the fees in effect at the time the applicant applies for a deferral. Unless otherwise provided, payment of deferred impact fees at the time of sale is the seller's responsibility. The term of an impact fee deferral may not exceed 18 months from the date of issuance of the building permit. If impact fees are not paid, the local jurisdiction may institute foreclosure proceedings to recover unpaid fees. If a local jurisdiction does not

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

initiate foreclosure proceedings for unpaid school impact fees, the school district may begin foreclosure proceedings. Local jurisdictions may collect reasonable administrative fees to implement the deferral system.

A county, city, or town with an impact fee deferral process on or before April 1, 2015, is exempt from the obligation to establish an impact fee deferral system if the locally adopted deferral process delays all fees and remains in effect after September 1, 2016.

Each applicant for an impact fee deferral is entitled to annually receive deferrals for the first 20 single-family residential construction building permits per jurisdiction. A local jurisdiction may elect to defer more than 20 building permits for an applicant provided that the local jurisdiction consults with the school district regarding the additional deferrals and gives substantial weight to their recommendations.

If the collection of impact fees is delayed through a deferral process, the six-year timeframe for completing improvements or strategies to comply with concurrency provisions of the GMA may not begin until after the county or city receives full payment of all impact fees due.

The Department of Commerce must report annually to the Legislature beginning December 1, 2018 on the impact fee deferral process including the number of deferrals requested and issued by local jurisdictions, and the number of deferrals that were not paid. The Joint Legislative Audit and Review Committee must review the impact fee deferral requirements and submit a report to the Legislature by September 1, 2021.

Votes on Final Passage:

Senate	33	15	
House	82	15	(House amended)
Senate	28	18	(Senate concurred)

Effective: September 1, 2016

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5923

Chapter 241, Laws of 2015

64th Legislature
2015 Regular Session

SINGLE-FAMILY DETACHED AND ATTACHED RESIDENTIAL CONSTRUCTION--
DEFERRED IMPACT FEES

EFFECTIVE DATE: 9/1/2016

Passed by the Senate April 16, 2015
Yeas 28 Nays 18

BRAD OWEN

President of the Senate

Passed by the House April 14, 2015
Yeas 82 Nays 15

FRANK CHOPP

Speaker of the House of Representatives

Approved May 11, 2015 2:46 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5923** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 12, 2015

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5923

AS AMENDED BY THE HOUSE

Passed Legislature - 2015 Regular Session

State of Washington **64th Legislature** **2015 Regular Session**

By Senators Brown, Liias, Roach, Dansel, Hobbs, Warnick, and Chase

Read first time 02/11/15. Referred to Committee on Trade & Economic Development.

1 AN ACT Relating to promoting economic recovery in the
2 construction industry; amending RCW 82.02.050 and 36.70A.070; adding
3 a new section to chapter 44.28 RCW; adding a new section to chapter
4 43.31 RCW; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 82.02.050 and 1994 c 257 s 24 are each amended to
7 read as follows:

8 (1) It is the intent of the legislature:

9 (a) To ensure that adequate facilities are available to serve new
10 growth and development;

11 (b) To promote orderly growth and development by establishing
12 standards by which counties, cities, and towns may require, by
13 ordinance, that new growth and development pay a proportionate share
14 of the cost of new facilities needed to serve new growth and
15 development; and

16 (c) To ensure that impact fees are imposed through established
17 procedures and criteria so that specific developments do not pay
18 arbitrary fees or duplicative fees for the same impact.

19 (2) Counties, cities, and towns that are required or choose to
20 plan under RCW 36.70A.040 are authorized to impose impact fees on
21 development activity as part of the financing for public facilities,

1 provided that the financing for system improvements to serve new
2 development must provide for a balance between impact fees and other
3 sources of public funds and cannot rely solely on impact fees.

4 (3)(a)(i) Counties, cities, and towns collecting impact fees
5 must, by September 1, 2016, adopt and maintain a system for the
6 deferred collection of impact fees for single-family detached and
7 attached residential construction. The deferral system must include a
8 process by which an applicant for a building permit for a single-
9 family detached or attached residence may request a deferral of the
10 full impact fee payment. The deferral system offered by a county,
11 city, or town under this subsection (3) must include one or more of
12 the following options:

13 (A) Deferring collection of the impact fee payment until final
14 inspection;

15 (B) Deferring collection of the impact fee payment until
16 certificate of occupancy or equivalent certification; or

17 (C) Deferring collection of the impact fee payment until the time
18 of closing of the first sale of the property occurring after the
19 issuance of the applicable building permit.

20 (ii) Counties, cities, and towns utilizing the deferral process
21 required by this subsection (3)(a) may withhold certification of
22 final inspection, certificate of occupancy, or equivalent
23 certification until the impact fees have been paid in full.

24 (iii) The amount of impact fees that may be deferred under this
25 subsection (3) must be determined by the fees in effect at the time
26 the applicant applies for a deferral.

27 (iv) Unless an agreement to the contrary is reached between the
28 buyer and seller, the payment of impact fees due at closing of a sale
29 must be made from the seller's proceeds. In the absence of an
30 agreement to the contrary, the seller bears strict liability for the
31 payment of the impact fees.

32 (b) The term of an impact fee deferral under this subsection (3)
33 may not exceed eighteen months from the date of building permit
34 issuance.

35 (c) Except as may otherwise be authorized in accordance with (f)
36 of this subsection (3), an applicant seeking a deferral under this
37 subsection (3) must grant and record a deferred impact fee lien
38 against the property in favor of the county, city, or town in the
39 amount of the deferred impact fee. The deferred impact fee lien,

1 which must include the legal description, tax account number, and
2 address of the property, must also be:

3 (i) In a form approved by the county, city, or town;

4 (ii) Signed by all owners of the property, with all signatures
5 acknowledged as required for a deed, and recorded in the county where
6 the property is located;

7 (iii) Binding on all successors in title after the recordation;
8 and

9 (iv) Junior and subordinate to one mortgage for the purpose of
10 construction upon the same real property granted by the person who
11 applied for the deferral of impact fees.

12 (d)(i) If impact fees are not paid in accordance with a deferral
13 authorized by this subsection (3), and in accordance with the term
14 provisions established in (b) of this subsection (3), the county,
15 city, or town may institute foreclosure proceedings in accordance
16 with chapter 61.12 RCW.

17 (ii) If the county, city, or town does not institute foreclosure
18 proceedings for unpaid school impact fees within forty-five days
19 after receiving notice from a school district requesting that it do
20 so, the district may institute foreclosure proceedings with respect
21 to the unpaid impact fees.

22 (e)(i) Upon receipt of final payment of all deferred impact fees
23 for a property, the county, city, or town must execute a release of
24 deferred impact fee lien for the property. The property owner at the
25 time of the release, at his or her expense, is responsible for
26 recording the lien release.

27 (ii) The extinguishment of a deferred impact fee lien by the
28 foreclosure of a lien having priority does not affect the obligation
29 to pay the impact fees as a condition of final inspection,
30 certificate of occupancy, or equivalent certification, or at the time
31 of closing of the first sale.

32 (f) A county, city, or town with an impact fee deferral process
33 on or before April 1, 2015, is exempt from the requirements of this
34 subsection (3) if the deferral process delays all impact fees and
35 remains in effect after September 1, 2016.

36 (g)(i) Each applicant for a single-family residential
37 construction permit, in accordance with his or her contractor
38 registration number or other unique identification number, is
39 entitled to annually receive deferrals under this subsection (3) for
40 the first twenty single-family residential construction building

1 permits per county, city, or town. A county, city, or town, however,
2 may elect, by ordinance, to defer more than twenty single-family
3 residential construction building permits for an applicant. If the
4 county, city, or town collects impact fees on behalf of one or more
5 school districts for which the collection of impact fees could be
6 delayed, the county, city, or town must consult with the district or
7 districts about the additional deferrals. A county, city, or town
8 considering additional deferrals must give substantial weight to
9 recommendations of each applicable school district regarding the
10 number of additional deferrals. If the county, city, or town
11 disagrees with the recommendations of one or more school districts,
12 the county, city, or town must provide the district or districts with
13 a written rationale for its decision.

14 (ii) For purposes of this subsection (3)(g), an "applicant"
15 includes an entity that controls the applicant, is controlled by the
16 applicant, or is under common control with the applicant.

17 (h) Counties, cities, and towns may collect reasonable
18 administrative fees to implement this subsection (3) from permit
19 applicants who are seeking to delay the payment of impact fees under
20 this subsection (3).

21 (i) In accordance with sections 3 and 4 of this act, counties,
22 cities, and towns must cooperate with and provide requested data,
23 materials, and assistance to the department of commerce and the joint
24 legislative audit and review committee.

25 (4) The impact fees:

26 (a) Shall only be imposed for system improvements that are
27 reasonably related to the new development;

28 (b) Shall not exceed a proportionate share of the costs of system
29 improvements that are reasonably related to the new development; and

30 (c) Shall be used for system improvements that will reasonably
31 benefit the new development.

32 ((+4+)) (5) (a) Impact fees may be collected and spent only for the
33 public facilities defined in RCW 82.02.090 which are addressed by a
34 capital facilities plan element of a comprehensive land use plan
35 adopted pursuant to the provisions of RCW 36.70A.070 or the
36 provisions for comprehensive plan adoption contained in chapter
37 36.70, 35.63, or 35A.63 RCW. After the date a county, city, or town
38 is required to adopt its development regulations under chapter 36.70A
39 RCW, continued authorization to collect and expend impact fees
40 ((shall be)) is contingent on the county, city, or town adopting or

1 revising a comprehensive plan in compliance with RCW 36.70A.070, and
2 on the capital facilities plan identifying:

3 ~~((a))~~ (i) Deficiencies in public facilities serving existing
4 development and the means by which existing deficiencies will be
5 eliminated within a reasonable period of time;

6 ~~((b))~~ (ii) Additional demands placed on existing public
7 facilities by new development; and

8 ~~((c))~~ (iii) Additional public facility improvements required to
9 serve new development.

10 (b) If the capital facilities plan of the county, city, or town
11 is complete other than for the inclusion of those elements which are
12 the responsibility of a special district, the county, city, or town
13 may impose impact fees to address those public facility needs for
14 which the county, city, or town is responsible.

15 **Sec. 2.** RCW 36.70A.070 and 2010 1st sp.s. c 26 s 6 are each
16 amended to read as follows:

17 The comprehensive plan of a county or city that is required or
18 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
19 and descriptive text covering objectives, principles, and standards
20 used to develop the comprehensive plan. The plan shall be an
21 internally consistent document and all elements shall be consistent
22 with the future land use map. A comprehensive plan shall be adopted
23 and amended with public participation as provided in RCW 36.70A.140.
24 Each comprehensive plan shall include a plan, scheme, or design for
25 each of the following:

26 (1) A land use element designating the proposed general
27 distribution and general location and extent of the uses of land,
28 where appropriate, for agriculture, timber production, housing,
29 commerce, industry, recreation, open spaces, general aviation
30 airports, public utilities, public facilities, and other land uses.
31 The land use element shall include population densities, building
32 intensities, and estimates of future population growth. The land use
33 element shall provide for protection of the quality and quantity of
34 groundwater used for public water supplies. Wherever possible, the
35 land use element should consider utilizing urban planning approaches
36 that promote physical activity. Where applicable, the land use
37 element shall review drainage, flooding, and storm water run-off in
38 the area and nearby jurisdictions and provide guidance for corrective

1 actions to mitigate or cleanse those discharges that pollute waters
2 of the state, including Puget Sound or waters entering Puget Sound.

3 (2) A housing element ensuring the vitality and character of
4 established residential neighborhoods that: (a) Includes an inventory
5 and analysis of existing and projected housing needs that identifies
6 the number of housing units necessary to manage projected growth; (b)
7 includes a statement of goals, policies, objectives, and mandatory
8 provisions for the preservation, improvement, and development of
9 housing, including single-family residences; (c) identifies
10 sufficient land for housing, including, but not limited to,
11 government-assisted housing, housing for low-income families,
12 manufactured housing, multifamily housing, and group homes and foster
13 care facilities; and (d) makes adequate provisions for existing and
14 projected needs of all economic segments of the community.

15 (3) A capital facilities plan element consisting of: (a) An
16 inventory of existing capital facilities owned by public entities,
17 showing the locations and capacities of the capital facilities; (b) a
18 forecast of the future needs for such capital facilities; (c) the
19 proposed locations and capacities of expanded or new capital
20 facilities; (d) at least a six-year plan that will finance such
21 capital facilities within projected funding capacities and clearly
22 identifies sources of public money for such purposes; and (e) a
23 requirement to reassess the land use element if probable funding
24 falls short of meeting existing needs and to ensure that the land use
25 element, capital facilities plan element, and financing plan within
26 the capital facilities plan element are coordinated and consistent.
27 Park and recreation facilities shall be included in the capital
28 facilities plan element.

29 (4) A utilities element consisting of the general location,
30 proposed location, and capacity of all existing and proposed
31 utilities, including, but not limited to, electrical lines,
32 telecommunication lines, and natural gas lines.

33 (5) Rural element. Counties shall include a rural element
34 including lands that are not designated for urban growth,
35 agriculture, forest, or mineral resources. The following provisions
36 shall apply to the rural element:

37 (a) Growth management act goals and local circumstances. Because
38 circumstances vary from county to county, in establishing patterns of
39 rural densities and uses, a county may consider local circumstances,
40 but shall develop a written record explaining how the rural element

1 harmonizes the planning goals in RCW 36.70A.020 and meets the
2 requirements of this chapter.

3 (b) Rural development. The rural element shall permit rural
4 development, forestry, and agriculture in rural areas. The rural
5 element shall provide for a variety of rural densities, uses,
6 essential public facilities, and rural governmental services needed
7 to serve the permitted densities and uses. To achieve a variety of
8 rural densities and uses, counties may provide for clustering,
9 density transfer, design guidelines, conservation easements, and
10 other innovative techniques that will accommodate appropriate rural
11 densities and uses that are not characterized by urban growth and
12 that are consistent with rural character.

13 (c) Measures governing rural development. The rural element shall
14 include measures that apply to rural development and protect the
15 rural character of the area, as established by the county, by:

16 (i) Containing or otherwise controlling rural development;

17 (ii) Assuring visual compatibility of rural development with the
18 surrounding rural area;

19 (iii) Reducing the inappropriate conversion of undeveloped land
20 into sprawling, low-density development in the rural area;

21 (iv) Protecting critical areas, as provided in RCW 36.70A.060,
22 and surface water and groundwater resources; and

23 (v) Protecting against conflicts with the use of agricultural,
24 forest, and mineral resource lands designated under RCW 36.70A.170.

25 (d) Limited areas of more intensive rural development. Subject to
26 the requirements of this subsection and except as otherwise
27 specifically provided in this subsection (5)(d), the rural element
28 may allow for limited areas of more intensive rural development,
29 including necessary public facilities and public services to serve
30 the limited area as follows:

31 (i) Rural development consisting of the infill, development, or
32 redevelopment of existing commercial, industrial, residential, or
33 mixed-use areas, whether characterized as shoreline development,
34 villages, hamlets, rural activity centers, or crossroads
35 developments.

36 (A) A commercial, industrial, residential, shoreline, or mixed-
37 use area (~~shall be~~) are subject to the requirements of (d)(iv) of
38 this subsection, but (~~shall~~) are not (~~be~~) subject to the
39 requirements of (c)(ii) and (iii) of this subsection.

1 (B) Any development or redevelopment other than an industrial
2 area or an industrial use within a mixed-use area or an industrial
3 area under this subsection (5)(d)(i) must be principally designed to
4 serve the existing and projected rural population.

5 (C) Any development or redevelopment in terms of building size,
6 scale, use, or intensity shall be consistent with the character of
7 the existing areas. Development and redevelopment may include changes
8 in use from vacant land or a previously existing use so long as the
9 new use conforms to the requirements of this subsection (5);

10 (ii) The intensification of development on lots containing, or
11 new development of, small-scale recreational or tourist uses,
12 including commercial facilities to serve those recreational or
13 tourist uses, that rely on a rural location and setting, but that do
14 not include new residential development. A small-scale recreation or
15 tourist use is not required to be principally designed to serve the
16 existing and projected rural population. Public services and public
17 facilities shall be limited to those necessary to serve the
18 recreation or tourist use and shall be provided in a manner that does
19 not permit low-density sprawl;

20 (iii) The intensification of development on lots containing
21 isolated nonresidential uses or new development of isolated cottage
22 industries and isolated small-scale businesses that are not
23 principally designed to serve the existing and projected rural
24 population and nonresidential uses, but do provide job opportunities
25 for rural residents. Rural counties may allow the expansion of small-
26 scale businesses as long as those small-scale businesses conform with
27 the rural character of the area as defined by the local government
28 according to RCW 36.70A.030(15). Rural counties may also allow new
29 small-scale businesses to utilize a site previously occupied by an
30 existing business as long as the new small-scale business conforms to
31 the rural character of the area as defined by the local government
32 according to RCW 36.70A.030(15). Public services and public
33 facilities shall be limited to those necessary to serve the isolated
34 nonresidential use and shall be provided in a manner that does not
35 permit low-density sprawl;

36 (iv) A county shall adopt measures to minimize and contain the
37 existing areas or uses of more intensive rural development, as
38 appropriate, authorized under this subsection. Lands included in such
39 existing areas or uses shall not extend beyond the logical outer
40 boundary of the existing area or use, thereby allowing a new pattern

1 of low-density sprawl. Existing areas are those that are clearly
2 identifiable and contained and where there is a logical boundary
3 delineated predominately by the built environment, but that may also
4 include undeveloped lands if limited as provided in this subsection.
5 The county shall establish the logical outer boundary of an area of
6 more intensive rural development. In establishing the logical outer
7 boundary, the county shall address (A) the need to preserve the
8 character of existing natural neighborhoods and communities, (B)
9 physical boundaries, such as bodies of water, streets and highways,
10 and land forms and contours, (C) the prevention of abnormally
11 irregular boundaries, and (D) the ability to provide public
12 facilities and public services in a manner that does not permit low-
13 density sprawl;

14 (v) For purposes of (d) of this subsection, an existing area or
15 existing use is one that was in existence:

16 (A) On July 1, 1990, in a county that was initially required to
17 plan under all of the provisions of this chapter;

18 (B) On the date the county adopted a resolution under RCW
19 36.70A.040(2), in a county that is planning under all of the
20 provisions of this chapter under RCW 36.70A.040(2); or

21 (C) On the date the office of financial management certifies the
22 county's population as provided in RCW 36.70A.040(5), in a county
23 that is planning under all of the provisions of this chapter pursuant
24 to RCW 36.70A.040(5).

25 (e) Exception. This subsection shall not be interpreted to permit
26 in the rural area a major industrial development or a master planned
27 resort unless otherwise specifically permitted under RCW 36.70A.360
28 and 36.70A.365.

29 (6) A transportation element that implements, and is consistent
30 with, the land use element.

31 (a) The transportation element shall include the following
32 subelements:

33 (i) Land use assumptions used in estimating travel;

34 (ii) Estimated traffic impacts to state-owned transportation
35 facilities resulting from land use assumptions to assist the
36 department of transportation in monitoring the performance of state
37 facilities, to plan improvements for the facilities, and to assess
38 the impact of land- use decisions on state-owned transportation
39 facilities;

40 (iii) Facilities and services needs, including:

1 (A) An inventory of air, water, and ground transportation
2 facilities and services, including transit alignments and general
3 aviation airport facilities, to define existing capital facilities
4 and travel levels as a basis for future planning. This inventory must
5 include state-owned transportation facilities within the city or
6 county's jurisdictional boundaries;

7 (B) Level of service standards for all locally owned arterials
8 and transit routes to serve as a gauge to judge performance of the
9 system. These standards should be regionally coordinated;

10 (C) For state-owned transportation facilities, level of service
11 standards for highways, as prescribed in chapters 47.06 and 47.80
12 RCW, to gauge the performance of the system. The purposes of
13 reflecting level of service standards for state highways in the local
14 comprehensive plan are to monitor the performance of the system, to
15 evaluate improvement strategies, and to facilitate coordination
16 between the county's or city's six-year street, road, or transit
17 program and the office of financial management's ten-year investment
18 program. The concurrency requirements of (b) of this subsection do
19 not apply to transportation facilities and services of statewide
20 significance except for counties consisting of islands whose only
21 connection to the mainland are state highways or ferry routes. In
22 these island counties, state highways and ferry route capacity must
23 be a factor in meeting the concurrency requirements in (b) of this
24 subsection;

25 (D) Specific actions and requirements for bringing into
26 compliance locally owned transportation facilities or services that
27 are below an established level of service standard;

28 (E) Forecasts of traffic for at least ten years based on the
29 adopted land use plan to provide information on the location, timing,
30 and capacity needs of future growth;

31 (F) Identification of state and local system needs to meet
32 current and future demands. Identified needs on state-owned
33 transportation facilities must be consistent with the statewide
34 multimodal transportation plan required under chapter 47.06 RCW;

35 (iv) Finance, including:

36 (A) An analysis of funding capability to judge needs against
37 probable funding resources;

38 (B) A multiyear financing plan based on the needs identified in
39 the comprehensive plan, the appropriate parts of which shall serve as
40 the basis for the six-year street, road, or transit program required

1 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
2 35.58.2795 for public transportation systems. The multiyear financing
3 plan should be coordinated with the ten-year investment program
4 developed by the office of financial management as required by RCW
5 47.05.030;

6 (C) If probable funding falls short of meeting identified needs,
7 a discussion of how additional funding will be raised, or how land
8 use assumptions will be reassessed to ensure that level of service
9 standards will be met;

10 (v) Intergovernmental coordination efforts, including an
11 assessment of the impacts of the transportation plan and land use
12 assumptions on the transportation systems of adjacent jurisdictions;

13 (vi) Demand-management strategies;

14 (vii) Pedestrian and bicycle component to include collaborative
15 efforts to identify and designate planned improvements for pedestrian
16 and bicycle facilities and corridors that address and encourage
17 enhanced community access and promote healthy lifestyles.

18 (b) After adoption of the comprehensive plan by jurisdictions
19 required to plan or who choose to plan under RCW 36.70A.040, local
20 jurisdictions must adopt and enforce ordinances which prohibit
21 development approval if the development causes the level of service
22 on a locally owned transportation facility to decline below the
23 standards adopted in the transportation element of the comprehensive
24 plan, unless transportation improvements or strategies to accommodate
25 the impacts of development are made concurrent with the development.
26 These strategies may include increased public transportation service,
27 ride sharing programs, demand management, and other transportation
28 systems management strategies. For the purposes of this subsection
29 (6), "concurrent with the development" means that improvements or
30 strategies are in place at the time of development, or that a
31 financial commitment is in place to complete the improvements or
32 strategies within six years. If the collection of impact fees is
33 delayed under RCW 82.02.050(3), the six-year period required by this
34 subsection (6)(b) must begin after full payment of all impact fees is
35 due to the county or city.

36 (c) The transportation element described in this subsection (6),
37 the six-year plans required by RCW 35.77.010 for cities, RCW
38 36.81.121 for counties, and RCW 35.58.2795 for public transportation
39 systems, and the ten-year investment program required by RCW
40 47.05.030 for the state, must be consistent.

1 (7) An economic development element establishing local goals,
2 policies, objectives, and provisions for economic growth and vitality
3 and a high quality of life. The element shall include: (a) A summary
4 of the local economy such as population, employment, payroll,
5 sectors, businesses, sales, and other information as appropriate; (b)
6 a summary of the strengths and weaknesses of the local economy
7 defined as the commercial and industrial sectors and supporting
8 factors such as land use, transportation, utilities, education,
9 workforce, housing, and natural/cultural resources; and (c) an
10 identification of policies, programs, and projects to foster economic
11 growth and development and to address future needs. A city that has
12 chosen to be a residential community is exempt from the economic
13 development element requirement of this subsection.

14 (8) A park and recreation element that implements, and is
15 consistent with, the capital facilities plan element as it relates to
16 park and recreation facilities. The element shall include: (a)
17 Estimates of park and recreation demand for at least a ten-year
18 period; (b) an evaluation of facilities and service needs; and (c) an
19 evaluation of intergovernmental coordination opportunities to provide
20 regional approaches for meeting park and recreational demand.

21 (9) It is the intent that new or amended elements required after
22 January 1, 2002, be adopted concurrent with the scheduled update
23 provided in RCW 36.70A.130. Requirements to incorporate any such new
24 or amended elements shall be null and void until funds sufficient to
25 cover applicable local government costs are appropriated and
26 distributed by the state at least two years before local government
27 must update comprehensive plans as required in RCW 36.70A.130.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 44.28
29 RCW to read as follows:

30 (1) The joint legislative audit and review committee must review
31 the impact fee deferral requirements of RCW 82.02.050(3). The review
32 must consist of an examination of issued impact fee deferrals,
33 including: (a) The number of deferrals requested of and issued by
34 counties, cities, and towns; (b) the type of impact fee deferred; (c)
35 the monetary amount of deferrals, by jurisdiction; (d) whether the
36 deferral process was efficiently administered; (e) the number of
37 deferrals that were not fully and timely paid; and (f) the costs to
38 counties, cities, and towns for collecting timely and delinquent
39 fees. The review must also include an evaluation of whether the

1 impact fee deferral process required by RCW 82.02.050(3) was
2 effective in providing a locally administered process for the
3 deferral and full payment of impact fees.

4 (2) The review required by this section must, in accordance with
5 RCW 43.01.036, be submitted to the appropriate committees of the
6 house of representatives and the senate on or before September 1,
7 2021.

8 (3) In complying with this section, and in accordance with
9 section 4 of this act, the joint legislative audit and review
10 committee must make its collected data and associated materials
11 available, upon request, to the department of commerce.

12 (4) This section expires January 1, 2022.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.31
14 RCW to read as follows:

15 (1) Beginning December 1, 2018, and each year thereafter, the
16 department of commerce must prepare an annual report on the impact
17 fee deferral process established in RCW 82.02.050(3). The report must
18 include: (a) The number of deferrals requested of and issued by
19 counties, cities, and towns; (b) the number of deferrals that were
20 not fully and timely paid; and (c) other information as deemed
21 appropriate.

22 (2) The report required by this section must, in accordance with
23 RCW 43.01.036, be submitted to the appropriate committees of the
24 house of representatives and the senate.

25 NEW SECTION. **Sec. 5.** This act takes effect September 1, 2016.

--- END ---

WEST RICHLAND AGENDA ACTION ITEMS

<i>AGENDA ITEM:</i>	6d	<i>TYPE OF ACTION NEEDED</i>			
<i>MEETING DATE:</i>	August 16, 2016	<i>Execute Contract</i>		<i>Consent Agenda</i>	X
<i>SUBJECT:</i>	Motion to Accept Belmont Blvd Phase 3 & 4 Project as Complete	<i>Pass Resolution</i>		<i>Public Hearing</i>	
		<i>Pass Ordinance</i>		<i>1st Discussion</i>	
<i>Prepared by:</i>	Roscoe C. Slade III, PW Director 	<i>Pass Motion</i>	X	<i>2nd Discussion</i>	
<i>Reviewed by:</i>	Brent Gerry, Mayor 	<i>Other</i>		<i>Other</i>	

SFA #2 – Quality and Adequate Infrastructure and Facilities

Goal #2 – Construct planned infrastructure essential for a growing community and economic vitality.

BACKGROUND INFORMATION:

In November 2014, Public Works staff submitted an application to BFCOG for a \$650,000 Federal STP-UL grant for the \$970,000 Belmont Blvd Phase 3 & 4 Project. The project's scope of work includes modifying the existing Keene Road/ Belmont Blvd T-intersection into a four-way signalized intersection and extends Belmont Blvd south approximately 0.3 miles through the City's Belmont property, across the frontage of the new middle school to the south City Limits. In December 2014, the City was notified that the Belmont Blvd Phase 3 & 4 Project was selected for a \$499,615 Federal STP-UL grant.

In January 2015, Council authorized an engineering services contract with DKS. The scope of work for the consultant included preliminary engineering through final approval of environmental documents, and acquisition, PS&E approval, and construction inspection and administration for the traffic signal portion of the project. As part of the traffic signal design, DKS will also be conducting a speed zone analysis of Keene Road between Bombing Range Road and Van Giesen to determine if adjustments to the current 50mph posted speed limit is warranted.

The City's Public Works professionally licensed engineering staff completed the roadway, water extension, and sewer extension design for the Belmont Blvd Phase 3 & 4 Project.

On April 30, 2015, the City was notified by the Federal Highway Administration (FHWA) that the federal construction funds were authorized, but placed in Advance Construction (AC) status. AC status means that you may proceed with the project, but all cost incurred that are eligible for federal reimbursement must be covered with local funds until additional federal funds are made available by FHWA (estimated by WSDOT Local Programs as July 2015). The delay with the federal funds is primarily due to Congress not passing an appropriations bill to fund the Highway Trust Fund.

The bid opening for the Belmont Blvd Phase 3 & 4 Project was on June 9, 2015. The City received only one bid in the amount of \$1,234,132.20. The apparent low bidder was Goodman & Mehlenbacher. The Engineer's estimate was \$1,204,887.54. On June 16, 2015, City Council awarded the project to Goodman & Mehlenbacher in the amount of \$1,234,132.20.

SUMMARY:

The Belmont Blvd Phase 3 & 4 Project is complete and ready for Council acceptance. There were eight change orders issued on the project totaling \$32,070.51 including sales tax (less than 2% of original contract amount). The total contract amount was \$1,258,695.53 including sales tax. The difference between the contract amount at award plus change orders and the final contract was due to minor underruns in estimated bid item quantities.

RECOMMENDATION:

Staff recommends Council accept the Belmont Blvd Phase 3 & 4 Project as complete.

ALTERNATIVES:

As amended by Council.

FISCAL IMPACT (Indicate amount, fund and impact on budget):

\$1,258,695.53 from various funds as follows:

- 1) Roadway and pathway portion of the project = \$948,285.05 (Federal STP-UL Grant - \$499,615, 355 Fund - \$288,670.05, and 104 Fund - \$160,000). A total of \$1,038,779 was included in the 2015/2016 Budget.
- 2) Sewer portion of the project = \$105,741.64 (442 Fund). \$107,000 was included in the 2015/2016 Budget.
- 3) Water portion of the project = \$170,161.37 (441 Fund - \$147,269.04 and 001 Fire Hydrant Program Fund - \$22,892.33). A total of \$393,815 was included in the 2015/2016 Budget.
- 4) Franchise utility conduit associated with new Municipal Services Facility portion of the project = \$34,507.87 (461 Fund & 001 Fund). \$5,620,730 was included in the 2015/2015 Budget.

MOTION:

I move Council to accept the Belmont Blvd Phase 3 & 4 Project as complete.

WEST RICHLAND AGENDA ACTION ITEMS

AGENDA ITEM:	6e	TYPE OF ACTION NEEDED			
MEETING DATE:	August 16, 2016	Execute	X	Consent	X
SUBJECT:	Motion to Award Police Building Repairs Contract Project	Pass Resolution		Public Hearing	
		Pass Ordinance		1st Discussion	
Prepared by:	Roscoe C. Slade III, PW Director 	Pass Motion	X	2nd Discussion	
Reviewed by:	Brent Gerry, Mayor 	Other		Other	

SFA#2 Quality and Adequate Infrastructure and Facilities

Goal#3 Maintain citizen's investments in existing infrastructure to extend useful life.

ATTACHMENTS:

- Summary of Repair Quotes

BACKGROUND INFORMATION:

During the replacement of the roof on the Police Building, the contractor removed the existing roofing material and did not properly secure / protect the building from a potential rain event. City staff had warned the contractor of pending/predicted storm events and to secure/protect the police building before leaving the site. For reasons unknown, the contractor did not properly secure /protect the building. On the evening of Wednesday, May 4, 2016 through the early morning of Thursday, May 5, 2016, a storm event occurred and the police building and contents inside experienced extensive water damage.

SUMMARY:

On the evening of Wednesday, May 4, 2016 through the early morning of Thursday, May 5, 2016, a storm event occurred and the police building and contents inside experienced extensive water damage. The City's insurance company (risk pool provider), WCIA, is working with the roofing contractor and roofing contractor's insurance company to reimburse WCIA for damage and repair costs to police building. WCIA is paying the City's restoration costs and repair costs and then seeking reimbursement through the contractor's insurance company.

Public Works solicited a minimum of three quotes for the repairs to the Police Building. The City received two bids ranging from \$18,970.24 to \$19,447.22. The lowest quote received was from Belfor Property Restoration. On July 19, 2016, City Council awarded the project to Belfor Property Restoration. Belfor Property Restoration would not execute the City's standard contract without modifications to the contract. Belfor Property Restoration's proposed modifications to the City's standard contract were reviewed by the City Attorney and deemed not acceptable. Belfor Property Restoration was once again provided an opportunity to execute the City's standard contract for this project, but they declined. Since Belfor Property Restoration has been deemed non-responsive for failure to execute the contract, the City Attorney recommends that City Council award the project to the second lowest bidder, Young's Service Master, in the amount of \$19,447.22. The situation has been discussed with WCIA and they concur with the City Attorney's recommendation and will cover the additional repair costs associated with using the second lowest bidder's quote. Repairs to the Police Building were originally expected to begin in August, but will this situation will now be delayed until September.

RECOMMENDATION:

Staff recommends Council to rescind the previous award of the Police Building Repairs Project to Belfor Property Restoration in the amount of \$18,970.24 and award of the Police Building Repairs Project to Young's Service Master in the amount of \$19,447.22.

ALTERNATIVES:

None.

FISCAL IMPACT (Indicate amount, fund and impact on budget):

\$19,447.22 from the 001 General Fund – Services Line Item for Repairs & Maintenance. A future budget amendment will be required to account for reimbursement revenue from WCIA and associated expenditures.

MOTION:

I move to rescind the previous award of the Police Building Repairs Project to Belfor Property Restoration in the amount of \$18,970.24 and to award the Police Building Repairs Project to Young's Service Master in the amount of \$19,447.22 and authorize the Mayor to execute the contract.

POLICE DEPARTMENT WATER DAMAGE REPAIR QUOTES

BELFOR PROPERTY RESTORATION:	\$18,970.24
YOUNGS SERVICEMASTER:	\$19,447.22
1ST CHOICE RESTORATION:	NON-RESPONSIVE - NO QUOTE RECEIVED

WEST RICHLAND AGENDA ACTION ITEMS

<i>AGENDA ITEM:</i>	6f	<i>TYPE OF ACTION NEEDED</i>			
<i>MEETING DATE:</i>	August 16, 2016	<i>Execute Contract</i>		<i>Consent Agenda</i>	X
<i>SUBJECT:</i>	Motion to Accept LED Street Light Retro-fit Project as Complete.	<i>Pass Resolution</i>		<i>Public Hearing</i>	
		<i>Pass Ordinance</i>		<i>1st Discussion</i>	
<i>Prepared by:</i>	Roscoe C. Slade III, PW Director 	<i>Pass Motion</i>	X	<i>2nd Discussion</i>	
<i>Reviewed by:</i>	Brent Gerry, Mayor 	<i>Other</i>		<i>Other</i>	

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COUNCIL STRATEGIC FOCUS AREA:

SFA #3 – Financial & Operational Effectiveness, Stability & Accountability

GOAL # 4 – Improve quality and efficiency of services and cost savings through collaboration with other public and private entities.

BACKGROUND INFORMATION:

The City of West Richland's Public Works engineering staff has been working collaborately with Benton Rural Electric Association's staff over the last several years to establish a new street light standard and a strategy for retro-fitting the existing street lights from high-pressure sodium lights to LED lights. This effort includes selection of technology, new street light rates, maintenance, and financing the program.

In May 2014, City Council authorized the Mayor to execute an agreement with the State of Washington's Department of Enterprise Services (DES) to provide Energy/Utility Conservation Program Management and Monitoring Services. Specifically this agreement provides the City with an avenue to select/consult with an Energy Services Contractor (ESCO) that has been pre-qualified by the State. The ESCO would then conduct a preliminary audit of the City's street light system to determine if the cost of retrofitting the City's entire street light system could be funded between available grant funds, BPA rebates managed by Benton REA and actual energy cost savings.

Ameresco was selected from DES's pre-qualified list of Energy Services Contractors to complete a preliminary audit of the feasibility of converting the City of West Richland's approximately 1,100 high pressure sodium (HPS) street lights to LED lights with and without ROAM controls.

In July 2014, City Council authorize the Public Works Director to execute the Energy Audit Fee Proposal and apply for a Department of Commerce Energy Efficiency Grant associated with Option #2 higher wattage LED street lights with a ROAM control system. City Council's decision was based on Ameresco's preliminary audit dated June 11, 2014. The assumptions of the preliminary audit were reviewed by both City and BREA staff. The results show that the City's 1,100 HPS street lights can be replaced with LED street lights utilizing BPA/BREA rebates, a Commerce Energy Efficiency Grant, and actual energy savings to pay for a local programs low-interest loan. The rebates and grant would cover approximately 35% of the capital costs with actual energy savings used to pay the loan debt service.

In September 2014, Public Works staff applied for a Commerce Energy Efficiency Grant. The City was notified on December 11, 2014, that the City was successful in obtaining a \$281,937 grant.

On February 3, 2015, City Council authorize the State of Washington's Department of Enterprise Services to furnish the necessary personnel and services to perform the work associated with the City of West Richland's LED Street Lighting Retrofit and Controls Project as outlined in the Ameresco, Inc. Energy Services Proposal dated September 18, 2014 with a total project cost of \$1,150,765.

SUMMARY:

The LED Street Light Retro-Fit Project is complete and ready for Council acceptance. The total project cost was \$1,115,624.82. The difference between the total project cost at award (\$1,150,765) and the final project cost was due to limited use/need of the project's \$38,204 contingency fund.

Original funding sources for the project were as follows:

\$673,828 Local Program's Low-Interest State Loan (debt service to be paid for by City with energy savings)

\$195,000 Benton REA (& BPA rebates)

\$281,937 Washington State Department of Commerce Grant

With the original funding sources, the project was estimated to pay for itself in energy savings in approximately 12 years.

During the project, City Staff was successful in obtaining a \$464,089 Washington State Transportation Improvement Board Grant. Actual energy savings metering/testing with the LED lights and ROAM System showed that switching from HPS lights to LED lights reduced the energy consumption by 61% and using the ROAM System to dim the LED lights further reduced the energy consumption by an additional 10% or a total of \$74,000 per year in energy savings. The energy savings was more than estimated and as such the City received \$17,213 more than anticipated in BPA rebates.

Final funding source summary for project are as follows:

\$157,356 Local Program's Low-Interest State Loan (debt service to be paid for by City with energy savings)

\$212,213 Benton REA (& BPA rebates)

\$281,937 Washington State Department of Commerce Grant

\$464,089 Washington State Transportation Improvement Board Grant

With the \$464,089 TIB Grant and additional \$17,213 in BPA rebates, the City's pay back for the project was reduced from 12 years to just over 2 years.

RECOMMENDATION:

Staff recommends Council accept the LED Street Light Retro-fit Project as complete.

ALTERNATIVES:

As amended by Council.

FISCAL IMPACT (Indicate amount, fund and impact on budget):

Total Project Cost: \$1,115,624.82.

Revenue sources:

\$157,356 Local Program's Low-Interest State Loan (debt service to be paid for by City with energy savings)

\$212,213 Benton REA (& BPA rebates)

\$281,937 Washington State Department of Commerce Grant

\$464,089 Washington State Transportation Improvement Board Grant

MOTION:

I move to accept the LED Street Light Retro-fit Project as complete.

WEST RICHLAND AGENDA ACTION ITEMS

AGENDA ITEM:	6g	TYPE OF ACTION NEEDED			
MEETING DATE:	August 16, 2016	<i>Execute Contract</i>	X	<i>Consent Agenda</i>	
SUBJECT:	Motion to Execute Agreement for Optical Ethernet, Fiber Internet, SIP Trunking and Coax Phone with Charter for Municipal Services Facility, Wastewater Treatment Plant & Police Building	<i>Pass Resolution</i>		<i>Public Hearing</i>	
		<i>Pass Ordinance</i>		<i>1st Discussion</i>	
Prepared by:	Roscoe C. Slade III, PW Director 	<i>Pass Motion</i>	X	<i>2nd Discussion</i>	
Reviewed by:	Brent Gerry, Mayor 	<i>Other</i>		<i>Other</i>	

STRATEGIC FOCUS AREA:

SFA #3 – Financial & Operational Effectiveness, Stability & Accountability.

Goal #4 – Improve quality and efficiency of services and cost savings through collaborate with other public and private entities.

ATTACHMENTS:

- Agreements for Optical Ethernet, Fiber Internet, SIP Trunking and Coax Phone Service – Municipal Services Facility, North Wastewater Treatment Plant & Police Station.
- Fiber Proposal dated June 22, 2016

BACKGROUND INFORMATION:

Charter can issue a commercial construction credit against the upfront capital cost of extending optical ethernet, fiber internet, SIP trunking and coax phone service to a consumer, if said consumer executes an Agreement for Services with Charter. In exchange for reducing the upfront capital cost of extending services, the consumer agrees to purchase a monthly minimum amount of services over a set term.

SUMMARY:

The City needs to extend fiber to the Municipal Services Facility site on Belmont Blvd. The estimated cost of extending fiber is approximately \$116,759. The attached Agreement for Optical Ethernet, Fiber Internet, SIP Trunking and Coax Phone Service with Charter would provide the City with a commercial construction credit of \$116,759 reducing the upfront capital cost of extending fiber to the new facility to \$0. Per the agreement, the City would be required to pay \$1,945.98 per month over the next 5 years (afterwards contracts convert to month to month status). Please see attached Fiber Proposal from Charter outlining services to be provided at the new Municipal Services Facility, Police Building and North Wastewater Treatment Plant.

The City Attorney has reviewed the agreements for services with Charter.

RECOMMENDATION:

Staff recommends Council authorize the Mayor to execute the Agreements for services with Charter.

ALTERNATIVES:

As amended by Council

FISCAL IMPACT (Indicate amount, fund and impact on budget):

\$1,945.98 per month for 5 years split between general fund and various enterprise funds.

MOTION:

I move to authorize the Mayor to execute the Data Networking Service Agreement, Spectrum Business Voice

Trunk Service Agreement, Business Internet Access, Video and Music Service Agreement, Customer Certification of Intrastate Circuits, and Spectrum Business Customer Permission for Release of Customer Proprietary Information with Charter for the new Municipal Services Facility, Wastewater Treatment Plant and Police Building.

SPECTRUM BUSINESS FIBER PROPOSAL

Optical Ethernet | Fiber Internet | PRI | SIP-Trunking



SPECTRUM BUSINESS® | CONFIDENTIAL

The following proposal is made by Spectrum Business® and shall not be considered an acceptance or any offer or otherwise create a binding contract. This proposal is submitted with the express understanding that the specific, comprehensive terms under which a binding contract may be entered into are understood to be subject to negotiation between the parties hereafter.

6/22/2016

City of West Richland
3100 Belmont Blvd
West Richland, WA 99353

Dear Customer,

Thanks for your interest in Spectrum Business® services. We have already helped power the success of thousands of business and are confident that our solutions can help you maximize your business potential too.

As we've discussed, this proposal details the Spectrum Business services that are designed to meet your specific needs.

Simply put, Spectrum Business Fiber Solutions offer your business an edge by offering more bandwidth for the money than your current provider. And we look forward to the prospect of working with you.

Sincerely yours,

Tony Brewer
Major Account Executive
tony.brewer@charter.com
509.572.2919

The following is a price estimate for Spectrum Business services that takes into account the conversations we've had around the specific solutions that are best suited to meet your needs. Please review and let me know if you have any questions or concerns. I value the opportunity to provide your business a better alternative to your current provider.

One-Time Charges

- Installation \$0.00
- Equipment \$0.00

"Does not include applicable taxes, fees, or surcharges"

Monthly Service Fees – 60 month term agreement

1. The monthly service fees listed above include the edge equipment required to complete the network connections.
2. Please allow up to 120 days for installation.

Site 1: 3100 Belmont Blvd.

Service	Location	Service Breakdown	Monthly Cost	Install Fee
Optical Ethernet	3100 Belmont Blvd.	60 Mbps Standard CoS	\$ 345.00	\$ 0.00
Fiber Internet		50 Mbps & /28 Static IPs	\$ 580.00	\$ 0.00
SIP Trunking		(32) Call Paths, 10,000 Long Distance, 100 DID's, (1) Toll Free Number	\$ 395.00	\$ 0.00
Coax Phone		2 Lines	\$ 75.98	\$ 99.00
Total			\$ 1,395.98	\$ 99.00

Site 2: 3801 W Van Giesen St

Service	Location	Service Breakdown	Monthly Cost	Install Fee
Optical Ethernet	3801 W. Van Giesen St.	20 Mbps Standard CoS	\$ 275.00	\$ 0.00
Total			\$ 275.00	\$ 0.00

Site 4: 320 N 46th

Service	Location	Service Breakdown	Monthly Cost	Install Fee
Optical Ethernet	320 N. 46 th	20 Mbps Standard CoS	\$ 275.00	\$ 0.00
Total			\$ 275.00	\$ 0.00

Total of all Sites **\$ 1,945.98** **\$ 99.00**

3. Frost charges may apply if the installation is scheduled after September 30th.

This offer is valid for 90 days, is based on a 60 month term, and is subject to these contingencies:

- Final engineering, design, and site visits
- Spectrum Business Terms and Conditions are provided in our Service Agreement/Order with our Commercial Terms of Service.

I appreciate the opportunity to provide City of West Richland with a proposal for Spectrum Business Fiber services. Please feel free to call me with any questions.

Sincerely,

Tony Brewer
Major Account Executive
tony.brewer@charter.com

The terms of this proposal are confidential and should not be disclosed directly or indirectly to any third party, except as may be required by law. If you and/or your agents or representative makes any unauthorized disclosure, Charter shall be entitled to revocation of this proposal, termination of the agreement and/or damages arising from such unauthorized disclosures, as well as to injunctive relief. This proposal is an estimate for discussion purposes only and is not intended to give rise to binding obligations for either party. The offer herein proposed by Charter is contingent upon your Customer's acceptance of Charter's applicable commercial terms of service. Any contractual relationship between us will be the effective only upon execution of a binding contract by representatives of the parties authorized to enter into such agreements.

©2015 Charter Communications. All trademarks belong to their respective owners. Services not available in all areas. All pricing and services provided subject to terms of applicable tariff/service and executed customer service agreement and subject to change. Other restrictions and limitations may apply. Taxes and franchise, installation and other fees apply. Actual amounts may vary depending on services ordered. Always contact Charter for verification of current rates, services and terms and conditions. Discounted rates may be available on a service term commitment basis. Internet speeds may vary.

"The bottom line is that they are as worried about making sure our network is running perfectly as I am."

-Jimmy B., Network Administrator, Bethel University

Whether your business is looking to ensure network uptime or transmit essential data flawlessly, you can count on Spectrum Business Fiber solutions for your mission critical business needs. There is no comparison to what you get with Spectrum Business versus traditional telecommunications companies.

The benefits of switching to Spectrum Business couldn't be more compelling. Here's what you can expect when you work with us:

Better value

Get the bandwidth your business needs without paying more than you should with powerful, cost-efficient services that help your business connect with customers and vendors more easily than ever.

Greater flexibility

No matter how quickly your networking needs change, we can accommodate your request with bandwidth changes in increments of 1Mbps that are quickly implemented.

More reliability

Our best-in-class network is physically diverse from the phone company routes and proactively monitored 24/7/365 to enable your business to work faster, more securely and with fewer interruptions.

Spectrum Business Fiber solutions offer a range of scalable, affordable solutions that include:

Optical Ethernet	Provides optical private line Ethernet service with speeds ranging from 10Mbps to 10Gbps. Supports point-to-point, point-to-multipoint, or multipoint configurations as well as Layer 3 VPN.	Spectrum Business® Layer 3 VPN Offers the high-speed capacity and flexibility to handle large amounts of traffic, securely connect multiple business locations with speeds ranging from 10Mbps to 10Gbps	
Fiber Internet	Provides dedicated optical Internet access with scalable speeds ranging from 5Mbps to 1Gbps.		Choose from a full suite of add-ons: Cloud services, email services, Website hosting, Domain name hosting, Backup, Microsoft® Exchange E-Mail Managed services, Static IP Addresses, Managed Security, Spectrum Business Managed Internet Router
PRI	High capacity calling service that connects to existing PBX/Key systems and offers scalable telephone service ranging from single to multiple T1s combined with DIDs and flexible long-distance options.		
SIP Trunking	Provides the ability to maximize your IP-PBX through one connection for voice, data and Internet traffic. This converged approach saves money and time by using bandwidth efficiently, reducing hardware costs and simplifying network management.		

"They offer a fiber-optic network that has proven its reliability. Sometimes Spectrum Business will know about a problem before we do, even if it is after hours."

-Dr. Angela G., District Curriculum and Technology Coordinator, Alabama

SPECTRUM BUSINESS | CONFIDENTIAL

Spectrum
BUSINESS





201510304481988

Spectrum Business® Customer Permission for Release of Customer Proprietary Information

Customer proprietary network information (“CPNI”) is information that is specific to a customer’s account including the quantity, technical configuration, type, destination, location, and amount of use of services and billing information that identifies call information. A communications provider may not obtain or use CPNI without permission from the customer. Customers have the right to protect their CPNI and all providers have a duty under federal law to protect the confidentiality of customer CPNI.

As the owner of CPNI the customer has the right to restrict the use and disclosure of and access to their CPNI. Denial of permission to obtain CPNI will not affect the provision of services to which you currently subscribe. However, Charter may not be able to accurately assess your service needs or advise you on your most appropriate option for services without such information. Additionally, the inability to obtain CPNI may delay Charter’s provisioning and installation of services. Providing permission to Charter to obtain CPNI from your communications provider will allow Charter to offer services and products that are well suited to your needs.

This letter of authorization provides your communications provider with written permission to provide your communications services account records to Spectrum Business®. By signing this letter you authorize Charter to request and your communications provider to release the CPNI from your account to be used by Charter in the establishment and provision of your communications services. This authorization will be in effect until you provide Charter with written notification that you wish to withdraw this permission for any or all of those services. Permission for access to your CPNI may be withdrawn by you at any time.

Customer Information	
Business Name	City of West Richland
Business Address	3100 Belmont Blvd West Richland, WA 99353
Billing Telephone Number(s)/Account Number(s) covered under this Authorization	

Company Authorized Agent (Please print) First: _____ **Last:** _____
Signature: _____ **Date:** _____

I am an officer or employee of Customer and knowledgeable concerning the jurisdictional nature of the communications traffic that is carried over circuits that Customer purchases from Charter Communications, Inc. and its affiliates (collectively, "Charter"). I attest on behalf of Customer that for each Data WAN/private line service that Customer purchases where the endpoint of such circuits are located within the same state ten percent (10%) or less of the communications traffic is interstate in nature.

If at any time this certification is no longer accurate, Customer shall complete and submit to Charter an updated Intrastate Circuit Certification and any other documentation reasonably required by Charter. Customer acknowledges that any Data WAN or private line services that it purchases from Charter that are not identified on a valid Intrastate Circuit Certification shall be subject to surcharges to recover federal Universal Service Fund ("fUSF") contribution associated with such services. If at any time the information provided in this Intrastate Circuit Certification is determined to be incorrect, or if it changes and Customer does not notify Charter as required, Customer will be responsible for paying any fUSF contributions and associated late payment charges and penalties imposed upon Charter relating to such services. Customer agrees to indemnify Charter and hold it harmless from and against any claim or action resulting from Charter's reliance on the information provided in this Intrastate Circuit Certification and agrees to cooperate in the defense of any action based on the information provided in this Intrastate Circuit Certification. I am authorized by Customer to make the representations, attestations and certifications contained herein.

Customer (full legal name of company): City of West Richland - Municipal Services Building
Address: 3100 Belmont Blvd_West Richland_WA_99353
Authorized Representative Signature:
Printed Name:
Title:
Date:
Contact Person (if different than above):
Contact Phone Number:

Please indicate the use of your Data WAN or private line service below. (Note: Locations not indicated will automatically be classified as interstate. Use additional sheets as necessary.)

Street Address of Network Location(s)	SELECT ONE	
	Intrastate The point to point circuit is physically located within a single state AND 10% or less of the traffic crosses state lines.	Interstate The point to point circuit physically crosses state lines OR more than 10% of the traffic crosses state lines
3801 W Van Giessen West Richland WA 99353	✓	
320 N 46th Ave West Richland, WA 99353	✓	
3100 Belmont Blvd_West Richland_WA_99353	✓	



201510304481999



USF



201510304481999



201509184435419

BUSINESS INTERNET ACCESS, VIDEO AND MUSIC SERVICE AGREEMENT

This Service Agreement ("Agreement") is executed and effective upon the latest date of the signatures set forth in the signature block below ("Effective Date") by and between Falcon Video Communications, L.P. , ("Spectrum Business" or "Charter") with a corporate office at 12405 Powerscourt Drive, St. Louis, Missouri 63131 and City of West Richland, ("Customer") with offices located at 3100 Belmont Blvd, West Richland, WA 99353.

Both parties desire to enter into this Agreement in order to set forth the general terms under which Charter is to provide Customer with Charter's services ("Service" or "Services") to Customer site(s), the scope and description to be specified per site below and/or in a Service order(s) executed by both parties (each instance of site identification and order a "Service Order" or collectively the "Service Orders"), which shall be incorporated in this Agreement upon execution. **This Agreement and each Service Order will be effective only after both parties have signed each document.**

**Spectrum Business is the commercial brand of Charter Communications, Inc.*

SERVICE ORDER

Under the Business Internet, Video and Music Service Agreement

CUSTOMER INFORMATION:

Account Name: City of West Richland

Invoicing Address: _____

Invoicing Special Instructions: _____

SITE-SPECIFIC INFORMATION:

New Renew Change: Order Type: New Customer

Service Location (Address): 3100 Belmont Blvd, West Richland, WA 99353

Service Location Name (for purposes of identification): _____

Service Location Special Instructions: _____

Non-Hospitality or Non-Video

Customer Contact Information. To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

	Billing Contact	Site Contact	Technical Contact
Name			
Phone			
Cell			
Email Address			

MONTHLY SERVICE FEES:		
Data Services:		
<i>Spectrum Business Bundle: No Bundle *</i>		
<u>Base Service</u>	Network Miles: Class of Service:	
	MEF Service Types (if applicable): N/A	\$580.00
	Speed: 50 Mbps (Down/Up)	
	CPE:	
<u>IP Options</u>		
	Static IP Package: BI: IPv4, Static /28 (13 IP pack)	\$0.00
	Static IP Addresses:	

* If Customer has selected the Spectrum Business Special Offers, the Section 3(i) of the Commercial Terms of Service (for Spectrum Business Bundle) shall apply.

ONE-TIME CHARGES:
ONE-TIME CHARGES \$0.00

2. TOTAL FEES.

Total Monthly Service Fees of \$580.00 are due upon receipt of the monthly invoice.

3. **SERVICE PERIOD.** The initial Service Period of this Service Order shall begin on the date installation is completed and shall continue for a period of 60 months. Upon expiration of the initial term, this Service Order shall automatically renew for successive one-month terms and Charter may then apply Charter's then-current Monthly Service Fees unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term.
4. **EPLAN SERVICES.** *Applicable only to EPLAN Data Transport Service.* Customer acknowledges that EPLAN Services consist of multiple end points connecting your designated locations to create a shared-data network. As new service locations are added to your EPLAN Services, the Network Miles will increase. The performance parameter metric Delay is impacted by the total Network Miles. Therefore, the applicable Delay metric is based upon the then-total Network Miles of the total of EPLAN Services provided by Charter to Customer. Customer acknowledges that the applicable Delay metric will be based upon the then-current total Network Miles.

* Your current Mileage Band is shown as Total EPLAN Network Miles in the above Monthly Service Fees table.
5. **NO UNTRUE STATEMENTS.** Customer further represents and warrants to Charter that neither this Service Order, nor any other information, including without limitation, any schedules or drawings furnished to Charter contains any untrue or incorrect statement of material fact or omits or fails to state a material fact.
6. **CONFIDENTIALITY.** Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by law. If any unauthorized disclosure

is made by Customer and/or its agent or representative, Charter shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Charter shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement.

- 7. **FACSIMILE.** A copy sent via fax machine or scanned and e-mailed of a duly executed Agreement and Service Order signed by both authorized parties shall be considered evidence of a valid order, and Charter may rely on such copy of the Agreement and Service Order as if it were the original.

NOW THEREFORE, Charter and Customer agree to the terms and conditions included within this Service Agreement, including the Commercial Terms of Service which follow, and hereby execute this Service Agreement by their duly authorized representatives.

Falcon Video Communications, L.P.

City of West Richland

By: Charter Communications, Inc., its Manager

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

COMMERCIAL TERMS OF SERVICE

1. **AGREEMENT TERM.** This Agreement shall terminate upon the lawful termination of the final existing Service Order entered into under this Agreement.
2. **SERVICE.** Charter shall provide the Services during the Service Period to Customer at the site(s) identified in the Service Order(s). "Service Period" is the time period starting on the date the Services are functional in all material respects and available for use (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).
3. **STANDARD PAYMENT TERMS.** Customer shall pay fees and charges for the Services in the amount specified on the Service Order in accordance with this Agreement. A one-time charge ("OTC") is a nonrecurring fee for construction, Service installation charge(s), repair, replacement, or any other nonrecurring costs or charges. "Equipment" means the components (e.g., any gateway or edge electronic device, node, router, switch, communications lines/cables, etc.) that make up the Network. "Network" means all of the physical elements necessary to provide the Services.
 - (a) **Charges.** Customer shall pay all associated charges with the Service(s), as set forth or referenced in the applicable Service Order(s) or invoiced by Charter. These charges may include, but are not limited to a monthly service fee ("MSF"), nonrecurring fees for construction, installation, repair, replacement or other one-time charges ("OTC"), usage charges such as, pay-per-view charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). MSFs shall be subject to increases attributable to programming, license, copyright, retransmission and/or other similar costs imposed upon Charter, Charter shall provide not less than thirty (30) days prior notice to Customer of any MSF change.
 - (b) **Taxes, Surcharges, and Fees.** Customer shall pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law. A copy of Customer's tax exemption document, if applicable, must be provided to Charter to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees. Charter reserves the right from time to time to change the surcharges for Services under this Agreement to reflect the charges or payment obligations imposed on Charter which Charter is permitted or required under applicable law to pass through to Customer (e.g., universal service fund ("USF") charges, franchise fees etc.).
 - (c) **Change Requests.** Any charges associated with Service and Equipment installations, changes, or additions requested by Customer subsequent to executing a Service Order for the applicable site are the sole financial responsibility of Customer. Charter shall notify Customer, in writing, of any additional OTCs and/or adjustments to MSFs associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to accept such additional charges within three days of receiving such notice shall be deemed a rejection by Customer, and Charter shall not be liable to perform any work giving rise to such charges. For accepted charges, Customer shall be assessed such additional OTCs and/or adjustments of the MSFs either (i) in advance of implementation of the change request or (ii) beginning on Customer's next and/or subsequent invoice(s).
 - (d) **Site Visits and Repairs.** If Customer's misuse, abuse or modification of the Services, Equipment or Network results in a visit to the Customer site for inspection, correction or repair, Charter may charge Customer a site visit fee as well as charges for any resulting Equipment or Network repair or replacement, which may be necessary.
 - (e) **Invoicing Errors.** Customer must provide written notice to Charter of any invoice errors or disputed charges within 30 days of the invoice date on which the errors and/or disputed charges appear for Customer to receive any credit that may be due. Customer must have and present a reasonable basis for disputing any amount charged.
 - (f) **Late Fees.** Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of not more than 1.5% per month or the maximum amount permitted by law.
 - (g) **Non-payment.** If Services are suspended due to late payment, Charter may require that Customer pay all past due charges, a reconnect fee, and one or more MSFs in advance before reconnecting Services.
 - (h) **Collection Fees.** Charter may charge a reasonable service fee for all returned checks and bank card, credit card or other charge card charge-backs. Customer shall be responsible for all expenses, including reasonable attorney fees and collection costs, incurred by Charter in collecting any unpaid amounts due under this Agreement.
 - (i) **Bundled Pricing.** If Customer has selected a Spectrum Business Bundle ("SBB") specifically, the following conditions shall apply:
 - i. In consideration for Customer's purchase of all Services in the SBB and only with respect to that period of time during which Customer continues to purchase such SBB, Charter shall apply a discount to the Services ordered under the applicable Service Order(s). Such discount has been applied to the Services included in Charter's bundled pricing offer and is reflected in the MSF for such Services.

- ii. Upon discontinuation or termination by Customer of any component of a Service of the applicable SBB, the pricing for the remaining Services shall revert to Charter's a la carte pricing for such Services in effect at the time. Termination liability applicable to the Services under this Agreement shall otherwise remain unchanged.

4. SERVICE LOCATION ACCESS AND INSTALLATION.

- (a) Access. Charter will require reasonable access to each service location listed on a Service Order ("Service Location") as necessary for Charter to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns or controls the Service Location(s), Customer grants Charter permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with Charter's assistance, appropriate right of access. If such right of access for Charter is not obtained by either party, then Charter's obligations with respect to such Service Location shall be considered null and void.
- (b) Installation Review; Subsequent Interference. Charter may perform an installation review of each Service Location prior to installation of the Services. Upon request, Customer shall provide Charter with accurate site and/or physical network diagrams or maps of a Service Location, including electrical and other utility service maps, prior to the installation review. If Charter determines that safe installation and/or activation of one or more of the Services will have negative consequences to Charter's personnel or Network or cause technical difficulties to Charter or its customers, Charter may terminate the Service Order effective upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

If during a Service Period, or any renewal thereof, (i) proper operation of Equipment or provision of a Service is no longer unhindered or possible as a result of interference or obstruction due to any cause other than Charter or (ii) such interference/obstruction or its cause may endanger, hinder, harm or injure Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, Charter may terminate the affected Service Order(s) without liability upon written notice to Customer.
- (c) Site Preparation. Customer shall be responsible for necessary preparations at its location(s) for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment or Services. Upon request, Customer shall provide any available electrical, utility service, and/or general physical network diagrams or maps prior to installation or maintenance work to be undertaken by Charter.
- (d) Installation. Charter will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. If

during the course of installation Charter determines additional work is necessary to enable Charter to deliver the Services to the Service Location, Charter will notify Customer of any additional OTCs. If Customer does not agree to pay such OTCs by executing a revised Service Order within five business days of receiving the same, Customer and Charter shall each have the right to terminate the applicable Service Order. Customer shall connect Customer's computer or network to applicable Charter-provided Equipment to enable access to the Services. Charter shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation.

- (e) Ongoing Visits. Charter will need periodic access for inspection, operation and maintenance of the Network. Except in emergency situations, Charter will obtain approval from Customer (not to be unreasonably withheld or delayed) before entering Customer Premises. At Charter's request, Customer, or a representative designated by Customer, will accompany Charter's employees or agents into any unoccupied unit for any purpose relating to the Equipment.

5. EQUIPMENT AND MATERIALS.

- (a) Responsibilities and Safeguards. Except as otherwise provided in this Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party; provided, however, that subject to the indemnification limitations set forth in this Agreement, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct. Customer shall:

- i. Safeguard Equipment against others;
- ii. Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- iii. Not hire nor permit anyone other than personnel authorized by Charter acting in their official capacity to perform any work on Equipment; and
- iv. Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of Charter.

Any unauthorized connection or other tampering with the Services or Equipment shall be cause for immediate suspension of Services, termination of this Agreement and/or legal action, and Charter shall be entitled to recover damages, including the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including reasonable attorney fees. Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services, Charter shall

not be obligated to distribute a signal to the Premises better than the highest quality which can be furnished without additional cost to Charter as a result of such interference, until such time as the interference is eliminated.

- (b) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service and/or Equipment. Charter may suspend the Services upon learning of a breach of security and will attempt to contact Customer in advance, if practicable.
- (c) Ownership. Notwithstanding any other provision contained in this Agreement to the contrary, all Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment. Customer shall not obtain or acquire title to, interest or right (including intellectual property rights) in the Service or Equipment other than to the limited extent of use rights expressly granted under this Agreement.
- (d) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of this Agreement and/or Service Order(s) ("Termination"), at the discretion of Charter, Customer shall return, or allow Charter to retrieve, the Equipment supplied by Charter to Customer. Failure of Customer to return, or allow Charter to retrieve, Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to the retail cost of replacement of the unreturned Equipment. Customer shall pay for the repair or replacement of any damaged Equipment, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects, together with any costs incurred by Charter in obtaining or attempting to regain possession of such Equipment, including reasonable attorney fees.

6. **ADMINISTRATIVE WEB SITE.** Charter may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). Charter may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Charter if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and Charter shall only be entitled to rely on all Customer uses of and submission to the

Administrative Web Site as authorized by Customer. Charter shall not be liable for any loss, cost, expense of other liability arising out of any Customer use of the Administrative Web Site, Charter may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.

7. **VIDEO, MUSIC AND CONTENT SERVICE.** This Video, Music and Content Service Section shall only apply if Video, Music and Content Services are included in a Service Order under this Agreement; however, continued use or reception of the Video Services is subject to the provisions of this Agreement.
- (a) Music Rights Fees. Customer is responsible for and must secure any music rights and/or pay applicable fees required by the American Society of Composers, Authors & Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC) or their respective successors, and any other entity, person or governmental authority from which a license is necessary or appropriate relating to Customer's transmission, retransmission, communication, distribution, performance or other use of the Services.
 - (b) Premium and Pay-Per-View. Customer may not: (i) exhibit any premium Services such as HBO or Showtime in any public or common area; (ii) order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment; or (iii) exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to Charter's prior written consent.
 - (c) HD Formatted Programming. If Customer has selected High Definition ("HD") formatted programming, Customer is responsible for provision, installation and maintenance of the receiving equipment and/or facilities necessary for its reception and display. Any failure of Customer to fulfill the foregoing obligation shall not relieve Customer of its obligation to pay the applicable MSFs or OTCs for the HD formatted programming.
 - (d) Provision of Service. Without notice, Charter may preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming comprising, packaging of, line-up applicable to, and/or distribution of its Video Services.
 - (e) Restrictions. Customer shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Services (or any part thereof); or (ii) transmit the Services by any television or radio broadcast or by any other means or use the Services outside the Service Location. Customer acknowledges that such duplication, reproduction or transmission may subject Customer to criminal penalties and/or civil liability and damages under applicable copyright and/or trademark laws. With respect to the music programming comprising a

portion of the Services, Customer shall not, and shall not authorize or permit any other person to, do any of the following unless Customer has obtained a then-current music license permitting such activity: (i) charge a cover charge or admission fee to any Service Location(s) at the time the Services are being performed or are to be performed; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Services; or (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements.

8. INTERNET ACCESS SERVICE. This Internet Access Service Section shall only apply if Internet Access Services are included in a Service Order under this Agreement; however, continued use of the Internet Service shall be subject to the provisions of this Agreement.

(a) Customer shall (i) maintain certain minimum equipment and software to receive the Service (see www.business.spectrum.com (or the applicable successor URL) for the current specifications); (ii) ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Agreement, (iii) be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Internet Services.

(b) Internet Service Speeds. Charter shall use commercially reasonable efforts to achieve the Internet speed selected by Customer on the Service Order, however, actual Internet speeds may vary. Many factors affect speed including, without limitation, the number of workstations using a single connection.

(c) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by Charter are the property of Charter. Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses.

(d) Changes of Address. Charter may change addressing schemes, including e-mail and IP addresses.

(e) No Liability for Risks of Internet Use. The Service, Charter's network and the Internet are not secure, and others may access or monitor traffic.

(f) No Liability for Purchases. Customer shall be solely liable and responsible for all fees or charges for online services, products or information. Charter shall have no responsibility to resolve disputes with other vendors.

(g) Blocking and Filtering. Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. Except to the extent set forth in the Supplemental Spectrum Business Security Service Section, Charter shall not be responsible in any manner for the effectiveness of these blocking and

filtering technologies. Charter does not warrant that others will be unable to gain access to Customer's computer(s) and/or data even if Customer utilizes blocking and filtering technologies, nor does Charter warrant that the data or files will be free from computer viruses or other harmful components. Charter has no responsibility and assumes no liability for such acts or occurrences.

(h) Acceptable Use Policy. Customer shall comply with the terms of Charter's Acceptable Use Policy ("AUP") found at www.business.spectrum.com (or the applicable successor URL) and that policy is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and shall be bound by its terms as they may be amended, revised, replaced, supplemented or otherwise changed from time-to-time by Charter with or without notice to Customer. Charter may suspend Service immediately for any violation of the Charter AUP.

9. SUPPLEMENTAL SERVICES. The following Subsections shall only apply in the event the referenced supplemental service has been selected by and are being delivered to Customer. The supplemental services (also "Services") may be made up of software and hardware components. Charter shall ensure the supplemental services are operational and updated from time-to-time based on manufacturer-sent updates. Except to the limited extent described in the foregoing sentence, Charter makes no warranties of any kind (express or implied) regarding the supplemental services and hereby disclaims any and all warranties pertaining thereto (including implied warranties of title, noninfringement, merchantability, and fitness for a particular purpose). Charter does not have title to and is not the manufacturer of any software or hardware components of the supplemental services nor is Charter the supplier of any components of such software or hardware. Customer shall return or destroy all software components provided to Customer upon the termination of the applicable Service Order, and in the case of the destruction thereof, shall, upon request, provide Charter with certification that such components have been destroyed. **IN NO EVENT SHALL CHARTER BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY SUPPLEMENTAL SERVICES.**

(a) Hosting. This Hosting Service subsection shall only apply if one of Charter's Hosting Services ("Hosting") is included as part of the Service in a Service Order under this Agreement. Charter will provide to Customer Hosting Service in accordance with the specifications associated with the plan Customer has selected on the Service Order.

i. Hosting Software. The Hosting Service will permit access to a variety of resources available from selected third parties, including developer tools, communication forums and product information (collectively, "Hosting Software"). The Hosting Software, including any updates, enhancements, new features, and/or the addition of any new Web properties, may be subject to

and Customer shall comply with applicable product use rights/end user license agreements between such third parties and Customer. Without abrogating or limiting anything set forth in the Sections: Internet Access Service, this Section, No Third-Party Support, Customer Use or Performance, Charter (not the manufacturer) shall provide technical support for Hosting Service, but version changes of any such software compatibility and/or suitability with any other Customer provided software shall be Customer's responsibility. Customer hereby consents to the disclosure to the provider of Third Party Software, of Customer's name and any other necessary information for the limited purpose of licensing rights. Customer shall not use Hosting Service for or in connection with any high risk use or activity such as aircraft or other modes of human mass transportation, nuclear, or chemical facilities, or Class III medical devices under the Federal Food, Drug, and Cosmetic Act. **COPYING OR REPRODUCTION OF THE HOSTING SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS APPROVED IN WRITING BY CHARTER.**

- ii. **Domain Names.** Customer shall be solely responsible for registering for or renewing a desired domain name. Charter does not guarantee that Customer will be able to register or renew a desired domain name.
- iii. **Specification Limitations.** Individual websites may not at any time exceed the Hosting specifications identified on the applicable Service Order. If Customer's Hosting account exceeds the applicable specifications or is adversely impacting Charter's network or server(s), Charter may (i) contact Customer to resolve the issues; or (ii) if Customer has exceeded the then-applicable specifications in any given month, upgrade account on the next available billing cycle to the next service level tier or suspend or terminate the Hosting Service.

Notwithstanding anything to the contrary, if Customer's use of the Hosting Service is causing an adverse impact on Charter's network or servers, Charter may suspend or terminate the Hosting Service without notice.
- iv. **Limitation of Charter-provided Services.** Certain services are not provided by Charter as part of the Hosting Service (e.g., Charter does not provide nor offer webpage creation, development, design or content services).
- v. **Hosting Fees.** The applicable Service Order sets forth the MSFs for the Hosting Service. Customer is responsible for payment whether or not the hosting platform is used and whether or not it

functions properly, unless such failure is caused by Charter.

- vi. **Content Liability and Use Restrictions.** Charter exercises no control over the content of the information passing through Customer's site(s) and it is Customer's sole responsibility to ensure that Customer and Customer's users use of the Hosting Service complies at all times with all applicable laws and regulations and the AUP. Charter shall have the right to disclose any and all available information collected from Customer to law enforcement authorities upon written request by such authorities. Information that may be disclosed includes IP addresses, account history, and files stored on servers used to provide the Hosting Service. If Customer engages in any of the following prohibited activities, Charter shall have the right to suspend or terminate the Hosting Services and/or this Agreement:
 - 1. The hosting of unlicensed software.
 - 2. Use of software or files that contain computer viruses or files that may harm user's computers;
 - 3. Any attempt or actual unauthorized access by Customer or through Customer's equipment to any Charter website or the website of any Charter customer;
 - 4. The collection or any attempt to collect personally identifiable information of any person or entity without his, her or its express written consent. Customer shall maintain records of any such written consent throughout the term of this Agreement and for three years thereafter;
 - 5. Any action or inaction which is harmful or potentially harmful to the Charter server structure;
 - 6. Running a banner exchange, free adult thumbnail gallery post and/or free adult image galleries on your website; or
 - 7. Inclusion of sites with material, links, or resources for hacking, phreaking, viruses, or any type of site that promotes or participates in willful harm to Internet sites, users or providers.
- vii. **Impositions on Customer's End Users.** Customer is responsible for charging and collecting from its end users any and all applicable taxes. If Customer fails to impose and/or collect any tax from its end users then, as between Charter and Customer, Customer shall be liable for such uncollected tax and any interest and penalty assessed thereon with respect to the uncollected tax. Customer shall indemnify and hold the Charter Indemnified Parties (defined below) harmless for any costs incurred or taxes or fees paid due to actions taken by the applicable taxing

authority to collect any such tax from Charter due to Customer's failure to comply with this Section.

(b) **SB Security Service – Desktop and Managed.** Charter's managed security service, SB Managed Security, and desktop security service, SB Desktop Security (collectively, "SB Security Service") are each made up of software and hardware components. Charter shall ensure that the selected SB Security Service(s) is/are operational and updated from time-to-time based on manufacturer-sent updates. Charter is not the manufacturer of any software or hardware components of either Spectrum Business Security Service nor is Charter the supplier of any components of such software or hardware.

(c) **SB Back-Up Service.** For Charter's data storage service ("SB Back-up"), Customer shall be assessed applicable OTCs and MSFs which shall be based upon Customer's selection of version retention quantity and storage tier (e.g., five gigabits). The version retention quantity selected specifies the maximum number of separate versions of a document that will be retained (running in sequential order based on the last version created). For example, if Customer has selected "seven" as the version retention quantity, Customer will be able to access the last seven versions of a particular document. In addition to OTCs and MSFs, monthly storage overage fees shall apply each month Customer exceeds the respective subscribed storage level. Additional OTCs and MSFs also apply to Customer-requested media and/or professional services.

Charter is not the manufacturer or supplier of any SB Back-Up software components. Customer shall be responsible for updating SB Back-Up from time-to-time based on updates provided by the software manufacturer, and any failure of Customer to perform such updates shall relieve Charter from any responsibility to ensure that SB Back-Up remains operational.

If the functionality of SB Back-Up cannot be maintained by Charter, Charter shall have the right to discontinue providing the Service immediately and Charter shall credit Customer's account for any pre-paid MSFs attributable to the Service, except where such lack of functionality is caused by Customer or any end user gaining access to the Service through Customer's facilities, equipment, or point of access. Customer shall not be relieved of its responsibility to continue to pay for SB Back-Up in the event SB Back-Up does not function properly as a result of Customer's failure to install and configure the software, activate the service or install manufacturer-provided updates. **CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT (1) IT IS CUSTOMER'S SOLE RESPONSIBILITY TO CREATE AND RETAIN THE SB BACK-UP PASSWORD THAT IS NECESSARY FOR ACCESS TO ANY DATA STORED VIA THE SB BACK-UP SERVICE AND (2) CHARTER HAS NO ACCESS TO AND DOES NOT KNOW NOR KEEP ANY RECORD OF THE PASSWORD CREATED BY CUSTOMER. FAILURE BY CUSTOMER TO RETAIN CUSTOMER'S SB BACK-UP PASSWORD SHALL RESULT IN COMPLETE LOSS**

OF ACCESSIBILITY TO DATA STORED VIA SB BACK-UP.

10. DATA NETWORKING (aka "DATA TRANSPORT"). Charter will provide Data Networking Services for Customer locations connected over coaxial and/or fiber-optic cable. Connectivity is established between two or more customer end-points under a unique customer topology. Charter will install the coaxial or fiber-optic cable into each Customer site as listed in the Service Order(s). Charter will also supply an edge device at each site that will be capable of receiving the Service as specified in the Service Order(s).

- i. Charter will terminate fiber-optic cable on a patch panel or provide a coaxial outlet at an agreed upon minimum point of penetration (MPOP) up to 50 feet within each facility (unless otherwise specified in the Service Order). If the hand-off point of the Data Networking Service at Customer's premise exceeds this distance, Customer may be responsible for any additional costs for internal wiring.
- ii. Customer will make available to Charter a building ground connection at each location that meets current electrical codes for the placement of a fiber-optic patch panel and/or coaxial outlet. Unless otherwise specified in the applicable Service Order, it is recommended that Customer provide a separate 20 Amp 110V AC circuit for the edge electronics, which is powered by a UPS system. Customer-supplied routing will be necessary for communication between each Service Location.
- iii. If Customer has selected "Monitoring" for a Service, Charter shall monitor the Services 24 hours a day, seven days a week. Customer shall contact the Enterprise and Strategic Marketing Network Operations Center at 1-866-603-3199 or subsequent number to report Data Networking Service problems. Additional fees may apply for Monitoring over coaxial cable.
- iv. In the event Customer is receiving Data Networking Services: Optical Ethernet EP-LAN or EVP-LAN, Charter recommends that the Customer place a router at each ingress/egress point (on Customer's side of the demarcation), which will reduce the number of customer media access control ("MAC") addresses which must be learned by Charter's network (aka 'masking') in order to be conveyed. In the event Customer chooses not to place a router on its side of the demarcation, Charter will place limitations on the number of MAC addresses that will be learned by Charter's network and, in circumstances where the customer exceeds these limitations, some Customer network traffic will be denied from entering Charter's network. Additional monthly fees will be applied if the number of MAC addresses on a given EVC (Ethernet Virtual Connection) exceeds 500, and Charter will not allow more than 1000 MAC addresses onto the network.

11. NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT. Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware

and/or software. For purposes of this Agreement the Hosting Software shall be considered third party software. Charter does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Charter assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third party software, any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Charter has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, Charter should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at Charter's discretion and at then-current commercial rates and terms.

- 12. CUSTOMER USE.** Customer shall not re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of Charter. Customer shall not use or permit third parties to use the Service(s), including the Equipment and software provided by Charter, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall not interfere with other customers' use of the Equipment or Services or disrupt the Charter Network, backbone, nodes or other Services. Violation of any part of this Section is grounds for immediate Termination of this Agreement and/or all Service Orders in addition to any other rights or remedies Charter may have.
- 13. PERFORMANCE.** Charter will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Charter's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Charter to perform its obligations under this Agreement, and Customer will not hold Charter at fault for loss of Customer revenue or lost employee productivity due to Service outages.
- 14. DEFAULT; SUSPENSION OF SERVICE; TERMINATION.** No express or implied waiver by Charter of any event of noncompliance shall in any way be a waiver of any further subsequent event of noncompliance. Nothing herein, including Termination, shall relieve Customer of its obligation to pay Charter all amounts due.
- (a) Default by Customer. Customer shall be in default under this Agreement if Customer does one or more of the

following things (each individually to be considered a separate event of default) and Customer fails to correct each such noncompliance within 30 days of receipt of written notice ("Default"):

- i. Customer is more than 30 days past due with respect to any payment required hereunder;
 - ii. Customer otherwise has failed to comply with the terms of this Agreement or any other Service Order(s) incorporated herein.
- (b) Termination for Convenience. Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order, or this Agreement in whole or part, at any time upon thirty (30) days prior written notice to Charter, and subject to payment of all outstanding amounts due, any applicable Termination Charges, and the return of any Charter Equipment.
- (c) Charter's Right to Terminate and Termination Charge. If Customer is in Default, Charter shall have the right, at its option, without prior notice, and in addition to any other rights of Charter expressly set forth in this Agreement and any other remedies it may have under applicable law to:
- i. Immediately suspend Services to Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Charter any amounts due under this Agreement (e.g., the MSFs) as if such suspension of Services had not taken place;
 - ii. Terminate the Services, this Agreement or the applicable Service Order(s).

If Termination is due to Customer Default or is elected/done by Customer for convenience, Customer must pay Charter a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to 50% of the unpaid balance of the MSFs that would have been due throughout the applicable Service Period plus 100% of (1) the outstanding balance of any and all OTCs plus (2) any and all previously waived OTCs.

- (d) Default by Charter. Charter shall be in default under this Agreement if Charter fails to comply with the terms of this Agreement and/or any or all of the applicable Service Order(s), and Charter fails to remedy each such noncompliance or occurrence within 30 days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance ("Charter Default").
- (e) Customer's Right to Terminate and Termination Charge.
- i. In the event Customer wishes to terminate a Service without cause, Customer shall be liable for the same Termination Charges as described above.
 - ii. Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of Charter Default by Charter is

limited to Services provided under the applicable Service Order(s) or this Agreement, if such Charter Default is not so limited.

- iii. If Termination is due to a Charter Default, Charter shall reimburse Customer for any pre-paid, unused MSFs attributable to such terminated Service Order(s). In addition, if Termination is due to Charter Default within one year of the applicable Turn-Up Date, Charter shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any OTC that has already been paid by Customer to Charter relative to Service at the sites covered by the terminated Service Order. This Termination Charge shall be equal to the product of a) the number of months (including partial months) remaining in the initial 12 months of the initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of OTCs paid to date and the denominator is 12.

15. LIMITATION OF LIABILITY. PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

- (a) Limited Warranty. At all times during the Service Period, Charter warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Customer. Charter does not warrant that Services will be error free.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, CHARTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT, EXCLUDING OTCs, PAID OR PAYABLE BY CUSTOMER TO CHARTER FOR THE APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY

PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Customer must be made within 30 days after the applicable Services have been performed. Charter's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (b) Content. Any content that Customer may access or transmit through any Service is provided by independent content providers, over which Charter does not exercise and disclaims any control. Charter neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. Charter specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and its authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Charter assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.
- (c) Damage, Loss or Destruction of Software Files and/or Data. Customer uses the Services and Equipment supplied by Charter at its sole risk. Charter does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind. Charter assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. Charter does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.
- (d) Unauthorized Access. If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate termination of Customer's Service by Charter without liability for Charter. Charter is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold harmless and indemnify the Charter Indemnified Parties from and against any claims, losses, or damages arising from such use. Charter is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing Customer's computers, its internal network and/or the Network through Customer's equipment.

(e) **Force Majeure Event.** Neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond such party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services. Changes in economic, business or competitive condition shall not be considered a Force Majeure Event.

16. INDEMNIFICATION. In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement and as permissible under applicable law, Customer at its own expense, shall indemnify, defend and hold harmless Charter and its directors, employees, representatives, officers and agents, (the "**Indemnified Parties**") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Charter Indemnified Parties, including reasonable attorney fees and court costs incurred by Charter Indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Charter Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Charter Indemnified Parties in such case.

17. TITLE. Title to the Equipment shall remain with Charter during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer premises free and clear of all liens, encumbrances and security interests. Upon termination of Service or expiration of a Service Order's Service Period for a specific site, Charter shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. Charter shall have the right to remove the Equipment and all components within 60 days after such termination.

18. COMPLIANCE WITH LAWS. Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Charter to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.

19. PRIVACY. Charter treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Charter also maintains a Privacy Policy with respect to the Services in order to protect the

privacy of its customers. The Privacy Policy may be found on Charter's website at www.business.spectrum.com. The Privacy Policy may be updated or modified from time-to-time by Charter, with or without notice to Customer.

20. GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS. Customer represents to Charter (a) that Customer has the authority to execute, deliver and carry out the terms of this Agreement and associated Service Orders and (b) that any person who accesses any Services through Customer's equipment or through the Network facilities in Customer's Premises will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Agreement. Customer is responsible for ensuring its users of the Service comply with the terms of this Agreement. Customer shall be responsible for all access to and use of the Service by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until informs Charter of any breach of security.

21. NOTICES. Any notices to be given under this Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:
Charter Communications
ATTN: Commercial Contracts Management
Dept: Corp. - Legal Ops
12405 Powerscourt Drive
St. Louis, MO 63131

Notices to Customer shall be sent to the Customer billing address.

Each party may change its respective address (es) for legal notice by providing notice to the other party.

22. MISCELLANEOUS.

(a) **Entire Agreement; Signatures.** This Agreement and any related, executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. This Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.

(b) **No Amendments, Supplements or Changes.** Except for pricing terms as set forth in this Agreement, this Agreement and the associated executed Service Order(s)

may not be amended, supplemented or changed without both parties' prior written consent.

- (c) No Assignment or Transfer. The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld; provided, however, that without Customer's consent, Charter may assign this Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with Charter, or to its successor-in-interest if Charter sells some or all of the underlying communications system.
- (d) Severability. If any term, covenant, condition or portion of this Agreement or any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or any related, executed Service Order(s) shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (e) Governing Law. The law of the state in which the Services are provided (excluding its conflicts of law provisions) shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND CHARTER EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- (f) Both parties had the opportunity to review and participate in the negotiation of the terms of this Agreement and the Service Order(s) and, accordingly, no court construing this Agreement and any Service Order(s) shall construe it more stringently against one party than against the other.
- (g) No Third Party Beneficiaries. The terms of this Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Agreement, and the consideration provided by each party hereunder only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the parties hereto.
- (h) Waiver. Except as otherwise provided herein, the failure of Charter to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision

**CHARTER COMMERCIAL SUBSCRIBER PRIVACY
POLICY & COMMERCIAL CUSTOMER
PROPRIETARY NETWORK INFORMATION (CPNI)
POLICY**

**These policies are provided with your Agreement for your information and convenience.*

Charter takes the protection of our subscribers' ("You," "Your" or "Customer(s)") privacy seriously. The following privacy policy ("Policy") applies to those Charter commercial Customers who subscribe to Charter's commercial video programming, high-speed Internet, data networking and/or telephone service (individually and collectively the "Service") and describes the Customer information that Charter collects and retains, how Charter uses and protects it, the limited cases where Charter may disclose some or all of that information, and Your rights under the Cable Communications Policy Act of 1984 ("Cable Act"). Depending upon the Charter Service to which You subscribe, parts of this Policy may not be applicable to You. Charter values Your privacy and considers all personally identifiable information contained in our business records to be confidential. Please review this Policy and, if You are a Charter telephone service subscriber, the attached Customer Proprietary Network Information ("CPNI") Policy (the "CPNI Policy"), in conjunction with Your service agreement, terms of service and acceptable use policy ("Your Service Agreement"). Charter will provide You copies of this Policy annually and the CPNI Policy at least once every two years, whether or not we have revised the policies. We may modify this Policy at any time. The most current version of this Policy can be found on www.charter.com. If You find the changes unacceptable and if those changes materially and adversely impact Your use of the Service, You may have the right to cancel Your Service under Your Service Agreement. If You continue to use the Service following the posting of a revised Policy, we will consider that to be Your acceptance of and consent to the Policy as revised.

What type of information does Charter collect?

Charter collects both personally identifiable information and non-personal information about You when You subscribe to our Service. Charter uses its system to collect personally identifiable information about You: (a) when it is necessary to provide our services to You; (b) to prevent unauthorized

reception of our services; and (c) as otherwise provided in this Policy. Charter will not use the system to collect Your personally identifiable information for other purposes without Your prior written or electronic consent. Charter also collects personally identifiable and non-personal information about You when You voluntarily provide information to Charter, as may be required under applicable law, and from third parties, as described in this Policy.

Personally identifiable information is any information that identifies or can potentially be used to identify, contact, or locate You. This includes information that is used in a way that is personally identifiable, including linking it with identifiable information from other sources, or from which other personally identifiable information can easily be derived, including, but not limited to, name, address, phone or fax number, email address, spouses or other relatives' names, drivers license or state identification number, financial profiles, tax identification number, bank account information, and credit card information. Personally identifiable information does not include information that is collected anonymously (i.e., without identification of the individual or business) or demographic information not connected to an identified individual or business.

Non-personal information, which may or may not be aggregated information about our Customers and may include information from third parties, does not identify individual Customers. Charter may combine third party data with our business records as necessary to better serve our Customers. Examples of non-personal information include IP addresses, MAC addresses or other equipment identifiers, among other data. Our systems may automatically collect certain non-personal information when You use an interactive or transactional service. This information is generally required to provide the service and is used to carry out requests a Customer makes through a remote control or set-top box.

We may also collect and maintain information about Your account, such as billing, payment and deposit history; maintenance and complaint information; correspondence with or from You, information about the service options that You have chosen; information about the equipment You have, including specific equipment identifiers; and information about Your use of our services, including the type, technical arrangement, quantity, destination and amount of use of certain of those services, and related billing for those services.

Charter also collects customer-provided customization settings and preferences. By using our service, You consent to our collection of this information and other information communicated to Charter such as correspondence, responses to surveys or emails, information provided in chat sessions with us, registration information, or participation in promotions or contests.

If You subscribe to our video service, then in certain of our systems, our set-top boxes automatically collect information that may be used to determine which programs are most popular, how many set-top boxes are tuned to watch a program to its conclusion and whether commercials are being watched, as well as other audience-measurement focused information. Our processes are designed to track this information and audience statistics on an anonymous basis. Information such as channel tuning, the time the channel is changed, and when the set-top box is "on" or "off" is collected at a secure database in an anonymous format. Charter, or our contractors or agents, may from time to time share the anonymous information with our advertisers, content providers, or other third parties with whom we have a relationship. We will not provide our advertisers, content providers, or these other third parties with personally identifiable information about You unless we have received Your consent first, except as required by law. (See "Who sees the information collected by Charter?")

Why does Charter collect personally identifiable information?

Charter collects and uses personally identifiable information to:

- properly deliver our Services to You;
- provide You with accurate and high quality customer service;
- perform billing, invoicing and collections;
- provide updates, upgrades, repairs or replacements for any of our service-related devices or software used in providing or receiving services;
- protect the security of the system, prevent fraud, detect unauthorized reception, use, and abuse of Charter's Services or violations of our policies or terms of service;
- keep You informed of new or available products and services;

- better understand how the Service is being used and to improve the Service;
- manage and configure our device(s), system(s) and network(s);
- maintain our accounting, tax and other records; and
- comply with applicable federal and state laws and regulations, as well as for the general administration of our business.

You acknowledge and agree that all communications between You and Charter may be recorded or monitored by Charter for quality assurance or other purposes.

If You use an interactive or transactional service, for example, responding to a survey or ordering a pay-per-view event, the system will collect certain additional personally identifiable information, such as account and billing information or Customer-provided locale and service preferences, to properly bill You for the services purchased and to provide You with a more personalized experience. In addition, certain information such as Your connections to our system is automatically collected to, for example, make it possible for Your digital boxes to receive and process the signals for the services You order.

Charter may also collect personally identifiable information from third parties to enhance our customer database for use in marketing and other activities. Charter also collects personally identifiable information from third parties to verify information You have provided us and collects personally identifiable information from credit reporting agencies to, for example, determine Your creditworthiness, credit score, and credit usage. Charter also may maintain research records containing information obtained through voluntary subscriber interviews or surveys.

If You subscribe to our high-speed Internet service, Charter transmits personally identifiable and non-personal identifiable information about You over the Service when You send and receive e-mail and instant messages, transfer and share files, make files accessible, visit websites, or otherwise use the Service and its features. Our transmission of this information is necessary to allow You to use the Service as You have chosen and to render the Service to You.

Who sees the information collected by Charter?

Charter will only disclose personally identifiable information to others if: (a) Customer provides written or electronic consent in advance, or (b) it is permitted or required under federal or applicable state law. Specifically, federal law allows Charter to disclose personally identifiable information to third parties:

- when it is necessary to provide Charter's services or to carry out Charter's business activities;
- as required by law or legal process; or
- for mailing list or other purposes, subject to Your ability to limit this last type of disclosure.

To provide services and carry out our business activities, certain authorized people have access to Your information, including our employees, entities affiliated through common ownership or control with Charter and third parties that provide and/or include: billing and collection services; installation, repair and customer service subcontractors or agents; program guide distributors; software vendors; program and other service suppliers for audit purposes; marketers of Charter's products and services; third party auditors; our attorneys and accountants; and/or strategic partners offering or providing products or services jointly or on behalf of Charter. The frequency of disclosures varies according to business needs, and may involve access on a regular basis. Charter restricts third parties' use of Your information to the purposes for which it is disclosed and prohibits third parties from further disclosure or use of Your personally identifiable information obtained from us, whether for that third party's own marketing purposes or otherwise.

Unless You object in advance, federal law also allows Charter to disclose through "mailing lists," personally identifiable information, such as Your name, address and the level of Your service subscription, to non-affiliated entities, including advertisers and marketing entities, for non-service related purposes, including product advertisement, direct marketing and research. Under no circumstances will Charter disclose to these advertising entities the extent of Your viewing habits or the transactions You make over the system. Charter, or our contractors or agents, may from time to time share non-personal and/or aggregate information such as the number of Service subscribers who match certain statistical profiles (for example, the number of subscribers in various parts of the

country) with our advertisers, content providers, or other third parties with whom we have a relationship.

We may provide anonymous data to third parties who may combine it with other information to conduct more comprehensive audience analysis for us and for television advertisers. This data helps program networks and cable operators decide on which programs, channels, and advertising to carry. Charter may also use that information to distribute targeted advertising to You without having disclosed any of Your personally identifiable information to the advertisers. These advertisements may invite interactive or transactional follow-up from You. By using any of Charter's interactive services, You consent to our collection of this additional information. Unless You consent first or except as required by law, only anonymous information is disclosed to audience measurement services.

As part of its business activities, if Charter enters into a merger, acquisition, or sale of all or a portion of our assets, Charter may transfer Customers' personally identifiable and non-personal information as part of the transaction.

If You subscribe to our telephone service, Your name, address and/or telephone number may be transmitted via Caller ID, published and distributed in affiliated or unaffiliated telephone directories, and available through affiliated or unaffiliated directory assistance operators. We take reasonable precautions to ensure that non-published and non-listed numbers are not included in the telephone directories or directory assistance services, although we cannot guarantee that errors will never occur. Please note that Caller ID blocking may not prevent the display of Your name and/or telephone number when You dial certain business numbers, 911, 900 numbers or toll-free 800, 866, 877 or 888 numbers.

If allowed by and after complying with any federal law requirements, Charter may disclose personally identifiable information about Customer to representatives of government or to comply with valid legal process, except as provided below, disclosures shall not include records revealing Customer's selection of video programming. Disclosures to representatives of government may be made pursuant to an administrative subpoena, warrant, court order, our reasonable discretion in cases of emergency or serious physical injury, or other permitted means. In these situations, Charter may be

required to disclose personally identifiable information about a Customer without Customer's consent and without notice to the Customer. Law enforcement agencies may, by federal or state court order, and without notice to You, obtain the right to install a device that monitors Your Internet and e-mail use, including addresses of email sent and received and in some cases the content of those communications; and/or Your use of our telephone service, including listings of incoming and outgoing calls and in some cases the content of those calls. In some instances where there are valid legal requests for or orders for disclosure of Your information, we may notify You of the requests or orders and then it may be up to You to object or take specific action to prevent any disclosures pursuant to those requests or orders.

Where a governmental entity is seeking personally identifiable information of a Customer who subscribes to Charter's video services only or records revealing Customer's selection of video programming, the Cable Act requires a court order and that the video subscriber be afforded the opportunity to appear and contest in a court proceeding relevant to the court order any claims made in support of the court order. At such a proceeding, the Cable Act requires the governmental entity to offer clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the prosecution of the case. Except in certain situations (such as with respect to those who owe, or are owed, welfare or child support) state welfare agencies may obtain the names, addresses, and certain other Customer information as it appears in Charter's subscriber records under the authority of an administrative subpoena.

We may also use or disclose personally identifiable information about You without Your consent (a) to protect our Customers, employees, or property, (b) in emergency situations, (c) to enforce our rights in court or elsewhere, or directly with You, for violations of service terms, conditions or policies and/or (d) in order to comply with the Digital Millennium Copyright Act or as otherwise required by law, for example, as part of a regulatory proceeding.

Note to California Customers Regarding Your Privacy Rights:

California law requires Charter provide to certain Customers, upon request, certain information regarding the sharing of personally identifiable information to third parties for their direct marketing purposes. As mentioned above, Charter does not share personally identifiable information with unaffiliated third parties for their own direct marketing purposes. However, Charter may share personally identifiable information with some same-branded affiliates for those affiliates' direct marketing purposes (and, if a Charter telephone subscriber, then subject to the restrictions in the attached CPNI Policy). If You make a request by phone or on-line, Charter will provide You with the number of its same-branded affiliates in California and a list of personal information that it may have shared with some or all such affiliates.

Can I prohibit or limit Charter's use and disclosure of my personally identifiable information?

If You do not want Your name, address, level of service or other personally identifiable information disclosed to third parties in a "mailing list" as explained above, please register this preference at <http://unsubscribe.charter.com> or by contacting us by telephone at 1-888-GET-CHARTER. Customers of our video service cannot opt-out of the collection of audience measurement data.

Also, if You do not want to receive marketing messages (e.g., phone calls, emails, and direct mail) from Charter, You may call 1-888-GET-CHARTER or visit <http://unsubscribe.charter.com> and make a request to have Your privacy preferences updated. Please note that such request will not eliminate all telephone calls, emails or direct mail sent to You from Charter as Charter may still continue to send non-marketing account-related messages to You.

How long does Charter maintain personally identifiable information?

Charter will maintain personally identifiable information about You as long as You are a subscriber to Charter's Service and as long as necessary for the purpose for which it was collected. If You are no longer a subscriber to any Charter Service and the information is no longer necessary for the purpose for which it was collected, Charter will only keep personally identifiable information as long as necessary to

comply with laws governing our business. These laws include, but are not limited to, tax and accounting requirements that require record retention. Charter will also maintain personally identifiable information to satisfy pending requests for access by a subscriber to his/her information or pursuant to a court order. Charter will destroy Customers' personally identifiable information when the information is no longer necessary for the purpose for which it was collected, when there are no longer pending requests for such information, and when it is no longer necessary to retain the information under applicable laws.

How does Charter protect customer information?

Charter takes the security of our Customers' personally identifiable information seriously. Charter takes such actions as are reasonably necessary to prevent unauthorized access by entities other than Charter to personally identifiable information. Charter uses security and/or encryption technology to secure certain sensitive personally identifiable information when it collects such information over the system. Charter restricts access to its customer database and secures the content by use of firewalls and other security methods. Charter limits access to databases containing Customers' personally identifiable information to those specifically authorized employees and agents of Charter and other parties identified in the "Who sees the information collected by Charter?" section above. However, we cannot guarantee that these practices will prevent every unauthorized attempt to access, use, or disclose personally identifiable information.

You need to help protect the privacy of Your own information. You and others who use Your equipment must not give identifying information to strangers or others whom You are not certain have a right or need to the information. You also must take precautions to protect the security of any personally identifiable information that You may transmit over any home networks, wireless routers, wireless fidelity (WiFi) networks or similar devices by using encryption and other techniques to prevent unauthorized persons from intercepting or receiving any of Your personally identifiable information. You are responsible for the security of Your information when using unencrypted, open access or otherwise unsecured networks in Your home. For more information on things You can do to help protect the privacy of Your own information, visit www.charter.com/security or www.OnGuardOnline.gov.

If Your organization is subject to the Health Insurance Portability and Accountability Act (HIPAA), you can learn how HIPAA applies to Your Charter services by reviewing our

[HIPAA Policy](#), which is incorporated by references into this Policy.

Can I see the information that Charter collects about me?

You have a right under the Cable Act to see Your personally identifiable information that Charter collects and maintains. The information Charter has about its Customers is maintained at the local offices where service is provided, in our systems, and at our corporate headquarters. If You would like to see Your information, please send a written request to Your local Charter office. To find the location of Your local office please visit www.charter-business.com. Charter will be glad to make an appointment for You to come in to Your local office during regular business hours. If Your review reveals an error in our records, Charter will correct it. You may also be able to access certain information about You or Your account by telephone or online at www.charter-business.com, depending upon the information You have provided.

Does Charter protect children's privacy?

Charter is concerned about children's privacy and does not knowingly collect personally identifiable information from anyone under the age of 13 over its Service unless otherwise expressly identified. At those specific parts of our Service, Charter will provide a special notice or other information describing the additional privacy protections that may apply. Charter urges children to always obtain a parent or legal guardian's permission before sending any information about themselves over the Internet and urges parents and legal guardians to be vigilant regarding children's Internet usage. Other services or web pages accessed through Charter's Service may have different policies on collection of information pertaining to children and You should consult their privacy policies and read their notices if You have any concerns about the collection or use of such information by those entities.

How does Charter use cookies and web beacons?

A cookie is a small file that stores information in Your browser on Your computer. Charter places cookies in Your browser that contain some of the information You provide when You

register with us and when You set up a personalized service or customize Your settings and preferences on our websites. Charter does not store highly sensitive personal information such as Your password, e-mail address or credit card number in cookies. Cookies enable Charter to summarize overall usage patterns for analysis. In addition, Charter uses cookies to provide personalized services such as saving Your astrological sign on Charter.net. Charter may also use cookies to provide a more useful online experience, such as allowing You to quickly enter a sweepstakes if You're already logged on.

A web beacon is an invisible graphic on a web page that is programmed to collect non-personally identifiable information about Your use of a given site. Like cookies, web beacons allow Charter and its technology providers to summarize overall usage patterns for our analysis and provide personalized services. Charter does not share or provide personally identifiable information we may collect, such as names, e-mail addresses and phone numbers with our advertisers without Your express permission. However, Charter may provide site usage information linked to Your personally identifiable information to law enforcement or others in compliance with valid legal process or in other situations as stated in the "Who Sees the Information Collected by Charter?" paragraphs above.

You may opt-out of the cookies delivered by Charter on its websites by changing the setting on Your browser. Depending on Your privacy settings, please be aware that this may disable all cookies delivered to Your browser, not just the ones delivered by Charter. Because a "Do Not Track" protocol has not yet been finalized, Charter's information collection and disclosure practices, and the choices that we provide to consumers, will continue to operate as described in this Privacy Policy, whether or not a Do Not Track signal is received.

Targeted Advertisements

Charter wants to make the advertisements it provides more relevant to You. Charter collects and uses non-personal information, such as information about your visits to our websites, ZIP Code, IP address and information from third parties. We may also combine that information with personally identifiable information, such as information You provide Charter and from Your Charter account. (See "What type of Information does Charter Collect"). In addition, Charter may partner with third-party advertising companies who may utilize

cookies, web beacons, or other technology to deliver or facilitate the delivery of targeted advertisements.

Charter also uses third-party advertising companies to identify and present tailored online advertisements for its goods and services and uses anonymous ZIP Codes to geographically target online advertisements for our other clients. Charter will not provide our online partners with access to Your name, address, e-mail address, telephone number or other personally identifiable information without Your permission. When targeted online advertisements displayed on third-party websites are based on Your personally identifiable information or general location derived from your Charter IP address, You may opt-out by going to <http://unsubscribe.charter.com> and updating Your privacy preferences. After doing so, we recommend that You also remove any unwanted cookies from Your browser. For more information on how to adjust these settings go to Charter.com > Support > Internet Help.

Some of the advertisements You see on cable channels are placed by us. Some of those advertisements are placed in particular shows or channels; others are shown in particular geographic areas. Some of our cable advertisements will ask for Your permission to take certain actions, like mail You information or allow the advertiser to contact You; if You grant permission, we will use Your personal information for the permitted purposes only. In some areas we will be able to target cable advertisements to Your household that will be more relevant to Your interests based on information You provide us or information that we receive from third parties. When those cable advertisements are directed to You based on Your personal information, You can elect not to receive them. You may opt-out by going to <http://unsubscribe.charter.com> and updating Your privacy preferences.

If you change or get a new account, You will need to review all of Your opt-out choices.

What can I do if I believe Charter has violated my rights?

You may enforce the limitations imposed on us by federal law with respect to the collection and disclosure of personally identifiable subscriber information about You, through a civil action under federal law, in addition to other rights and remedies that may be available to You under federal or other applicable laws.

What if I have any questions?

If You have any questions about our privacy protections and policies, please contact Your local customer service office. You can find the phone number for Your local customer service office on Your monthly bill statement or by visiting Charter's website at www.charter-business.com.

IMPORTANT NOTE:

This Policy does not apply to Your use of any Charter website. You should review the privacy policy applicable to each site, which is available under the "Your Privacy Rights" or "Privacy Policy" section of each Charter website. This Policy also does not apply to those residential customers who subscribe to Charter's residential video programming, high-speed Internet and/or telephone service. The Residential Subscriber Privacy Policy is available under the "Your Privacy Rights" section of www.charter.com.

Effective: December 16, 2013

Charter Commercial Customer Proprietary Network Information (CPNI) Policy

The following CPNI Policy is in addition to requirements set forth in Charter's Commercial Subscriber Privacy Policy and is subject to some permitted uses and disclosures of Your name, address, and/or telephone number outlined in the Privacy Policy. The information that we have (1) relating to the quantity, technical configuration, type, destination, location, and amount of Your use of telephone service, and / or (2) contained on Your telephone bill concerning the telephone services that You receive is subject to additional privacy protections. That information, when matched to Your name, address, and telephone number is known as "Customer Proprietary Network Information," or CPNI for short. Examples of CPNI include information typically available from details on a customer's monthly telephone bill – the type of line, technical characteristics, class of service, current telephone charges, long distance and local service billing records, directory assistance charges, usage data, and calling patterns. As a subscriber to our telephone services, You have the right, and Charter has a duty, under federal law to protect the confidentiality of CPNI. Charter offers many communications-

related services, such as, for example, Charter Internet services. From time to time we would like to use the CPNI information we have on file to provide You with information about our communications-related products and services or special promotions. Our use of CPNI may also enhance our ability to offer products and services tailored to Your specific needs. We would like Your approval so that we, our agents, affiliates, joint venture partners, and independent contractors may use this CPNI to let You know about communications-related services other than those to which You currently subscribe that we believe may be of interest to You. You do have the right to restrict this use of CPNI.

IF WE DO NOT HEAR FROM YOU WITHIN 30 DAYS OF THIS NOTIFICATION, WE WILL ASSUME THAT YOU APPROVE OUR USE OF YOUR CPNI FOR THE PURPOSES OF PROVIDING YOU WITH INFORMATION ABOUT OTHER COMMUNICATIONS-RELATED SERVICES. YOU HAVE THE RIGHT TO DISAPPROVE OUR USE OF YOUR CPNI, AND MAY DENY OR WITHDRAW OUR RIGHT TO USE YOUR CPNI AT ANY TIME BY CALLING THE TELEPHONE NUMBER REFLECTED ON YOUR MONTHLY BILLING STATEMENT OR 1-888-GET-CHARTER. We will also honor any restrictions applied by state law, to the extent applicable. Charter also offers various other services that are not related to the communications services to which You subscribe. Under the CPNI rules, some of those services, such as Charter video services, are considered to be non-communications related services. Occasionally, You may be asked during a telephone call with one of our representatives for Your oral consent to Charter's use of Your CPNI for the purpose of providing You with an offer for products or services not related to the telephone services to which You subscribe. If You provide Your oral consent for Charter to do so, Charter may use Your CPNI for the duration of such telephone call in order to offer You additional services. Any action that You take to deny or restrict approval to use Your CPNI will not affect our provision to You, now or in the future, of any service to which You subscribe. You may disregard this notice if You previously contacted us in response to a CPNI Notification and denied use of Your CPNI for the purposes described above. Any denial of approval for use of Your CPNI outside of the service to which You already subscribe is valid until such time as Your telephone services are discontinued or You affirmatively revoke or limit such approval or denial. The CPNI Policy above may be required by law to apply to our Voice over Internet Protocol, or, IP voice services.

Effective: May 4, 2009



201510304481988

SPECTRUM BUSINESS VOICE TRUNK SERVICE AGREEMENT

This Spectrum Business ("SB") Voice Trunk Services Agreement ("Agreement") is executed and effective upon the latest date of the signatures set forth in the signature block below ("Effective Date") by and between Charter Advanced Services (WA), LLC, on behalf of itself and its Affiliates that provide communications services, ("Spectrum Business*" or "Charter") with a corporate office at 12405 Powerscourt Drive, St. Louis, Missouri 63131 and City of West Richland, ("Customer") with offices located at 3100 Belmont Blvd, West Richland, WA 99353.

Both parties desire to enter into this Agreement in order to set forth the general terms under which Charter is to provide Customer with Charter's services ("Service" or "Services") to Customer site(s), the scope and description to be specified per site below and/or in a Service order(s) executed by both parties (each instance of site identification and order a "Service Order" or collectively the "Service Orders"), which shall be incorporated in this Agreement upon execution. SB Voice Trunk Services are governed by the terms and conditions contained in the applicable Tariff(s)/Service, Price and Terms Guide for the U.S. state in which the Service is provided and any applicable federal tariff. The applicable SB Voice Trunk Service Tariff(s)/Service, Price and Terms Guide for your state can be found at Charter's website, <http://www.charter.com/Visitors/Policies.aspx?Policy=9> (or any successor URL), and clicking on your U.S. state.

This Agreement and each Service Order will be effective only after both parties have signed each document.

Customer's continuous use of the Service(s) after the implementation of any change(s) to the applicable Tariff(s)/Service, Price and Terms Guide or terms and conditions of the Service, which may change from time to time, shall reflect Customer's agreement thereto. Customer shall have the right to terminate this Service Order in the event Customer objects to any material change to the applicable Tariff(s)/Service, Price and Terms Guide that adversely affects Customer's rights under this Agreement by providing Charter with written notice within sixty (60) days of such change and provided that Customer pays any unpaid or previously waived one-time charges and any applicable early termination charges.

If any provisions herein conflict with provisions in Charter's tariff(s) or Service Price and Terms Guide (as applicable), the tariff(s) or Service Price and Terms Guide (as applicable) shall control.

**Spectrum Business is the commercial brand of Charter Communications, Inc.*

SERVICE ORDER

Under the Voice Trunk Service Agreement

CUSTOMER INFORMATION:

Account Name: City of West Richland

Invoicing Address: 3100 Belmont Blvd, West Richland, WA 99353

Invoicing Special Instructions: _____

1. SITE-SPECIFIC INFORMATION. *Each Service Location requires a separate Service Order*

NEW RENEWAL CHANGE Specify: _____

Service Location (Address): 3100 Belmont Blvd, West Richland, WA 99353

Service Location Name (for purposes of identification):

Service Location Special Instructions:

Service Period: 60 months

Charter provided:

Charter will install the Spectrum Business® Voice Trunk Service ("Voice Trunk") into each customer Service Location as listed in the Service Order(s). The parties hereby acknowledge that Charter will also supply facilities at each Service Location as may be necessary to provide the Service(s) as specified in the Service Order(s).

Charter will terminate any necessary fiber-optic cable required for use of the Service on a patch panel at an agreed upon Minimum Point of Penetration (MPOP) fifty (50) feet within each Service Location, pursuant to the terms of a separate agreement entered into by the parties. Customer shall be responsible for paying Charter for any costs associated with installation of fiber optic cable or other facilities to an MPOP located more than fifty (50) feet within a Service Location.

Customer Provided:

The Customer will make available to Charter a building ground connection at each Service Location that meets current electrical code requirements for the placement of a fiber-optic patch panel and/or other necessary equipment. It is recommended that the Customer provide a separate 20 Amp 110V AC circuit that is powered by a UPS system for the customer premises electronics and/or other facilities installed by Charter at the Service Location.

Customer Contact Information. To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

	Billing Contact	Site Contact	Technical Contact
Name			
Phone			
Cell			
Email Address			

MONTHLY SERVICE FEES:	
Total SIP Trunk Pack MRC: SIP Trunk Pack Quantity: 8	\$119.00
Total PRI/SIP DID 100 MRC: PRI/SIP DID100 Quantity: 1	\$20.00
Long Distance Service: Business LD 10000	\$256.00
TOTAL MONTHLY SERVICE FEES	\$395.00

ONE-TIME CHARGES:	
Additional Outlets to Install: _____	_____
Wall Fishes: _____	_____
Other Services Provided: _____	_____
One-Time Standard Installation Fee: _____	_____
ONE-TIME CHARGES	\$0.00

2. TOTAL FEES.*

Total Monthly Service Fees of \$395.00 are due upon receipt of the monthly invoice.*

Total One-Time Charges of _____ are due with payment of the first monthly invoice.*

** Customer understands and agrees that pricing set forth herein is unique to the Customer and is Charter confidential information.*

3. **SERVICE PERIOD.** The initial Service Period of this Service Order shall begin on the date installation is completed and shall continue for a period of 60 months. Upon expiration of the initial term, this Service Order shall automatically renew for successive one-month terms and Charter may apply Charter's then-current Monthly Service Fees unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term.
4. **NON-STANDARD CALLING PATTERN.** The customer's total minutes of long distance calling to any of the following four types of calls shall not exceed ten percent (10%) of the customer's total long distance minutes in the aggregate in any one-month billing cycle: (i) calls terminating to Alaska, (ii) calls terminating to Guam, (iii) calls terminating to a conference calling service operating in areas with high access rates (which are charges that carriers pay one another to exchange long distance traffic), and (iv) calls terminating to a chat line service. If the customer's total minutes of long distance calling for these four types of calls exceed ten percent (10%) as stated herein, Charter will have the right to suspend service upon twenty-four (24) hours' notice (via any reasonable means available, including by telephone, mail or email) to customer of the non-standard calling pattern and customer will have fourteen (14) days to correct the issue. In the event customer continues the non-standard calling pattern for more than fourteen (14) days after receiving written notice, Charter will have the right to suspend or terminate all services provided to customer immediately without further notice.
5. **EMERGENCY CALLING.** By executing this Service Order, Customer acknowledges that Customer's address for 911/E911 purposes shall be the Service Location to which Charter delivers Service(s), and Customer accepts any limitations on the 911/E911 functionality of the Service(s) as specified in the for Voice Trunk Service Agreement.
6. **NO UNTRUE STATEMENTS.** Customer further represents and warrants to Charter that neither this Service Order, nor any other information, including without limitation, any schedules or drawings furnished to Charter contains any untrue or incorrect statement of material fact or omits or fails to state a material fact.
7. **CONFIDENTIALITY.** Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by law. If any unauthorized disclosure is made by Customer and/or its agent or representative, Charter shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Charter shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement.

8. **FACSIMILE.** A copy sent via fax machine, or scanned and e-mailed, of a duly executed Agreement and Service Order signed by both authorized parties shall be considered evidence of a valid Order, and Charter may rely on such copy of the Agreement and Service Order as if it were the original.

NOW THEREFORE, Charter and Customer agree to the terms and conditions included within this Service Agreement, including the Commercial Terms of Service which follow, and hereby execute this Service Agreement by their duly authorized representatives.

By: Charter Advanced Services (WA), LLC

By: Charter Communications Inc., Its Manager

City of West Richland

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

COMMERCIAL TERMS OF SERVICE

1. AGREEMENT TERM. This Agreement shall terminate upon the lawful termination of the final existing Service Order entered into under this Agreement.

2. SERVICE. Charter shall provide the Services during the Service Period to Customer at the site(s) identified in the Service Order(s). "Service Period" is the time period starting on the date the Services are functional in all material respects and available for use (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).

3. STANDARD PAYMENT TERMS. Customer shall pay fees and charges for the Services in the amount specified on the Service Order in accordance with this Agreement. A one-time charge ("OTC") is a nonrecurring fee for construction, Service installation charge(s), repair, replacement, or any other nonrecurring costs or charges. "Equipment" means the components (e.g., any gateway enterprise session border controller, electronic device, node, router, switch, communications lines/cables, etc.) that make up the Network. "Network" means all of the Charter-owned or controlled physical elements necessary to provide the Services.

(a) Charges. Customer shall pay all charges associated with the Service(s), as set forth or referenced in the applicable Service Order(s) or invoiced by Charter. These charges may include, but are not limited to, a monthly service fee ("MSF"), nonrecurring fees for construction, installation, repair, replacement or other one-time charges ("OTC"), usage charges such as, pay-per-view charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). MSFs shall be subject to increases attributable to programming, license, copyright, retransmission and/or other similar costs imposed upon Charter, Charter shall provide not less than thirty (30) days prior notice to Customer of any MSF change.

(b) Taxes, Surcharges and Fees. Customer shall pay any sales, use, property, excise, or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law. A copy of Customer's tax exemption document, if applicable, must be provided to Charter to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees. Charter reserves the right from time-to-time to change the surcharges for Services under this Agreement to reflect the charges or payment obligations imposed on Charter which Charter is permitted or required under applicable law to pass through to Customer (e.g., Universal Service Fund ("USF") charges, franchise fees, etc.).

(c) Modification of Terms. In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of any Service(s) (other than any assessment of Applicable Taxes on the revenues generated or paid pursuant to this Agreement), Charter and Customer shall negotiate in good faith regarding the Monthly Service Fees to be charged Customer to reflect such increase in cost and, in the event that the parties are unable to reach agreement respecting

new Monthly Service Fees within thirty (30) days after Charter's delivery of written notice requesting renegotiation, then (a) Charter may pass such increased costs through to Customer as a Monthly Service Fee increase, and (b) if Charter elects to pass such increased costs through to Customer, Customer may terminate the affected Service without termination liability by delivering written notice of termination to Charter within ten (10) days of Customer's receipt of Charter's notice of such Monthly Service Fee increase.

(d) Change Requests. Any charges associated with Service and Equipment installations, changes, or additions requested by Customer subsequent to executing a Service Order for the applicable site are the sole financial responsibility of Customer. Charter shall notify Customer, in writing, of any additional OTCs and/or adjustments to MSFs associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to accept such additional charges within three (3) days of receiving such notice shall be deemed a rejection by Customer, and Charter shall not be liable to perform any work giving rise to such charges. For accepted charges, Customer shall be assessed such additional OTCs and/or adjustments of the MSFs either (i) in advance of implementation of the change request or (ii) beginning on Customer's next and/or subsequent invoice(s).

(e) Site Visits and Repairs. If Customer's misuse, abuse or modification of the Services, Equipment or Network results in a visit to the Customer site for inspection, correction or repair, Charter may charge Customer a site visit fee as well as charges for any resulting Equipment or Network repair or replacement, which may necessary.

(f) Invoicing Errors. Customer must provide written notice to Charter of any invoice errors or disputed charges within 30 days of the invoice date on which the errors and/or disputed charges appear for Customer to receive any credit that may be due. Customer must have and present a reasonable basis for disputing any amount charged.

(g) Late Fees. Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of not more than 1.5% per month or the maximum amount permitted by law.

(h) Non-payment. If Services are suspended due to late payment, Charter may require that Customer pay all past due charges, a reconnect fee, and one or more MSFs in advance before reconnecting Services.

(i) Collection Fees. Charter may charge a reasonable service fee for all returned checks and bank card, credit card or other charge card charge-backs. Customer shall be responsible for all expenses, including reasonable attorney fees and collection costs, incurred by Charter in collecting any unpaid amounts due under this Agreement.

(j) Bundled Pricing. If Customer has selected a Spectrum Business Bundle ("SBB") specifically, the following conditions shall apply:

(i) In consideration for Customer's purchase of all Services in the SBB and only with respect to that period of time during which Customer continues to purchase such SBB, Charter shall apply a discount to the Services ordered under the applicable Service Order(s). Such discount has been applied to the Services included in Charter's bundled pricing offer and is reflected in the MSF for such Services.

(ii) Upon discontinuation or termination by Customer of any component of a Service of the applicable SBB, the pricing for the remaining Services shall revert to Charter's ala carte pricing for such Services in effect at the time. Termination liability applicable to the Services under this Agreement shall otherwise remain unchanged.

4. SERVICE LOCATION ACCESS AND INSTALLATION

(a) Access. Charter will require reasonable access to each service location listed on a Service Order ("Service Location") as necessary for Charter to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns or controls the Service Location(s), Customer grants Charter permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with Charter's assistance, appropriate right of access. If such right of access for Charter is not obtained by either party, then Charter's obligations with respect to such Service Location shall be considered null and void.

(b) Installation Review; Subsequent Interference. Charter may perform an installation review of each Service Location prior to installation of the Services. Upon request, Customer shall provide Charter with accurate site and/or physical network diagrams or maps of a Service Location, including electrical and other utility service maps, prior to the installation review. If Charter determines that safe installation and/or activation of one or more of the Services will have negative consequences to Charter's personnel or Network or cause technical difficulties to Charter or its customers, Charter may terminate the Service Order effective upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services. If during a Service Period, or any renewal thereof, (i) proper operation of Equipment or provision of a Service is no longer unhindered or possible as a result of interference or obstruction due to any cause other than Charter or (ii) such interference/obstruction or its cause may endanger, hinder, harm or injure Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, Charter may terminate the affected Service Order(s) without liability upon written notice to Customer.

(c) Site Preparation. Customer shall be responsible for necessary preparations at the Service Location(s) for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment or Services. Upon request, Customer shall provide any available electrical, utility service, and/or general physical network diagrams or

maps prior to installation or maintenance work to be undertaken by Charter. Customer shall be responsible for providing sufficient rack space, wall mount space, power and HVAC for any routers and/or media gateways necessary for proper working conditions in support of the Service.

(d) Installation. Charter will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. If during the course of installation Charter determines additional work is necessary to enable Charter to deliver the Services to the Service Location, Charter will notify Customer of any additional OTCs. If Customer does not agree to pay such OTCs by executing a revised Service Order within five business days of receiving the same, Customer and Charter shall each have the right to terminate the applicable Service Order. Customer shall connect Customer's computer or network to applicable Charter-provided Equipment to enable access to the Services. Charter shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation.

(e) Ongoing Visits. Charter will need periodic access for inspection, operation and maintenance of the Network. Except in emergency situations, Charter will obtain approval from Customer (not to be unreasonably withheld or delayed) before entering Customer Premises. At Charter's request, Customer, or a representative designated by Customer, will accompany Charter's employees or agents into any unoccupied unit for any purpose relating to the Equipment.

5. EQUIPMENT AND MATERIALS.

(a) Responsibilities and Safeguards. Except as otherwise provided in this Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party; provided, however, that subject to the indemnification limitations set forth in this Agreement, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct.

Customer Shall:

(i) Safeguard Equipment against others;

(ii) Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;

(iii) Not hire nor permit anyone other than personnel authorized by Charter, acting in their official capacity, to perform any work on Equipment; and

(iv) Not move nor relocate Equipment to another location or use it at an address other than the Service Location without the prior written consent of Charter.

Any unauthorized connection or other tampering with the Services or Equipment shall be cause for immediate suspension of Services, termination of this Agreement and/or legal action, and Charter shall be entitled to recover damages, including the value of any Services and/or Equipment obtained in violation of this

Agreement, in addition to reasonable collection costs (including reasonable attorney fees). Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services, Charter shall not be obligated to distribute a signal to the Premises better than the highest quality which can be furnished without additional cost to Charter as a result of such interference, until such time as the interference is eliminated.

(b) Customer Responsibilities.

(i) Customer shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service and/or Equipment. Charter may suspend the Services upon learning of a breach of security and will attempt to contact Customer in advance, if practicable.

(ii) Customer shall be solely responsible for providing battery back-up to the Fiber Access Router and Media Gateway(s). Customer acknowledges and accepts that the Service will not function without power and any power outage shall be the sole responsibility of Customer.

(iii) Customer shall configure any Customer equipment used in connection with the Service based on specifications provided by Charter.

(iv) Customer shall provide T1 cables for connectivity to the RJ48X jack(s) connected to the Media Gateway(s).

(v) Customer shall be solely responsible for the physical connection of Customer's equipment to the RJ48X jack(s).

(c) Ownership. Notwithstanding any other provision contained in this Agreement to the contrary, all Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected, in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment. Customer shall not obtain or acquire title to, interest or right (including intellectual property rights) in the Service or Equipment other than to the limited extent of use rights expressly granted under this Agreement.

(d) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of this Agreement and/or Service Order(s) ("Termination"), at the discretion of Charter, Customer shall return, or allow Charter to retrieve, the Equipment supplied by Charter to Customer. Failure of Customer to return, or allow Charter to retrieve, Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to the retail cost of replacement of the unreturned Equipment. Customer shall pay for the repair or replacement of any damaged Equipment, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects, together with any costs incurred by Charter in obtaining or attempting to regain

possession of such Equipment, including reasonable attorney fees.

6. ADMINISTRATIVE WEB SITE. Charter may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). Charter may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Charter if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and Charter shall only be entitled to rely on all Customer uses of and submission to the Administrative Web Site as authorized by Customer. Charter shall not be liable for any loss, cost, and expense of other liability arising out of any Customer use of the Administrative Web Site. Charter may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.

7. VOICE TRUNK SERVICE. Voice Trunk includes dedicated access for inbound and outbound local and long distance services, one primary phone number which includes unlimited local calling, a single white and/or yellow page listing (on an account basis), access to operator services, and inbound caller ID. Charter will route calls (i) from the PSTN and terminate them to either a Charter provided demarcation (T1/PRI) or the enterprise session border controller (SIP Trunking), and (ii) from the Charter provided demarcation or enterprise session border controller (SIP Trunking) to the PSTN. Charter may temporarily block Service where Charter reasonably believes it to be fraudulent or where reasonably necessary to protect Charter's network.

(a) T1 PRI Dedicated Access ("T1 PRI"). Voice Trunk is a dedicated, high speed, multi-purpose switched access digital interface providing twenty-three (23) bearer channels and one (1) signaling channel (23B+D). Multiple channels in Voice Trunk T1 PRIs may be grouped together allowing calls to overflow from one channel to another within the group. Each Voice Trunk T1 PRI will be provisioned with 23B+D; Non-facility Associated Signaling ("NFAS") is not supported.

(b) SIP Trunking Dedicated Access ("SIP Trunking"). Voice Trunk – SIP Trunking is a dedicated, high speed, multi-purpose switched access digital interface providing four (4) bearer channels in each pack. Multiple channels may be grouped together allowing calls to overflow from one channel to another within the pack and from one pack to another.

(c) Charter Provided Customer Premises Equipment. Voice Trunk requires that the following Equipment be installed by Charter at the Service Location. Charter retains all property interests in such Equipment:

(i) Fiber Access Router. Charter provides Voice Trunk over Charter-provided fiber only. Charter shall provide a Fiber Access Router to connect Charter's fiber network to the Media Gateway described below. Customer shall procure extension of fiber, as necessary, to the Service Location under a separate agreement.

(ii) Media Gateway(s) (T1 PRI). At least one Media Gateway is required for the T1 PRI Service. Charter shall provide a Media Gateway that will provide the T1 PRI interface(s) to Customer's equipment. Media Gateways may be ordered in configurations supporting 1, 2, 4, 8, or 16 T1s and may be stacked to provide any combination of the foregoing. Each Media Gateway has a fixed configuration, meaning that an increase in T1 capacity will require either a replacement of the existing Media Gateway or the addition of another Media Gateway.

(iii) Enterprise Session Border Controller. At least one enterprise session border controller (eSBC) is required for the SIP Trunking Service. Charter will provide an eSBC to enable the SIP Trunking interface(s) to Customer's equipment. Multiple eSBCs may be provided by Charter.

(d) Related Services. Charter offers additional services under its tariff(s) and/or Service Price and Terms Guides for use with Voice Trunk. The following are considered additional and/or related services: Directory Assistance, Operator Services, Private Number, Additional Listing, Call Blocking Features (Block 3rd Party / Collect, Block International, and/or Toll Restriction), Domestic Long Distance, International Long Distance (enabled only upon Customer request), Toll Free Service (800, 888, 877, and 866), Installation, Dispatch/Maintenance, and Reconnection.

(e) Direct Inward Dialing ("DID"). Charter provides DIDs in blocks of ten (10), twenty (20), or one-hundred (100), which may or may not contain numbers that are contiguous.

(f) Voice Trunk Overflow Feature. "Voice Trunk Overflow" is a feature of Voice Trunk T1 PRI and SIP Trunking Service. Customer can program its Voice Trunk Service to enable incoming calls to overflow from one or more PRIs or SIP Trunk packs (as applicable) at one Customer Service Location to the PRI, PRIs or SIP Trunk packs at a second Customer Service Location. Customer will pay the monthly recurring charge for the Voice Trunk Overflow feature. Certain technical limitations apply and Voice Trunk Overflow is not available in all service areas.

(g) Voice Trunk DID Overflow Feature. "DID Overflow" is a feature of Voice Trunk Service. Customer can program its Voice Trunk Service to enable incoming calls to a specific DID to overflow to another U.S. domestic telephone number. Customer will pay the monthly recurring charge for the DID Overflow feature. Certain technical limitations apply and DID Overflow is not available in all service areas.

(h) Disaster Recovery Feature. "Disaster Recovery" is a feature of SB Voice Trunk T1 PRI and SIP Trunking Services. In the event of an Service outage, Customer can contact the SB NOC, of which contact information is provided in the Customer Welcome Letter, and request that

certain Direct Inward Dial ("DID") or other phone numbers be temporarily forwarded to the phone numbers of another Customer location until the outage event is corrected and Service is restored. There is no charge for the Disaster Recovery feature; provided, however Customer will pay a one-time Disaster Recovery fee if the outage event was caused by the Customer.

(i) Local Number Portability.

(i) Porting In. Upon submission of a Service Order, Customer may port a telephone number within the rate center for its particular Service Location to Charter for use with Voice Trunk Service. Customer represents and warrants that it has all necessary rights and authority for any porting request, will provide copies of letters of authority authorizing the same upon request, and shall indemnify, defend and hold harmless Charter and its Affiliates from any third-party claim related to or arising out of any porting request. Charter shall coordinate telephone number porting with Customer's former local service provider ("FLSP") using the operational process for coordinating telephone number porting as prescribed by the appropriate regulatory authority. Charter shall port in a telephone number using one of the following agreed upon methods:

(ii) Spare Equipment Cut. "Spare Equipment Cut" means that Customer will provide sufficient spare Customer equipment, such as line cards, for connection of Charters Service(s) prior to telephone number porting. Charter and Customer shall verify the operational stability of the Service(s) in advance of Charter issuing a request to port Customer's telephone numbers from Customer's FLSP to Charter's Service. Customer acknowledges and accepts that the porting process involves the updating of multiple databases and may result in an outage of Service during such updates.

(iii) Hot Cut – Business Hours. "Hot Cut" means that Customer's existing service is disconnected prior to Customer connecting Customer's equipment to Charter's Service which, in turn, occurs prior to the scheduled telephone number port change. "Business Hours" means 8:00 AM to 5:00 PM, Monday through Friday, excluding Holidays. Charter will use reasonable efforts to resolve any issues arising during the Hot Cut prior to the execution of the port change and may cancel the port change at Customer's request. Customer acknowledges that a Hot Cut necessarily results in an interruption of Customer's telephone service thereby exposing Customer to risks associated with inability to make or receive telephone calls. Customer accepts all liability for any loss or damage arising out of or related to such an interruption.

(iv) Hot Cut – After Hours. For purposes of this section, Hot Cut has the same meaning as in Section 7(i) (iii). "After Hours" means any time outside of Business Hours. Charter will use reasonable efforts to resolve any issues arising during the Hot Cut prior to the execution of the port change. At Customer's request, Charter shall make reasonable efforts to cancel the port request, but unavailability of necessary

third party resources may prevent Charter from effecting such cancellation. Customer acknowledges that a Hot Cut necessarily results in an interruption of Customer's telephone service thereby exposing Customer to risks associated with inability to make or receive telephone calls. Additionally, Customer acknowledges that Customer's choice of an After Hours Hot Cut exposes Customer to the additional risk of an extended outage due to unavailability of necessary third-party resources to cancel a porting request or resolve a trouble report. Customer accepts all liability for any loss or damage arising out of or related to such an interruption or outage.

(v) Porting Out. Charter may receive requests to port a telephone number currently assigned to Customer to a third party service provider. Customer agrees that until such time as the porting process has been completed and no further traffic for any ported telephone number traverses Charter's network, Customer shall remain bound by the terms of the Agreement and this Product Attachment (including, without limitation, Customer's obligation to pay for any applicable Services) for any and all traffic which remains on any Customer telephone numbers. Notwithstanding the foregoing, Customer shall notify Charter at least five (5) business days in advance of Customer requesting more than twenty (20) telephone numbers to be ported from Charter to another service provider.

8. E-911 EMERGENCY CALLING SERVICES. With respect to any Service(s) provided by Charter, Customer's address for 911/E911 purposes shall be the Service Location to which Charter delivers such Service(s). Customer agrees that a Phone Plus Remote Office location is not a Service Location at which Service is installed. Customer shall be solely responsible for directing emergency personnel at the customer premises at each Service Location.

(a) E-911 Routing. Enhanced 911 calling ("E-911") enables End-Users to access an appropriate public safety answering point ("PSAP") by dialing 911 with Automatic Number Identification ("ANI") and Automatic Location Identification ("ALI") displayed at the PSAP. The ANI may be the calling party number (CPN) or the billing telephone number (BTN) depending on Customer's configuration. Pursuant to FCC requirements, Charter enables the routing of E-911 calls only in locations where such 911 calling is available and only under the limited circumstances described below. The ability of an End-User to access an appropriate PSAP depends on the location of the telephone used. Furthermore, Charter will only send the main billing telephone number to the PSAP with E-911 service. A Phone Plus Remote Office location is not a Service Location at which Service is installed and calls to a PSAP or other emergency answering point are not permitted utilizing the Phone Plus Remote office Feature.

(b) Spectrum Business Private Switch/Automatic Location Identification ("SB PS/ALI"). If Customer requires station-specific ALI (including the floor and/or room number within a building) delivery to the PSAP for a private branch exchange ("PBX"), key service unit ("KSU") or other

private telephone switch, or otherwise desires E-911 service to be provided for multiple user configurations, Customer must order SB PS/ALI, where available (i.e., not available in all Charter areas), and must obtain the software and support that enables private switch ALI from a third-party provider. Where available, SB PS/ALI Service can only support the delivery of the end-user's station-level telephone number(s) to a PSAP when such telephone numbers are ported to Charter during the initial provisioning process or if such telephone numbers are assigned by Charter.

(c) Corrupt ANI and Emergency Call Identification Limitations. If the ANI delivered to Charter in the 911 call setup message is not recognized and therefore considered "corrupt," the call will be automatically routed by Charter to default PSAP. In such cases, the call will be answered by operators who will relay the call to the appropriate emergency service provider based on the End user's ability to communicate a current location and emergency service needed. If the end-user is unable to communicate its current location, reasonable call identification procedures will be implemented. Call identification capabilities may be limited.

(d) LIMITATIONS OF E-911 CALLING. THE FOLLOWING EVENTS CAN LIMIT ACCESS TO E-911 CALLING:

(i) Loss of Electric Service. Service will be interrupted if there is a loss of electric service. Customer shall be responsible for providing a battery backup system, or an uninterrupted power supply, for its phone system and for the Equipment Charter installs at each Service Location.

(ii) Failure of Equipment. The malfunction or failure of equipment, software, or hardware necessary for end-to-end functionality (e.g. routers, gateways, etc.) can limit access to E-911.

(iii) Non-Recognition of Phone Number. If an end-user uses a non-native telephone number (i.e., a telephone number from a local exchange area different from where the end-user is located), E-911 access may be limited.

(e) E-911 end-user Notice Requirement. Customer will notify all of its end-users receiving Service under this Agreement of the limitations of E-911 set forth above. Upon request, Charter will make available to Customer E-911 end-user information to assist the Customer in satisfying this notice requirement.

(f) E-911 INDEMNITY. CUSTOMER WILL INDEMNIFY, DEFEND, AND HOLD CHARTER HARMLESS FROM ANY CLAIMS, CAUSES OF ACTION, LIABILITIES, DAMAGES AND/OR EXPENSES ARISING FROM THE NON-IMPLEMENTATION OF PRIVATE SWITCH ALI AS MAY BE REQUIRED BY APPLICABLE STATE LAW, THE ENABLING OF STATION-LEVEL 911 SERVICE, AND/OR THE FAILURE OF PRIVATE SWITCH ALI OR STATION-LEVEL 911 SERVICE, IF ENABLED.

(g) CUSTOMER'S SPECIFIC E-911 ALI OBLIGATIONS. Customer agrees to comply with private switch ALI requirements for E-911 Service as mandated by applicable state law.

9. NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT. Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. For purposes of this Agreement, the Hosting Software shall be considered third-party software. Charter does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Charter assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third-party software, any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Charter has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, Charter should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at Charter's discretion and at then-current commercial rates and terms.

10. CUSTOMER USE. Customer shall not re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of Charter. Customer shall not use or permit third parties to use the Service(s), including the Equipment and software provided by Charter, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall not interfere with other customers' use of the Equipment or Services or disrupt the Charter Network, backbone, nodes or other Services. Violation of any part of this Section is grounds for immediate Termination of this Agreement and/or all Service Orders in addition to any other rights or remedies Charter may have.

11. PERFORMANCE. Charter will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Charter's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Charter to perform its obligations under this Agreement, and Customer will not hold Charter at fault for loss of Customer revenue or lost employee productivity due to Service outages.

12. SERVICE INTERRUPTION CREDITS. For purposes of this Agreement, Customer shall be entitled to one (1) hour of Service Interruption Credit per Service Location per affected Service, for each hour of Service Interruption if the interruption: (a) exceeds four (4) consecutive hours, (b) is not caused by Customer-provided equipment or facilities, (c) is not caused by scheduled maintenance and (d) is reported to Charter within twenty-four (24) hours of the commencement of the interruption. Service credits shall not apply to any period of time for which Charter is not granted access, if necessary, to the applicable Service Location. A "Service Interruption" is the continuous period of time during which a respective Service is totally interrupted to one or more of Customer's Service Locations. A Service Interruption

commences when Customer makes Charter aware of such Service Interruption and ends when the Service is operational and the trouble ticket is closed. Service Interruption Credits will be based on the Customer's Monthly Service Fee (for the affected Service) for those Service Locations and affected by the Service Interruption. Non-recurring, equipment and usage-based charges are excluded. The sum of all Service Interruption Credits shall not exceed the Customer's total Monthly Service Fees for the month in which the Service Interruption occurred. Within thirty (30) days of the date of a specific Service Interruption, the Customer must contact Charter at 1-866-603-3199 (or successor applicable toll-free number) to request a Service Credit for such Service Interruption. Charter will exercise commercially reasonable efforts to respond to such Service Interruption Credit requests within fifteen (15) business days of receipt thereof. The approved Service Credit will be applied on the billing cycle following the date Charter makes its credit determination. Service Interruption Credits shall be Customer's sole and exclusive remedy for Charter's failure to provide Services per the terms of the Service Order and/or the Agreement. The Service Credit shall be calculated as follows:

Service Credit = (Per Hour Rate) x (# of consecutive hours during Service Interruption)

Per Hour Rate = (Per Day Rate) / (24 hours)

Per Day Rate = (Monthly Service Fee) / (30 days)

Any Service Interruption that exceeds a consecutive period of twelve (12) hours shall be considered a Service Interruption of one (1) day.

13. DEFAULT; SUSPENSION OF SERVICE; TERMINATION. No express or implied waiver by Charter of any event of noncompliance shall in any way be a waiver of any further subsequent event of noncompliance. Nothing herein, including Termination, shall relieve Customer of its obligation to pay Charter all amounts due.

(a) **Default by Customer.** Customer shall be in default under this Agreement if Customer does one or more of the following things (each individually to be considered a separate event of default) and Customer fails to correct each such noncompliance within 30 days of receipt of written notice ("Default"):

(i) Customer is more than 30 days past due with respect to any payment required hereunder;

(ii) Customer otherwise has failed to comply with the terms of this Agreement or any other Service Order(s) incorporated herein.

(b) **Termination for Convenience.** Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order, or this Agreement in whole or part, at any time upon thirty (30) days prior written notice to Charter, and subject to payment of all outstanding amounts due, any applicable Termination Charges, and the return of any Charter Equipment.

(c) **Charter's Right to Suspend Service.** Charter may immediately suspend Service(s) without liability if Charter is ordered, directed or requested by a federal, state or local governmental entity, regulatory body or court of competent jurisdiction, to suspend Service(s), in whole or in part, or if Customer breaches any other material obligation hereunder, and may continue a suspension until such order expires or

has been withdrawn or such breach has been cured to the reasonable satisfaction of Charter, or until Charter terminates the applicable Service(s), Service Order(s) or the Agreement.

(d) Charter's Right to Terminate and Termination Charge. If Customer is in Default, Charter shall have the right, at its option, without prior notice, and in addition to any other rights of Charter expressly set forth in this Agreement and any other remedies it may have under applicable law to:

(i) Immediately suspend Services to Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Charter any amounts due under this Agreement (e.g., the MSFs) as if such suspension of Services had not taken place; or

(ii) Terminate the Services, this Agreement or the applicable Service Order(s). If Termination is due to Customer Default or is elected/done by Customer for convenience, Customer must pay Charter a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to 50% of the unpaid balance of the MSFs that would have been due throughout the applicable Service Period plus 100% of (1) the outstanding balance of any and all OTCs plus, (2) any and all previously waived OTCs.

(e) Default by Charter. Charter shall be in default under this Agreement if Charter fails to comply with the terms of this Agreement and/or any or all of the applicable Service Order(s), and Charter fails to remedy each such noncompliance or occurrence within 30 days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance ("Charter Default").

(f) Customer's Right to Terminate and Termination Charge.

(i) In the event Customer wishes to terminate a Service without cause, Customer shall be liable for the same Termination Charges as described above.

(ii) Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of Charter Default by Charter is limited to Services provided under the applicable Service Order(s) or this Agreement, and if such Charter Default is not so limited.

(iii) If Termination is due to a Charter Default, Charter shall reimburse Customer for any pre-paid, unused MSFs attributable to such terminated Service Order(s). In addition, if Termination is due to Charter Default within one year of the applicable Turn-Up Date, Charter shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any OTC that has already been paid by Customer to Charter relative to Service at the Service Locations covered by the terminated Service Order. This Termination Charge shall be equal to the product of a) the number of months (including partial months) remaining in the initial 12 months of the initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of OTCs paid to date and the denominator is 12.

14. LIMITATION OF LIABILITY. PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

(a) Limited Warranty. At all times during the Service Period, Charter warrants that it will use commercially reasonable efforts in providing the Services pursuant to industry standards. Charter does not warrant that Services will be error free or uninterrupted.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, CHARTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT, EXCLUDING OTCs, PAID OR PAYABLE BY CUSTOMER TO CHARTER FOR THE APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Customer must be made within 30 days after the applicable Services have been performed. Charter's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

(b) LIMITATIONS OF LIABILITY. IN ADDITION TO THE LIMITATIONS OF LIABILITY PROVIDED IN THIS AGREEMENT, CHARTER SHALL NOT BE LIABLE FOR ANY CLAIM OR DAMAGES CAUSED BY OR ARISING OUT OF A FAILURE TO ROUTE CALLS, INCLUDING 911 CALLS, DUE TO: (A) LOSS OF POWER TO EQUIPMENT AT THE CUSTOMER PREMISES; (B) FAILURE OF CUSTOMER EQUIPMENT ON CUSTOMER'S SIDE OF THE DEMARCATION POINT; (C) CUSTOMER-CAUSED DAMAGE TO ANY CHARTER EQUIPMENT; (D) A DID/DOD BEING ASSIGNED BY CUSTOMER TO AN END USER LOCATED OUTSIDE OF THE RATE CENTER ASSOCIATED WITH SUCH DID/DOD; (E) THE

CUSTOMER OR AN END USER ATTEMPTING A 911 CALL FROM A LOCATION DIFFERENT FROM THE CUSTOMER'S SERVICE LOCATION PROVIDED TO CHARTER BY CUSTOMER, INCLUDING CUSTOMER ATTEMPTED CALLS FROM A PHONE PLUS REMOTE OFFICE LOCATION; (F) CUSTOMER'S SERVICE HAVING BEEN CANCELLED OR SUSPENDED FOR ANY REASON (INCLUDING SUSPENSIONS OR CANCELLATIONS UNDER THE AGREEMENT FOR FAILURE TO PAY OR OTHER DEFAULT); (G) CUSTOMER SUPPLYING INCORRECT OR INVALID CUSTOMER SERVICE LOCATION INFORMATION TO CHARTER OR IF SUCH INFORMATION IS NOT UPDATED IN THE EVENT OF A CHANGE IN CUSTOMER'S SERVICE LOCATION; OR (H) ERRORS OR DELAYS IN THE TELEPHONE NUMBER PORTING PROCESS. BY SIGNING THE AGREEMENT, CUSTOMER ACKNOWLEDGES AND ACCEPTS THE FOREGOING LIMITATIONS.

(c) Content. Any content that Customer may access or transmit through any Service is provided by independent content providers, over which Charter does not exercise and disclaims any control. Charter neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. Charter specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and its authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Charter assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.

(d) Damage, Loss or Destruction of Software Files and/or Data. Customer uses the Services and Equipment supplied by Charter at its sole risk. Charter does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind. Charter assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. Charter does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.

(e) Unauthorized Access. If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate termination of Customer's Service by Charter without liability for Charter. Charter is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold harmless and indemnify the Charter Indemnified Parties from and against any claims, losses, or damages arising from such use. Charter is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing Customer's computers, its internal network and/or the Network through Customer's equipment.

15. FORCE MAJEURE EVENT. Neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or

indirectly caused by circumstances beyond such party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services. Changes in economic, business or competitive condition shall not be considered a Force Majeure Event.

16. INDEMNIFICATION. In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement and as permissible under applicable law, Customer at its own expense, shall indemnify, defend and hold harmless Charter and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Charter Indemnified Parties, including reasonable attorney fees and court costs incurred by Charter indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Charter Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Charter Indemnified Parties in such case.

17. TITLE. Title to the Equipment shall remain with Charter during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer premises free and clear of all liens, encumbrances and security interests. Upon termination of Service or expiration of a Service Order's Service Period for a specific site, Charter shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. Charter shall have the right to remove the Equipment and all components within 60 days after such termination, provided that Customer grants Charter access to the applicable Service Locations.

18. COMPLIANCE WITH LAWS. Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Charter to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.

19. PRIVACY. Charter treats private communications on or through its Network, or using any Service, as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Charter also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy may be found on Charter's website at www.business.spectrum.com. The Privacy Policy may be updated or modified periodically by Charter, with or without notice to Customer.

20. GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS. Customer represents to Charter (a) that Customer has the authority to execute, deliver and carry out the terms of this Agreement and associated Service Orders and (b) that any person who accesses any Services through Customer's equipment or through the Network facilities at the Service Locations will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal

manner, and will be subject to the terms of this Agreement. Customer is responsible for ensuring its users of the Service comply with the terms of this Agreement. Customer shall be responsible for all access to and use of the Service by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until it informs Charter of any breach of security.

21. NOTICES. Any notices to be given under this Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:

Charter Communications
ATTN: Commercial Contracts Management
Dept: Corp. - Legal Ops
12405 Powerscourt Drive
St. Louis, MO 63131

Notices to Customer shall be sent to the Customer billing address.

Each party may change its respective address (es) for legal notice by providing notice to the other party.

22. MISCELLANEOUS.

(a) Entire Agreement; Signatures. This Agreement and any related, executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. This Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.

(b) No Amendments, Supplements or Changes. Except for pricing terms as set forth in this Agreement, this Agreement and the associated executed Service Order(s) may not be amended, supplemented or changed without both parties' prior written consent.

(c) No Assignment or Transfer. The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld; provided, however, that without Customer's consent, Charter may assign this Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with Charter, or to its successor-in-interest if Charter sells some or all of the underlying communications system.

(d) Severability. If any term, covenant, condition or portion of this Agreement or any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or any related, executed Service Order(s) shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.

(e) Governing Law. The law of the state in which the Services are provided (excluding its conflicts of law provisions) shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND CHARTER EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.

(f) Both parties had the opportunity to review and participate in the negotiation of the terms of this Agreement and the Service Order(s) and, accordingly, no court construing this Agreement and any Service Order(s) shall construe it more stringently against one party than against the other.

(g) No Third Party Beneficiaries. The terms of this Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Agreement, and the consideration provided by each party hereunder only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the parties hereto.

23. USE OF MARKS. Customer shall not use any trademarks, service marks, logos, or trade names of Charter (individually and collectively the "Charter Marks") in any manner whatsoever without Charter's express advance written consent, and then only in strict compliance with Charter's instructions. Customer shall not issue any press release, announcement or public statement with respect to the Agreement or Charter without Charter's express advance written consent, and any such press release, announcement or public statement shall be subject to Charter's review and written approval. Charter may revoke any consent granted to Customer to use Charter Marks, or any other approval granted under this Section 23 at any time for any reason. Customer's breach of this Section shall be a material breach of the Agreement.

24. WAIVER. Except as otherwise provided herein, the failure of Charter to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

Charter Commercial Subscriber Privacy Policy

TV Internet Phone

Charter Commercial Subscriber Privacy Policy:

Charter takes the protection of our subscribers' ("You," "Your" or "Customer(s)") privacy seriously. The following privacy policy ("Policy") applies to those Charter commercial Customers who subscribe to Charter's commercial video programming, high-speed Internet and/or telephone service (individually and collectively the "Service") and describes the Customer information that Charter collects and retains, how Charter uses and protects it, the limited cases where Charter may disclose some or all of that information, and Your rights under the Cable Communications Policy Act of 1984 ("Cable Act"). Depending upon the Charter Service to which You subscribe, parts of this Policy may not be applicable to You. Charter values Your privacy and considers all personally identifiable information contained in our business records to be confidential. Please review this Policy and, if You are a Charter telephone service subscriber, the attached Customer Proprietary Network Information ("CPNI") Policy (the "CPNI Policy"), in conjunction with Your service agreement, terms of service and acceptable use policy ("Your Service Agreement"). Charter will provide You copies of this Policy annually and the CPNI Policy at least once every two years, whether or not we have revised the policies. We may modify this Policy at any time. The most current version of this Policy can be found on www.charter.com. If you find the changes unacceptable and if those changes materially and adversely impact Your use of the Service, you may have the right to cancel Your Service under Your Service Agreement if you continue to use the Service following the posting of a revised Policy; we will consider that to be your acceptance of and consent to the Policy as revised.

What type of information does Charter collect?

Charter collects both personally identifiable information and non-personal information about You when You subscribe to our Service. Charter uses its system to collect personally identifiable information about You: (a) when it is necessary to provide our services to You; (b) to prevent unauthorized reception of our services; and (c) as otherwise provided in this Policy. Charter will not use the system to collect Your personally identifiable information for other purposes without Your prior written or electronic consent. Charter also collects personally identifiable and non-personal information about You when You voluntarily provide information to Charter, as may be required under applicable law, and from third parties, as described in this Policy. Personally identifiable information is any information that identifies or can potentially be used to identify, contact, or locate You. This includes information that is used in a way that is personally identifiable, including linking it with identifiable information from other sources, or from which other personally identifiable information can easily be derived, including, but not limited to, name, address, phone or fax number, email address, spouses or other relatives names, drivers license or state identification number, financial profiles, tax identification number, bank account information, and credit card information. Personally identifiable information does not include information that is collected anonymously (i.e., without identification of the individual or business) or demographic information not connected to an identified individual or business.

Non-personal information, which may or may not be aggregated information about our Customers and may include information from third parties, does not identify individual Customers. Charter may combine third party data with our business records as necessary to better serve our Customers. Examples of non-personal information include IP addresses, MAC addresses or other equipment identifiers, among other data. Our systems may automatically collect certain non-personal information when You use an interactive or transactional service. This information is generally required to provide the service and is used to carry out requests a Customer makes through a remote control or set-top box.

We may also collect and maintain information about Your account, such as billing, payment and deposit history; maintenance and complaint information; correspondence with or from You; information about the service options that You have chosen; information on the equipment You have, including specific equipment identifiers; and information about Your use of our services, including the type, technical arrangement, quantity, destination and amount of use of certain of those services, and related billing for those services.

Charter also collects customer-provided customization settings and preferences. By using our service, You consent to our collection of this information and other information communicated to Charter such as correspondence, responses to surveys or emails, information provided in chat sessions with us, registration information, or participation in promotions or contests.

If You subscribe to our video service, then, in certain of our systems, our set-top boxes automatically collect information that may be used to determine which programs are most popular, how many set-top boxes are tuned to watch a program to its conclusion and whether commercials are being watched, as well as other audience-measurement focused information. Our processes are designed to track

this information and audience statistics on an anonymous basis. Information such as channel tuning, the time the channel is changed, and when the set-top box is "on" or "off" is collected at a secure database in an anonymous format. Charter, or our contractors or agents, may from time to time share the anonymous information with our advertisers, content providers, or other third parties with whom we have a relationship. We will not provide our advertisers, content providers, or these other third parties with personally identifiable information about You unless we have received Your consent first, except as required by law. (See "Who sees the information collected by Charter?")

Why does Charter collect personally identifiable information?

Charter collects and uses personally identifiable information to:

- properly deliver our Services to You;
- provide You with accurate and high quality customer service;
- perform billing, invoicing and collections;
- provide updates, upgrades, repairs or replacements for any of our service-related devices or software used in providing or receiving services;
- protect the security of the system, prevent fraud, detect unauthorized reception, use, and abuse of Charter's Services or violations of our policies or terms of service;
- keep You informed of new or available products and services;
- better understand how the Service is being used and to improve the Service;
- manage and configure our device(s), system(s) and network(s);
- maintain our accounting, tax and other records; and
- comply with applicable federal and state laws and regulations, as well as for the general administration of our business.

If You use an interactive or transactional service, for example, responding to a survey or ordering a pay-per-view event, the system will collect certain additional personally identifiable information, such as account and billing information or Customer-provided location and service preferences, to properly bill You for the services purchased and to provide You with a more personalized experience. In addition, certain information such as Your connections to our system is automatically collected to, for example, make it possible for Your digital boxes to receive and process the signals for the services You order.

Charter may also collect personally identifiable information from third parties to enhance our customer database for use in marketing and other activities. Charter also collects personally identifiable information from third parties to verify information You have provided us and collects personally identifiable information from credit reporting agencies to, for example, determine Your creditworthiness, credit score, and credit usage. Charter also may maintain research records containing information obtained through voluntary subscriber interviews or surveys.

If You subscribe to our high-speed Internet service, Charter transmits personally identifiable and non-personal identifiable information about You over the Service when You send and receive e-mail and instant messages, transfer and share files, make files accessible, visit websites, or otherwise use the Service and its features. Our transmission of this information is necessary to allow You to use the Service as You have chosen and to render the Service to You.

Who sees the information collected by Charter?

Charter will only disclose personally identifiable information to others if: (a) Customer provides written or electronic consent in advance, or (b) it is permitted or required under federal or applicable state law. Specifically, federal law allows Charter to disclose personally identifiable information to third parties:

- when it is necessary to provide Charter's services or to carry out Charter's business activities;
- as required by law or legal process; or
- for making list or other purposes, subject to Your ability to limit this last type of disclosure.

To provide services and carry out our business activities, certain authorized people have access to Your information, including our employees, entities affiliated through common ownership or control with Charter and third parties that provide and/or include billing and collection services; installation, repair and customer service subcontractors or agents; program guide distributors; software vendors, program and other service suppliers for audit purposes; marketers of Charter's products and services; third party auditors; our attorneys and accountants; and/or strategic partners offering or providing products or services jointly or on behalf of Charter. The frequency of disclosures varies according to business needs, and may involve access on a regular basis. Charter restricts third parties' use of Your information to the

purposes for which it is disclosed and prohibits third parties from further disclosure or use of Your personally identifiable information obtained from us, whether for that third party's own marketing purposes or otherwise.

Unless You object in advance, federal law also allows Charter to disclose through "mailing lists," personally identifiable information, such as Your name, address and the level of Your service subscription, to non-affiliated entities, including advertisers and marketing entities, for non-service related purposes, including product advertisement, direct marketing and research. Under no circumstances will Charter disclose to these advertising entities the extent of Your viewing habits or the transactions You make over the system. Charter, or our contractors or agents, may from time to time share non-personal and/or aggregate information such as the number of Service subscribers who match certain statistical profiles (for example, the number of subscribers in various parts of the country) with our advertisers, content providers, or other third parties with whom we have a relationship.

We may provide anonymous data to third parties who may combine it with other information to conduct more comprehensive audience analysis for us and for television advertisers. This data helps program networks and cable operators decide on which programs, channels, and advertising to carry. Charter may also use that information to distribute targeted advertising to You without having disclosed any of Your personally identifiable information to the advertisers. These advertisements may invite interactive or transactional follow-up from You. By using any of Charter's interactive services, You consent to our collection of this additional information. Unless You consent first or except as required by law, only anonymous information is disclosed to audience measurement services.

As part of its business activities, if Charter enters into a merger, acquisition, or sale of all or a portion of our assets, Charter may transfer Customers' personally identifiable and non-personal information as part of the transaction.

If You subscribe to our telephone service, Your name, address and/or telephone number may be transmitted via Caller ID, published and distributed in affiliated or unaffiliated telephone directories, and available through affiliated or unaffiliated directory assistance operators. We take reasonable precautions to ensure that non-published and non-listed numbers are not included in the telephone directories or directory assistance services, although we cannot guarantee that errors will never occur. Please note that Caller ID blocking may not prevent the display of Your name and/or telephone number when You dial certain business numbers, 911, 900 numbers or toll-free 800, 866, 877 or 888 numbers.

If allowed by and after complying with any federal law requirements, Charter may disclose personally identifiable information about Customer to representatives of government or to comply with valid legal process, except as provided below. Disclosures shall not include records revealing Customer's selection of video programming. Disclosures to representatives of government may be made pursuant to an administrative subpoena, warrant, court order, our reasonable discretion in cases of emergency or serious physical injury, or other permitted means. In these situations, Charter may be required to disclose personally identifiable information about a Customer without Customer's consent and without notice to the Customer. Law enforcement agencies may, by federal or state court order, and without notice to You, obtain the right to install a device that monitors Your internet and e-mail use, including addresses of email sent and received and in some cases the content of those communications, and/or Your use of our telephone service, including listings of incoming and outgoing calls and in some cases the content of those calls. In some instances where there are valid legal requests for or orders for disclosure of Your information, we may notify You of the requests or orders and then it may be up to You to object or take specific action to prevent any disclosures pursuant to those requests or orders.

Where a governmental entity is seeking personally identifiable information of a Customer who subscribes to Charter's video services only or records revealing Customer's selection of video programming, the Cable Act requires a court order and that the video subscriber be afforded the opportunity to appear and contest in a court proceeding relevant to the court order any claims made in support of the court order. At such a proceeding, the Cable Act requires the governmental entity to offer clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the prosecution of the case. Except in certain situations (such as with respect to those who owe, or are owed, welfare or child support) state welfare agencies may obtain the names, addresses, and certain other Customer information as it appears in Charter's subscriber records under the authority of an administrative subpoena.

We may also use or disclose personally identifiable information about You without Your consent (a) to protect our Customers, employees, or property, (b) in emergency situations, (c) to enforce our rights in court or elsewhere, or directly with You, for violations of service terms, conditions or policies and/or (d) in order to comply with the Digital Millennium Copyright Act or as otherwise required by law, for example, as part of a regulatory proceeding.

Note to California Customers Regarding Your Privacy Rights:

California law requires Charter provide to certain Customers, upon request, certain information regarding the sharing of personally identifiable information to third parties for their direct marketing purposes. As mentioned above, Charter does not share personally identifiable information with unaffiliated third parties for their own direct marketing purposes. However, Charter may share personally identifiable information with some same-branded affiliates for those affiliates' direct marketing purposes (and, if a Charter telephone subscriber, then subject to the restrictions in the attached CPN Policy). If You make a request by phone or on-line, Charter will provide You with the number of its same-branded affiliates in California and a list of personal information that it may have shared with some or all such affiliates.

Can I prohibit or limit Charter's use and disclosure of my personally identifiable information?

If You do not want Your name, address, level of service or other personally identifiable information regarding the sharing of personally identifiable information to third parties in a "mailing list" as explained above, please register this preference at <http://unsubscribe.charter.com> or by contacting us by telephone at 1-888-GET-CHARTER. Customers of our video service cannot opt-out of the collection of audience measurement data.

Also, if You do not want to receive marketing messages (e.g., phone calls, emails, and direct mail) from Charter, You may call 1-888-GET-CHARTER or visit <http://unsubscribe.charter.com> and make a request to have your privacy preferences updated. Please note that such request will not eliminate all telephone calls, emails or direct mail sent to You from Charter as Charter may still continue to send non-marketing account-related messages to You.

How long does Charter maintain personally identifiable information?

Charter will maintain personally identifiable information about You as long as You are a subscriber to Charter's Service and as long as necessary for the purpose for which it was collected. If You are no longer a subscriber to any Charter Service and the information is no longer necessary for the purpose for which it was collected, Charter will only keep personally identifiable information as long as necessary to comply with laws governing our business. These laws include, but are not limited to, tax and accounting requirements that require record retention. Charter will also maintain personally identifiable information to satisfy pending requests for access by a subscriber to his/her information or pursuant to a court order. Charter will destroy Customers' personally identifiable information when the information is no longer necessary for the purpose for which it was collected, when there are no longer pending requests for such information, and when it is no longer necessary to retain the information under applicable laws.

How does Charter protect customer information?

Charter takes the security of our Customers' personally identifiable information seriously. Charter takes such actions as are reasonably necessary to prevent unauthorized access by entities other than Charter to personally identifiable information. Charter uses security and/or encryption technology to secure certain sensitive personally identifiable information when it collects such information over the system. Charter restricts access to its customer database and secures the content by use of firewalls and other security methods. Charter limits access to databases containing Customers' personally identifiable information to those specifically authorized employees and agents of Charter and other parties identified in the "Who sees the information collected by Charter?" section above. However, we cannot guarantee that these practices will prevent every unauthorized attempt to access, use, or disclose personally identifiable information.

You need to help protect the privacy of Your own information. You and others who use Your equipment must not give identifying information to strangers or others whom You are not certain have a right or need to the information. You also must take precautions to protect the security of any personally identifiable information that You may transmit over any home networks, wireless routers, wireless fidelity (WiFi) networks or similar devices by using encryption and other techniques to prevent unauthorized persons from intercepting or receiving any of Your personally identifiable information. You are responsible for the security of Your information when using unencrypted, open access or otherwise unsecured networks in Your home. For more information on things you can do to help protect the privacy of Your own information, visit www.charter.com/security or www.OnGuardOnline.gov.

Can I see the information that Charter collects about me?

You have a right under the Cable Act to see Your personally identifiable information that Charter collects and maintains. The information Charter has about its Customers is maintained at the local offices where service is provided, in our systems, and at our corporate headquarters. If You would like to see Your information, please send a written request to Your local Charter office. To find the location of your local office please visit www.charter-business.com. Charter will be glad to make an appointment for You to come in to Your local office during regular business hours. If Your review

reveals an error in our records, Charter will correct it. You may also be able to access certain information about You or Your account by telephone or online at www.charter-business.com depending upon the information You have provided.

Does Charter protect children's privacy?

Charter is concerned about children's privacy and does not knowingly collect personally identifiable information from anyone under the age of 13 over its Service unless otherwise expressly identified. At those specific parts of our Service, Charter will provide a special notice or other information describing the additional privacy protections that may apply. Charter urges children to always obtain a parent or legal guardian's permission before sending any information about themselves over the Internet and urges parents and legal guardians to be vigilant regarding children's Internet usage. Other services or web pages accessed through Charter's Service may have different policies on collection of information pertaining to children and You should consult their privacy policies and read their notices if You have any concerns about the collection or use of such information by those entities.

How does Charter use cookies and web beacons?

A cookie is a small file that stores information in Your browser on Your computer. Charter places cookies in Your browser that contain some of the information You provide when You register with us and when You set up a personalized service or customize Your settings and preferences on our websites. Charter does not store highly sensitive personal information such as Your password, e-mail address or credit card number in cookies. Cookies enable Charter to summarize overall usage patterns for analysis. In addition, Charter uses cookies to provide personalized services such as saving your astrological sign on Charter.net. Charter may also use cookies to provide a more useful online experience, such as allowing You to quickly order a sweepstakes if You're already logged on.

A web beacon is an invisible graphic on a web page that is programmed to collect non-personally identifiable information about Your use of a given site. Like cookies, web beacons allow Charter and its technology providers to summarize overall usage patterns for our analysis and provide personalized services. Charter does not share or provide personally identifiable information we may collect, such as names, e-mail addresses and phone numbers with our advertisers without Your express permission. However, Charter may provide site usage information linked to your personally identifiable information to law enforcement or others in compliance with valid legal process or in other situations as stated in the "Who Sees the Information Collected by Charter?" paragraphs above.

You may opt-out of the cookies delivered by Charter on its websites by changing the setting on Your browser. Depending on Your privacy settings, please be aware that this may disable all cookies delivered to Your browser, not just the ones delivered by Charter.

Targeted Marketing

Charter wants to make its advertisements for its goods and services more relevant to You. Charter collects and uses non-personal information, such as information about Your visits to our websites and IP address and personally identifiable information, such as information You provide Charter and from Your Charter account (see "What type of information does Charter collect"), to identify and present such tailored advertisements for Charter's goods and services. In addition, Charter may partner with a third-party advertising company who may utilize cookies, web beacons, or other technology to deliver or facilitate the delivery of targeted advertisements about Charter's goods and services on third-party websites. Charter will not provide this partner with access to Your name, address, e-mail address, telephone number or other personally identifiable information. When these targeted online advertisements are based on Your personally identifiable information and displayed on third-party websites, You may opt-out by going to <http://unsubscribe.charter.com> and requesting to have Your privacy preferences updated. After doing so, we recommend that You also remove any unwanted cookies from Your browser. For more information on how to adjust these settings go to Charter.com > Support > Internet Help

What can I do if I believe Charter has violated my rights?

You may enforce the limitations imposed on us by federal law with respect to the collection and disclosure of personally identifiable subscriber information about You, through a civil action under federal law, in addition to other rights and remedies that may be available to You under federal or other applicable laws.

What if I have any questions?

If You have any questions about our privacy protections and policies, please contact Your local customer service office. You can find the phone number for Your local customer service office on Your monthly bill statement or by visiting Charter's website at www.charter-business.com.

IMPORTANT NOTE:

This Policy does not apply to Your use of any Charter website. You should review the privacy policy applicable to each site, which is available under the "Your Privacy Rights" or "Privacy Policy" section of each Charter website. This Policy also does not apply to those residential customers who subscribe to Charter's residential video programming, high-speed internet and/or telephone service. The Residential Subscriber Privacy Policy is available under the "Your Privacy Rights" section of www.charter.com.

Effective: May 4, 2010

Charter Commercial Customer Proprietary Network Information (CPNI) Policy

The following CPNI Policy is in addition to requirements set forth in Charter's Commercial Subscriber Privacy Policy and is subject to some permitted uses and disclosures of your name, address, and/or telephone number outlined in the Privacy Policy. The information that we have (1) relating to the quantity, technical configuration, type, destination, location, and amount of Your use of telephone service, and (2) contained on Your telephone bill concerning the telephone services that You receive is subject to additional privacy protections. That information, when matched to Your name, address, and telephone number is known as "Customer Proprietary Network Information," or CPNI for short. Examples of CPNI include information typically available from details on a customer's monthly telephone bill -- the type of line, technical characteristics, class of service, current telephone charges, long distance and local service billing records, directory assistance charges, usage data, and calling patterns. As a subscriber to our telephone services, You have the right, and Charter has a duty, under federal law to protect the confidentiality of CPNI. Charter offers many communications-related services, such as, for example, Charter Internet services. From time to time we would like to use the CPNI information we have on file to provide You with information about our communications-related products and services or special promotions. Our use of CPNI may also enhance our ability to offer products and services tailored to Your specific needs. We would like Your approval so that we, our agents, affiliates, joint venture partners, and independent contractors may use this CPNI to let You know about communications-related services other than those to which You currently subscribe that we believe may be of interest to You. You do have the right to restrict this use of CPNI.

IF WE DO NOT HEAR FROM YOU WITHIN 30 DAYS OF THIS NOTIFICATION, WE WILL ASSUME THAT YOU APPROVE OUR USE OF YOUR CPNI FOR THE PURPOSES OF PROVIDING YOU WITH INFORMATION ABOUT OTHER COMMUNICATIONS-RELATED SERVICES. YOU HAVE THE RIGHT TO DISAPPROVE OUR USE OF YOUR CPNI, AND MAY DENY OR WITHDRAW OUR RIGHT TO USE YOUR CPNI AT ANY TIME BY CALLING THE TELEPHONE NUMBER REFLECTED ON YOUR MONTHLY BILLING STATEMENT OR 1-888-GET-CHARTER. We will also honor any restrictions applied by state law, to the extent applicable. Charter also offers various other services that are not related to the communications services to which You subscribe. Under the CPNI rules, some of those services, such as Charter video services, are considered to be non-communications related services. Occasionally, You may be asked during a telephone call with one of our representatives for Your oral consent to Charter's use of Your CPNI for the purpose of providing You with an offer for products or services not related to the telephone services to which You subscribe. If You provide Your oral consent for Charter to do so, Charter may use Your CPNI for the duration of such telephone call in order to offer You additional services. Any action that You take to deny or restrict approval to use Your CPNI will not affect our provision to You, now or in the future, of any service to which You subscribe. You may disregard this notice if You previously contacted us in response to a CPNI Notification and denied use of Your CPNI for the purposes described above. Any denial of approval for use of Your CPNI outside of the service to which You already subscribe is valid until such time as Your telephone services are discontinued or You affirmatively revoke or limit such approval or denial. The CPNI Policy above may be required by law to apply to our Voice over Internet Protocol, or IP voice services.

Effective: May 4, 2009



201510304481999

DATA NETWORKING SERVICE AGREEMENT

This Service Agreement ("Agreement") is executed and effective upon the latest date of the signatures set forth in the signature block below ("Effective Date") by and between Charter Fiberlink WA-CCVII, LLC, ("Spectrum Business" or "Charter") with a corporate office at 12405 Powerscourt Drive, St. Louis, Missouri 63131 and City of West Richland, ("Customer") with offices located at 3100 Belmont Blvd, West Richland, WA 99353.

Both parties desire to enter into this Agreement in order to set forth the general terms under which Charter is to provide Customer with Charter's services ("Service" or "Services") to Customer site(s), the scope and description to be specified per site below and/or in a Service order(s) executed by both parties (each instance of site identification and order a "Service Order" or collectively the "Service Orders"), which shall be incorporated in this Agreement upon execution. **This Agreement and each Service Order will be effective only after both parties have signed each document.**

**Spectrum Business is the commercial brand of Charter Communications, Inc.*

SERVICE ORDER

Under the Data Networking Service Agreement

CUSTOMER INFORMATION:

Account Name: City of West Richland

Invoicing Address: _____

Invoicing Special Instructions: _____

SITE-SPECIFIC INFORMATION:

New Renew Change: Order Type: New Customer

Service Location (Address): 3100 Belmont Blvd, West Richland, WA 99353

Service Location Name (for purposes of identification): _____

Service Location Special Instructions: _____

Non-Hospitality or Non-Video

SITE-SPECIFIC INFORMATION:

New Renew Change: Order Type: New Customer

Service Location (Address): 3801 W Van Giessen, West Richland, WA 99353

Service Location Name (for purposes of identification): _____

Service Location Special Instructions: _____

Non-Hospitality or Non-Video

SITE-SPECIFIC INFORMATION:

New Renew Change: Order Type: New Customer

Service Location (Address): 320 N 46th Ave, West Richland, WA 99353

Service Location Name (for purposes of identification): _____

Service Location Special Instructions: _____

Non-Hospitality or Non-Video

Customer Contact Information. To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

	Billing Contact	Site Contact	Technical Contact
Name			
Phone			
Cell			
Email Address			

MONTHLY SERVICE FEES : 3100 Belmont Blvd

Data Services:

*Spectrum Business Bundle: No Bundle **

Base Service Network Miles: Class of Service: Standard CoS \$345.00
MEF Service Types (if applicable): EPLAN
Speed: 60 Mbps (Down/Up)
CPE:

MONTHLY SERVICE FEES : 3801 W Van Giessen

Data Services:

*Spectrum Business Bundle: No Bundle **

Base Service Network Miles: Class of Service: Standard CoS \$275.00
MEF Service Types (if applicable): EPLAN
Speed: 20 Mbps (Down/Up)
CPE:

MONTHLY SERVICE FEES : 320 N 46th Ave

Data Services:

*Spectrum Business Bundle: No Bundle **

Base Service Network Miles: Class of Service: Standard CoS \$275.00
MEF Service Types (if applicable): EPLAN
Speed: 20 Mbps (Down/Up)
CPE:

* If Customer has selected the Spectrum Business Special Offers, the Section 3(i) of the Commercial Terms of Service (for Spectrum Business Bundle) shall apply.

ONE - TIME CHARGES :
ONE - TIME CHARGES \$0.00

2. TOTAL FEES.

Total Monthly Service Fees of \$895.00 are due upon receipt of the monthly invoice.

3. SERVICE PERIOD. The initial Service Period of this Service Order shall begin on the date installation is completed and shall continue for a period of 60 months. Upon expiration of the initial term, this Service Order shall automatically renew for successive one-month terms and Charter may then apply Charter's then-current Monthly Service Fees unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term.

4. EPLAN SERVICES. *Applicable only to EPLAN Data Transport Service.* Customer acknowledges that EPLAN Services consist of multiple end points connecting your designated locations to create a shared-data network. As new service locations are added to your EPLAN Services, the Network Miles will increase. The performance parameter metric Delay is impacted by the total Network Miles. Therefore, the applicable Delay metric is based upon the then-total Network Miles of the total of EPLAN Services provided by Charter to Customer. Customer acknowledges that the applicable Delay metric will be based upon the then-current total Network Miles.

* Your current Mileage Band is shown as Total EPLAN Network Miles in the above Monthly Service Fees table.

5. NO UNTRUE STATEMENTS. Customer further represents and warrants to Charter that neither this Service Order, nor any other information, including without limitation, any schedules or drawings furnished to Charter contains any untrue or incorrect statement of material fact or omits or fails to state a material fact.

6. CONFIDENTIALITY. Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by law. If any unauthorized disclosure is made by Customer and/or its agent or representative, Charter shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Charter shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement.

7. FACSIMILE. A copy sent via fax machine or scanned and e-mailed of a duly executed Agreement and Service Order signed by both authorized parties shall be considered evidence of a valid order, and Charter may rely on such copy of the Agreement and Service Order as if it were the original.

NOW THEREFORE, Charter and Customer agree to the terms and conditions included within this Service Agreement, including the Commercial Terms of Service which follow, and hereby execute this Service Agreement by their duly authorized representatives.

Charter Fiberlink WA-CCVII, LLC

City of West Richland

By: Charter Communications, Inc., its Manager

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

COMMERCIAL TERMS OF SERVICE

1. **AGREEMENT TERM.** This Agreement shall terminate upon the lawful termination of the final existing Service Order entered into under this Agreement.
2. **SERVICE.** Charter shall provide the Services during the Service Period to Customer at the site(s) identified in the Service Order(s). "Service Period" is the time period starting on the date the Services are functional in all material respects and available for use (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).
3. **STANDARD PAYMENT TERMS.** Customer shall pay fees and charges for the Services in the amount specified on the Service Order in accordance with this Agreement. A one-time charge ("OTC") is a nonrecurring fee for construction, Service installation charge(s), repair, replacement, or any other nonrecurring costs or charges. "Equipment" means the components (e.g., any gateway or edge electronic device, node, router, switch, communications lines/cables, etc.) that make up the Network. "Network" means all of the physical elements necessary to provide the Services.
 - (a) **Charges.** Customer shall pay all associated charges with the Service(s), as set forth or referenced in the applicable Service Order(s) or invoiced by Charter. These charges may include, but are not limited to a monthly service fee ("MSF"), nonrecurring fees for construction, installation, repair, replacement or other one-time charges ("OTC"), usage charges such as, pay-per-view charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). MSFs shall be subject to increases attributable to programming, license, copyright, retransmission and/or other similar costs imposed upon Charter, Charter shall provide not less than thirty (30) days prior notice to Customer of any MSF change.
 - (b) **Taxes, Surcharges, and Fees.** Customer shall pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law. A copy of Customer's tax exemption document, if applicable, must be provided to Charter to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees. Charter reserves the right from time to time to change the surcharges for Services under this Agreement to reflect the charges or payment obligations imposed on Charter which Charter is permitted or required under applicable law to pass through to Customer (e.g., universal service fund ("USF") charges, franchise fees etc.).
 - (c) **Change Requests.** Any charges associated with Service and Equipment installations, changes, or additions requested by Customer subsequent to executing a Service Order for the applicable site are the sole financial responsibility of Customer. Charter shall notify Customer, in writing, of any additional OTCs and/or adjustments to MSFs associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to accept such additional charges within three days of receiving such notice shall be deemed a rejection by Customer, and Charter shall not be liable to perform any work giving rise to such charges. For accepted charges, Customer shall be assessed such additional OTCs and/or adjustments of the MSFs either (i) in advance of implementation of the change request or (ii) beginning on Customer's next and/or subsequent invoice(s).
 - (d) **Site Visits and Repairs.** If Customer's misuse, abuse or modification of the Services, Equipment or Network results in a visit to the Customer site for inspection, correction or repair, Charter may charge Customer a site visit fee as well as charges for any resulting Equipment or Network repair or replacement, which may be necessary.
 - (e) **Invoicing Errors.** Customer must provide written notice to Charter of any invoice errors or disputed charges within 30 days of the invoice date on which the errors and/or disputed charges appear for Customer to receive any credit that may be due. Customer must have and present a reasonable basis for disputing any amount charged.
 - (f) **Late Fees.** Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of not more than 1.5% per month or the maximum amount permitted by law.
 - (g) **Non-payment.** If Services are suspended due to late payment, Charter may require that Customer pay all past due charges, a reconnect fee, and one or more MSFs in advance before reconnecting Services.
 - (h) **Collection Fees.** Charter may charge a reasonable service fee for all returned checks and bank card, credit card or other charge card charge-backs. Customer shall be responsible for all expenses, including reasonable attorney fees and collection costs, incurred by Charter in collecting any unpaid amounts due under this Agreement.
 - (i) **Bundled Pricing.** If Customer has selected a Spectrum Business Bundle ("SBB") specifically, the following conditions shall apply:
 - i. In consideration for Customer's purchase of all Services in the SBB and only with respect to that period of time during which Customer continues to purchase such SBB, Charter shall apply a discount to the Services ordered under the applicable Service Order(s). Such discount has been applied to the Services included in Charter's bundled pricing offer and is reflected in the MSF for such Services.

- ii. Upon discontinuation or termination by Customer of any component of a Service of the applicable SBB, the pricing for the remaining Services shall revert to Charter's a la carte pricing for such Services in effect at the time. Termination liability applicable to the Services under this Agreement shall otherwise remain unchanged.

4. SERVICE LOCATION ACCESS AND INSTALLATION.

- (a) Access. Charter will require reasonable access to each service location listed on a Service Order ("Service Location") as necessary for Charter to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns or controls the Service Location(s), Customer grants Charter permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with Charter's assistance, appropriate right of access. If such right of access for Charter is not obtained by either party, then Charter's obligations with respect to such Service Location shall be considered null and void.

- (b) Installation Review; Subsequent Interference. Charter may perform an installation review of each Service Location prior to installation of the Services. Upon request, Customer shall provide Charter with accurate site and/or physical network diagrams or maps of a Service Location, including electrical and other utility service maps, prior to the installation review. If Charter determines that safe installation and/or activation of one or more of the Services will have negative consequences to Charter's personnel or Network or cause technical difficulties to Charter or its customers, Charter may terminate the Service Order effective upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

If during a Service Period, or any renewal thereof, (i) proper operation of Equipment or provision of a Service is no longer unhindered or possible as a result of interference or obstruction due to any cause other than Charter or (ii) such interference/obstruction or its cause may endanger, hinder, harm or injure Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, Charter may terminate the affected Service Order(s) without liability upon written notice to Customer.

- (c) Site Preparation. Customer shall be responsible for necessary preparations at its location(s) for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment or Services. Upon request, Customer shall provide any available electrical, utility service, and/or general physical network diagrams or maps prior to installation or maintenance work to be undertaken by Charter.
- (d) Installation. Charter will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. If

during the course of installation Charter determines additional work is necessary to enable Charter to deliver the Services to the Service Location, Charter will notify Customer of any additional OTCs. If Customer does not agree to pay such OTCs by executing a revised Service Order within five business days of receiving the same, Customer and Charter shall each have the right to terminate the applicable Service Order. Customer shall connect Customer's computer or network to applicable Charter-provided Equipment to enable access to the Services. Charter shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation.

- (e) Ongoing Visits. Charter will need periodic access for inspection, operation and maintenance of the Network. Except in emergency situations, Charter will obtain approval from Customer (not to be unreasonably withheld or delayed) before entering Customer Premises. At Charter's request, Customer, or a representative designated by Customer, will accompany Charter's employees or agents into any unoccupied unit for any purpose relating to the Equipment.

5. EQUIPMENT AND MATERIALS.

- (a) Responsibilities and Safeguards. Except as otherwise provided in this Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party; provided, however, that subject to the indemnification limitations set forth in this Agreement, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage –causing party's negligence or willful misconduct. Customer shall:

- i. Safeguard Equipment against others;
- ii. Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- iii. Not hire nor permit anyone other than personnel authorized by Charter acting in their official capacity to perform any work on Equipment; and
- iv. Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of Charter.

Any unauthorized connection or other tampering with the Services or Equipment shall be cause for immediate suspension of Services, termination of this Agreement and/or legal action, and Charter shall be entitled to recover damages, including the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including reasonable attorney fees. Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services, Charter shall

not be obligated to distribute a signal to the Premises better than the highest quality which can be furnished without additional cost to Charter as a result of such interference, until such time as the interference is eliminated.

- (b) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service and/or Equipment. Charter may suspend the Services upon learning of a breach of security and will attempt to contact Customer in advance, if practicable.
 - (c) Ownership. Notwithstanding any other provision contained in this Agreement to the contrary, all Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment. Customer shall not obtain or acquire title to, interest or right (including intellectual property rights) in the Service or Equipment other than to the limited extent of use rights expressly granted under this Agreement.
 - (d) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of this Agreement and/or Service Order(s) ("Termination"), at the discretion of Charter, Customer shall return, or allow Charter to retrieve, the Equipment supplied by Charter to Customer. Failure of Customer to return, or allow Charter to retrieve, Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to the retail cost of replacement of the unreturned Equipment. Customer shall pay for the repair or replacement of any damaged Equipment, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects, together with any costs incurred by Charter in obtaining or attempting to regain possession of such Equipment, including reasonable attorney fees.
6. **ADMINISTRATIVE WEB SITE.** Charter may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). Charter may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Charter if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and Charter shall only be entitled to rely on all Customer uses of and submission to the

Administrative Web Site as authorized by Customer. Charter shall not be liable for any loss, cost, expense of other liability arising out of any Customer use of the Administrative Web Site, Charter may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.

7. **VIDEO, MUSIC AND CONTENT SERVICE.** This Video, Music and Content Service Section shall only apply if Video, Music and Content Services are included in a Service Order under this Agreement; however, continued use or reception of the Video Services is subject to the provisions of this Agreement.
- (a) Music Rights Fees. Customer is responsible for and must secure any music rights and/or pay applicable fees required by the American Society of Composers, Authors & Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC) or their respective successors, and any other entity, person or governmental authority from which a license is necessary or appropriate relating to Customer's transmission, retransmission, communication, distribution, performance or other use of the Services.
 - (b) Premium and Pay-Per-View. Customer may not: (i) exhibit any premium Services such as HBO or Showtime in any public or common area; (ii) order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment; or (iii) exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to Charter's prior written consent.
 - (c) HD Formatted Programming. If Customer has selected High Definition ("HD") formatted programming, Customer is responsible for provision, installation and maintenance of the receiving equipment and/or facilities necessary for its reception and display. Any failure of Customer to fulfill the foregoing obligation shall not relieve Customer of its obligation to pay the applicable MSFs or OTCs for the HD formatted programming.
 - (d) Provision of Service. Without notice, Charter may preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming comprising, packaging of, line-up applicable to, and/or distribution of its Video Services.
 - (e) Restrictions. Customer shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Services (or any part thereof); or (ii) transmit the Services by any television or radio broadcast or by any other means or use the Services outside the Service Location. Customer acknowledges that such duplication, reproduction or transmission may subject Customer to criminal penalties and/or civil liability and damages under applicable copyright and/or trademark laws. With respect to the music programming comprising a

portion of the Services, Customer shall not, and shall not authorize or permit any other person to, do any of the following unless Customer has obtained a then-current music license permitting such activity: (i) charge a cover charge or admission fee to any Service Location(s) at the time the Services are being performed or are to be performed; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Services; or (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements.

8. INTERNET ACCESS SERVICE. This Internet Access Service Section shall only apply if Internet Access Services are included in a Service Order under this Agreement; however, continued use of the Internet Service shall be subject to the provisions of this Agreement.

(a) Customer shall (i) maintain certain minimum equipment and software to receive the Service (see www.business.spectrum.com (or the applicable successor URL) for the current specifications); (ii) ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Agreement, (iii) be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Internet Services.

(b) Internet Service Speeds. Charter shall use commercially reasonable efforts to achieve the Internet speed selected by Customer on the Service Order, however, actual Internet speeds may vary. Many factors affect speed including, without limitation, the number of workstations using a single connection.

(c) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by Charter are the property of Charter. Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses.

(d) Changes of Address. Charter may change addressing schemes, including e-mail and IP addresses.

(e) No Liability for Risks of Internet Use. The Service, Charter's network and the Internet are not secure, and others may access or monitor traffic.

(f) No Liability for Purchases. Customer shall be solely liable and responsible for all fees or charges for online services, products or information. Charter shall have no responsibility to resolve disputes with other vendors.

(g) Blocking and Filtering. Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. Except to the extent set forth in the Supplemental Spectrum Business Security Service Section, Charter shall not be responsible in any manner for the effectiveness of these blocking and

filtering technologies. Charter does not warrant that others will be unable to gain access to Customer's computer(s) and/or data even if Customer utilizes blocking and filtering technologies, nor does Charter warrant that the data or files will be free from computer viruses or other harmful components. Charter has no responsibility and assumes no liability for such acts or occurrences.

(h) Acceptable Use Policy. Customer shall comply with the terms of Charter's Acceptable Use Policy ("AUP") found at www.business.spectrum.com (or the applicable successor URL) and that policy is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and shall be bound by its terms as they may be amended, revised, replaced, supplemented or otherwise changed from time-to-time by Charter with or without notice to Customer. Charter may suspend Service immediately for any violation of the Charter AUP.

9. SUPPLEMENTAL SERVICES. The following Subsections shall only apply in the event the referenced supplemental service has been selected by and are being delivered to Customer. The supplemental services (also "Services") may be made up of software and hardware components. Charter shall ensure the supplemental services are operational and updated from time-to-time based on manufacturer-sent updates. Except to the limited extent described in the foregoing sentence, Charter makes no warranties of any kind (express or implied) regarding the supplemental services and hereby disclaims any and all warranties pertaining thereto (including implied warranties of title, noninfringement, merchantability, and fitness for a particular purpose). Charter does not have title to and is not the manufacturer of any software or hardware components of the supplemental services nor is Charter the supplier of any components of such software or hardware. Customer shall return or destroy all software components provided to Customer upon the termination of the applicable Service Order, and in the case of the destruction thereof, shall, upon request, provide Charter with certification that such components have been destroyed. **IN NO EVENT SHALL CHARTER BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY SUPPLEMENTAL SERVICES.**

(a) Hosting. This Hosting Service subsection shall only apply if one of Charter's Hosting Services ("Hosting") is included as part of the Service in a Service Order under this Agreement. Charter will provide to Customer Hosting Service in accordance with the specifications associated with the plan Customer has selected on the Service Order.

i. Hosting Software. The Hosting Service will permit access to a variety of resources available from selected third parties, including developer tools, communication forums and product information (collectively, "Hosting Software"). The Hosting Software, including any updates, enhancements, new features, and/or the addition of any new Web properties, may be subject to

and Customer shall comply with applicable product use rights/end user license agreements between such third parties and Customer. Without abrogating or limiting anything set forth in the Sections: Internet Access Service, this Section, No Third-Party Support, Customer Use or Performance, Charter (not the manufacturer) shall provide technical support for Hosting Service, but version changes of any such software compatibility and/or suitability with any other Customer provided software shall be Customer's responsibility. Customer hereby consents to the disclosure to the provider of Third Party Software, of Customer's name and any other necessary information for the limited purpose of licensing rights. Customer shall not use Hosting Service for or in connection with any high risk use or activity such as aircraft or other modes of human mass transportation, nuclear, or chemical facilities, or Class III medical devices under the Federal Food, Drug, and Cosmetic Act. **COPYING OR REPRODUCTION OF THE HOSTING SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS APPROVED IN WRITING BY CHARTER.**

- ii. **Domain Names.** Customer shall be solely responsible for registering for or renewing a desired domain name. Charter does not guarantee that Customer will be able to register or renew a desired domain name.
- iii. **Specification Limitations.** Individual websites may not at any time exceed the Hosting specifications identified on the applicable Service Order. If Customer's Hosting account exceeds the applicable specifications or is adversely impacting Charter's network or server(s), Charter may (i) contact Customer to resolve the issues; or (ii) if Customer has exceeded the then-applicable specifications in any given month, upgrade account on the next available billing cycle to the next service level tier or suspend or terminate the Hosting Service.

Notwithstanding anything to the contrary, if Customer's use of the Hosting Service is causing an adverse impact on Charter's network or servers, Charter may suspend or terminate the Hosting Service without notice.
- iv. **Limitation of Charter-provided Services.** Certain services are not provided by Charter as part of the Hosting Service (e.g., Charter does not provide nor offer webpage creation, development, design or content services).
- v. **Hosting Fees.** The applicable Service Order sets forth the MSFs for the Hosting Service. Customer is responsible for payment whether or not the hosting platform is used and whether or not it

functions properly, unless such failure is caused by Charter.

- vi. **Content Liability and Use Restrictions.** Charter exercises no control over the content of the information passing through Customer's site(s) and it is Customer's sole responsibility to ensure that Customer and Customer's users use of the Hosting Service complies at all times with all applicable laws and regulations and the AUP. Charter shall have the right to disclose any and all available information collected from Customer to law enforcement authorities upon written request by such authorities. Information that may be disclosed includes IP addresses, account history, and files stored on servers used to provide the Hosting Service. If Customer engages in any of the following prohibited activities, Charter shall have the right to suspend or terminate the Hosting Services and/or this Agreement:
 - 1. The hosting of unlicensed software.
 - 2. Use of software or files that contain computer viruses or files that may harm user's computers;
 - 3. Any attempt or actual unauthorized access by Customer or through Customer's equipment to any Charter website or the website of any Charter customer;
 - 4. The collection or any attempt to collect personally identifiable information of any person or entity without his, her or its express written consent. Customer shall maintain records of any such written consent throughout the term of this Agreement and for three years thereafter;
 - 5. Any action or inaction which is harmful or potentially harmful to the Charter server structure;
 - 6. Running a banner exchange, free adult thumbnail gallery post and/or free adult image galleries on your website; or
 - 7. Inclusion of sites with material, links, or resources for hacking, phreaking, viruses, or any type of site that promotes or participates in willful harm to Internet sites, users or providers.
- vii. **Impositions on Customer's End Users.** Customer is responsible for charging and collecting from its end users any and all applicable taxes. If Customer fails to impose and/or collect any tax from its end users then, as between Charter and Customer, Customer shall be liable for such uncollected tax and any interest and penalty assessed thereon with respect to the uncollected tax. Customer shall indemnify and hold the Charter Indemnified Parties (defined below) harmless for any costs incurred or taxes or fees paid due to actions taken by the applicable taxing

authority to collect any such tax from Charter due to Customer's failure to comply with this Section.

(b) **SB Security Service – Desktop and Managed.** Charter's managed security service, SB Managed Security, and desktop security service, SB Desktop Security (collectively, "**SB Security Service**") are each made up of software and hardware components. Charter shall ensure that the selected SB Security Service(s) is/are operational and updated from time-to-time based on manufacturer-updates. Charter is not the manufacturer of any software or hardware components of either Spectrum Business Security Service nor is Charter the supplier of any components of such software or hardware.

(c) **SB Back-Up Service.** For Charter's data storage service ("**SB Back-up**"), Customer shall be assessed applicable OTCs and MSFs which shall be based upon Customer's selection of version retention quantity and storage tier (e.g., five gigabits). The version retention quantity selected specifies the maximum number of separate versions of a document that will be retained (running in sequential order based on the last version created). For example, if Customer has selected "seven" as the version retention quantity, Customer will be able to access the last seven versions of a particular document. In addition to OTCs and MSFs, monthly storage overage fees shall apply each month Customer exceeds the respective subscribed storage level. Additional OTCs and MSFs also apply to Customer-requested media and/or professional services.

Charter is not the manufacturer or supplier of any SB Back-Up software components. Customer shall be responsible for updating SB Back-Up from time-to-time based on updates provided by the software manufacturer, and any failure of Customer to perform such updates shall relieve Charter from any responsibility to ensure that SB Back-Up remains operational.

If the functionality of SB Back-Up cannot be maintained by Charter, Charter shall have the right to discontinue providing the Service immediately and Charter shall credit Customer's account for any pre-paid MSFs attributable to the Service, except where such lack of functionality is caused by Customer or any end user gaining access to the Service through Customer's facilities, equipment, or point of access. Customer shall not be relieved of its responsibility to continue to pay for SB Back-Up in the event SB Back-Up does not function properly as a result of Customer's failure to install and configure the software, activate the service or install manufacturer-provided updates. **CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT (1) IT IS CUSTOMER'S SOLE RESPONSIBILITY TO CREATE AND RETAIN THE SB BACK-UP PASSWORD THAT IS NECESSARY FOR ACCESS TO ANY DATA STORED VIA THE SB BACK-UP SERVICE AND (2) CHARTER HAS NO ACCESS TO AND DOES NOT KNOW NOR KEEP ANY RECORD OF THE PASSWORD CREATED BY CUSTOMER. FAILURE BY CUSTOMER TO RETAIN CUSTOMER'S SB BACK-UP PASSWORD SHALL RESULT IN COMPLETE LOSS**

OF ACCESSIBILITY TO DATA STORED VIA SB BACK-UP.

10. DATA NETWORKING (aka "DATA TRANSPORT"). Charter will provide Data Networking Services for Customer locations connected over coaxial and/or fiber-optic cable. Connectivity is established between two or more customer end-points under a unique customer topology. Charter will install the coaxial or fiber-optic cable into each Customer site as listed in the Service Order(s). Charter will also supply an edge device at each site that will be capable of receiving the Service as specified in the Service Order(s).

i. Charter will terminate fiber-optic cable on a patch panel or provide a coaxial outlet at an agreed upon minimum point of penetration (MPOP) up to 50 feet within each facility (unless otherwise specified in the Service Order). If the hand-off point of the Data Networking Service at Customer's premise exceeds this distance, Customer may be responsible for any additional costs for internal wiring.

ii. Customer will make available to Charter a building ground connection at each location that meets current electrical codes for the placement of a fiber-optic patch panel and/or coaxial outlet. Unless otherwise specified in the applicable Service Order, it is recommended that Customer provide a separate 20 Amp 110V AC circuit for the edge electronics, which is powered by a UPS system. Customer-supplied routing will be necessary for communication between each Service Location.

iii. If Customer has selected "Monitoring" for a Service, Charter shall monitor the Services 24 hours a day, seven days a week. Customer shall contact the Enterprise and Strategic Marketing Network Operations Center at 1-866-603-3199 or subsequent number to report Data Networking Service problems. Additional fees may apply for Monitoring over coaxial cable.

iv. In the event Customer is receiving Data Networking Services: Optical Ethernet EP-LAN or EVP-LAN, Charter recommends that the Customer place a router at each ingress/egress point (on Customer's side of the demarcation), which will reduce the number of customer media access control ("MAC") addresses which must be learned by Charter's network (aka 'masking') in order to be conveyed. In the event Customer chooses not to place a router on its side of the demarcation, Charter will place limitations on the number of MAC addresses that will be learned by Charter's network and, in circumstances where the customer exceeds these limitations, some Customer network traffic will be denied from entering Charter's network. Additional monthly fees will be applied if the number of MAC addresses on a given EVC (Ethernet Virtual Connection) exceeds 500, and Charter will not allow more than 1000 MAC addresses onto the network.

11. NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT. Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware

and/or software. For purposes of this Agreement the Hosting Software shall be considered third party software. Charter does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Charter assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third party software, any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Charter has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, Charter should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at Charter's discretion and at then-current commercial rates and terms.

12. CUSTOMER USE. Customer shall not re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of Charter. Customer shall not use or permit third parties to use the Service(s), including the Equipment and software provided by Charter, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall not interfere with other customers' use of the Equipment or Services or disrupt the Charter Network, backbone, nodes or other Services. Violation of any part of this Section is grounds for immediate Termination of this Agreement and/or all Service Orders in addition to any other rights or remedies Charter may have.

13. PERFORMANCE. Charter will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Charter's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Charter to perform its obligations under this Agreement, and Customer will not hold Charter at fault for loss of Customer revenue or lost employee productivity due to Service outages.

14. DEFAULT; SUSPENSION OF SERVICE; TERMINATION. No express or implied waiver by Charter of any event of noncompliance shall in any way be a waiver of any further subsequent event of noncompliance. Nothing herein, including Termination, shall relieve Customer of its obligation to pay Charter all amounts due.

(a) Default by Customer. Customer shall be in default under this Agreement if Customer does one or more of the

following things (each individually to be considered a separate event of default) and Customer fails to correct each such noncompliance within 30 days of receipt of written notice ("Default"):

- i. Customer is more than 30 days past due with respect to any payment required hereunder;
- ii. Customer otherwise has failed to comply with the terms of this Agreement or any other Service Order(s) incorporated herein.

(b) Termination for Convenience. Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order, or this Agreement in whole or part, at any time upon thirty (30) days prior written notice to Charter, and subject to payment of all outstanding amounts due, any applicable Termination Charges, and the return of any Charter Equipment.

(c) Charter's Right to Terminate and Termination Charge. If Customer is in Default, Charter shall have the right, at its option, without prior notice, and in addition to any other rights of Charter expressly set forth in this Agreement and any other remedies it may have under applicable law to:

- i. Immediately suspend Services to Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Charter any amounts due under this Agreement (e.g., the MSFs) as if such suspension of Services had not taken place;
- ii. Terminate the Services, this Agreement or the applicable Service Order(s).

If Termination is due to Customer' Default or is elected/done by Customer for convenience, Customer must pay Charter a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to 50% of the unpaid balance of the MSFs that would have been due throughout the applicable Service Period plus 100% of (1) the outstanding balance of any and all OTCs plus (2) any and all previously waived OTCs.

(d) Default by Charter. Charter shall be in default under this Agreement if Charter fails to comply with the terms of this Agreement and/or any or all of the applicable Service Order(s), and Charter fails to remedy each such noncompliance or occurrence within 30 days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance ("Charter Default").

(e) Customer's Right to Terminate and Termination Charge.

- i. In the event Customer wishes to terminate a Service without cause, Customer shall be liable for the same Termination Charges as described above.
- ii. Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of Charter Default by Charter is

limited to Services provided under the applicable Service Order(s) or this Agreement, if such Charter Default is not so limited.

- iii. If Termination is due to a Charter Default, Charter shall reimburse Customer for any pre-paid, unused MSFs attributable to such terminated Service Order(s). In addition, if Termination is due to Charter Default within one year of the applicable Turn-Up Date, Charter shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any OTC that has already been paid by Customer to Charter relative to Service at the sites covered by the terminated Service Order. This Termination Charge shall be equal to the product of a) the number of months (including partial months) remaining in the initial 12 months of the initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of OTCs paid to date and the denominator is 12.

15. LIMITATION OF LIABILITY. PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

- (a) Limited Warranty. At all times during the Service Period, Charter warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Customer. Charter does not warrant that Services will be error free.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, CHARTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT, EXCLUDING OTCS, PAID OR PAYABLE BY CUSTOMER TO CHARTER FOR THE APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY

PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Customer must be made within 30 days after the applicable Services have been performed. Charter's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (b) Content. Any content that Customer may access or transmit through any Service is provided by independent content providers, over which Charter does not exercise and disclaims any control. Charter neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. Charter specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and its authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Charter assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.
- (c) Damage, Loss or Destruction of Software Files and/or Data. Customer uses the Services and Equipment supplied by Charter at its sole risk. Charter does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind. Charter assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. Charter does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.
- (d) Unauthorized Access. If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate termination of Customer's Service by Charter without liability for Charter. Charter is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold harmless and indemnify the Charter Indemnified Parties from and against any claims, losses, or damages arising from such use. Charter is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing Customer's computers, its internal network and/or the Network through Customer's equipment.

(e) **Force Majeure Event.** Neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond such party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services. Changes in economic, business or competitive condition shall not be considered a Force Majeure Event.

16. INDEMNIFICATION. In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement and as permissible under applicable law, Customer at its own expense, shall indemnify, defend and hold harmless Charter and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Charter Indemnified Parties, including reasonable attorney fees and court costs incurred by Charter Indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Charter Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Charter Indemnified Parties in such case.

17. TITLE. Title to the Equipment shall remain with Charter during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer premises free and clear of all liens, encumbrances and security interests. Upon termination of Service or expiration of a Service Order's Service Period for a specific site, Charter shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. Charter shall have the right to remove the Equipment and all components within 60 days after such termination.

18. COMPLIANCE WITH LAWS. Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Charter to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.

19. PRIVACY. Charter treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Charter also maintains a Privacy Policy with respect to the Services in order to protect the

privacy of its customers. The Privacy Policy may be found on Charter's website at www.business.spectrum.com. The Privacy Policy may be updated or modified from time-to-time by Charter, with or without notice to Customer.

20. GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS. Customer represents to Charter (a) that Customer has the authority to execute, deliver and carry out the terms of this Agreement and associated Service Orders and (b) that any person who accesses any Services through Customer's equipment or through the Network facilities in Customer's Premises will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Agreement. Customer is responsible for ensuring its users of the Service comply with the terms of this Agreement. Customer shall be responsible for all access to and use of the Service by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until informs Charter of any breach of security.

21. NOTICES. Any notices to be given under this Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:
Charter Communications
ATTN: Commercial Contracts Management
Dept: Corp. - Legal Ops
12405 Powerscourt Drive
St. Louis, MO 63131

Notices to Customer shall be sent to the Customer billing address.

Each party may change its respective address (es) for legal notice by providing notice to the other party.

22. MISCELLANEOUS.

(a) **Entire Agreement; Signatures.** This Agreement and any related, executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. This Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.

(b) **No Amendments, Supplements or Changes.** Except for pricing terms as set forth in this Agreement, this Agreement and the associated executed Service Order(s)

may not be amended, supplemented or changed without both parties' prior written consent.

- (c) No Assignment or Transfer. The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld; provided, however, that without Customer's consent, Charter may assign this Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with Charter, or to its successor-in-interest if Charter sells some or all of the underlying communications system.
- (d) Severability. If any term, covenant, condition or portion of this Agreement or any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or any related, executed Service Order(s) shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (e) Governing Law. The law of the state in which the Services are provided (excluding its conflicts of law provisions) shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. **IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND CHARTER EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.**
- (f) Both parties had the opportunity to review and participate in the negotiation of the terms of this Agreement and the Service Order(s) and, accordingly, no court construing this Agreement and any Service Order(s) shall construe it more stringently against one party than against the other.
- (g) No Third Party Beneficiaries. The terms of this Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Agreement, and the consideration provided by each party hereunder only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the parties hereto.
- (h) Waiver. Except as otherwise provided herein, the failure of Charter to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision

**CHARTER COMMERCIAL SUBSCRIBER PRIVACY
POLICY & COMMERCIAL CUSTOMER
PROPRIETARY NETWORK INFORMATION (CPNI)
POLICY**

**These policies are provided with your Agreement for your information and convenience.*

Charter takes the protection of our subscribers' ("You," "Your" or "Customer(s)") privacy seriously. The following privacy policy ("Policy") applies to those Charter commercial Customers who subscribe to Charter's commercial video programming, high-speed Internet, data networking and/or telephone service (individually and collectively the "Service") and describes the Customer information that Charter collects and retains, how Charter uses and protects it, the limited cases where Charter may disclose some or all of that information, and Your rights under the Cable Communications Policy Act of 1984 ("Cable Act"). Depending upon the Charter Service to which You subscribe, parts of this Policy may not be applicable to You. Charter values Your privacy and considers all personally identifiable information contained in our business records to be confidential. Please review this Policy and, if You are a Charter telephone service subscriber, the attached Customer Proprietary Network Information ("CPNI") Policy (the "CPNI Policy"), in conjunction with Your service agreement, terms of service and acceptable use policy ("Your Service Agreement"). Charter will provide You copies of this Policy annually and the CPNI Policy at least once every two years, whether or not we have revised the policies. We may modify this Policy at any time. The most current version of this Policy can be found on www.charter.com. If You find the changes unacceptable and if those changes materially and adversely impact Your use of the Service, You may have the right to cancel Your Service under Your Service Agreement. If You continue to use the Service following the posting of a revised Policy, we will consider that to be Your acceptance of and consent to the Policy as revised.

What type of information does Charter collect?

Charter collects both personally identifiable information and non-personal information about You when You subscribe to our Service. Charter uses its system to collect personally identifiable information about You: (a) when it is necessary to provide our services to You; (b) to prevent unauthorized

reception of our services; and (c) as otherwise provided in this Policy. Charter will not use the system to collect Your personally identifiable information for other purposes without Your prior written or electronic consent. Charter also collects personally identifiable and non-personal information about You when You voluntarily provide information to Charter, as may be required under applicable law, and from third parties, as described in this Policy.

Personally identifiable information is any information that identifies or can potentially be used to identify, contact, or locate You. This includes information that is used in a way that is personally identifiable, including linking it with identifiable information from other sources, or from which other personally identifiable information can easily be derived, including, but not limited to, name, address, phone or fax number, email address, spouses or other relatives' names, drivers license or state identification number, financial profiles, tax identification number, bank account information, and credit card information. Personally identifiable information does not include information that is collected anonymously (i.e., without identification of the individual or business) or demographic information not connected to an identified individual or business.

Non-personal information, which may or may not be aggregated information about our Customers and may include information from third parties, does not identify individual Customers. Charter may combine third party data with our business records as necessary to better serve our Customers. Examples of non-personal information include IP addresses, MAC addresses or other equipment identifiers, among other data. Our systems may automatically collect certain non-personal information when You use an interactive or transactional service. This information is generally required to provide the service and is used to carry out requests a Customer makes through a remote control or set-top box.

We may also collect and maintain information about Your account, such as billing, payment and deposit history; maintenance and complaint information; correspondence with or from You, information about the service options that You have chosen; information about the equipment You have, including specific equipment identifiers; and information about Your use of our services, including the type, technical arrangement, quantity, destination and amount of use of certain of those services, and related billing for those services.

Charter also collects customer-provided customization settings and preferences. By using our service, You consent to our collection of this information and other information communicated to Charter such as correspondence, responses to surveys or emails, information provided in chat sessions with us, registration information, or participation in promotions or contests.

If You subscribe to our video service, then in certain of our systems, our set-top boxes automatically collect information that may be used to determine which programs are most popular, how many set-top boxes are tuned to watch a program to its conclusion and whether commercials are being watched, as well as other audience-measurement focused information. Our processes are designed to track this information and audience statistics on an anonymous basis. Information such as channel tuning, the time the channel is changed, and when the set-top box is "on" or "off" is collected at a secure database in an anonymous format. Charter, or our contractors or agents, may from time to time share the anonymous information with our advertisers, content providers, or other third parties with whom we have a relationship. We will not provide our advertisers, content providers, or these other third parties with personally identifiable information about You unless we have received Your consent first, except as required by law. (See "Who sees the information collected by Charter?")

Why does Charter collect personally identifiable information?

Charter collects and uses personally identifiable information to:

- properly deliver our Services to You;
- provide You with accurate and high quality customer service;
- perform billing, invoicing and collections;
- provide updates, upgrades, repairs or replacements for any of our service-related devices or software used in providing or receiving services;
- protect the security of the system, prevent fraud, detect unauthorized reception, use, and abuse of Charter's Services or violations of our policies or terms of service;
- keep You informed of new or available products and services;

- better understand how the Service is being used and to improve the Service;
- manage and configure our device(s), system(s) and network(s);
- maintain our accounting, tax and other records; and
- comply with applicable federal and state laws and regulations, as well as for the general administration of our business.

You acknowledge and agree that all communications between You and Charter may be recorded or monitored by Charter for quality assurance or other purposes.

If You use an interactive or transactional service, for example, responding to a survey or ordering a pay-per-view event, the system will collect certain additional personally identifiable information, such as account and billing information or Customer-provided locale and service preferences, to properly bill You for the services purchased and to provide You with a more personalized experience. In addition, certain information such as Your connections to our system is automatically collected to, for example, make it possible for Your digital boxes to receive and process the signals for the services You order.

Charter may also collect personally identifiable information from third parties to enhance our customer database for use in marketing and other activities. Charter also collects personally identifiable information from third parties to verify information You have provided us and collects personally identifiable information from credit reporting agencies to, for example, determine Your creditworthiness, credit score, and credit usage. Charter also may maintain research records containing information obtained through voluntary subscriber interviews or surveys.

If You subscribe to our high-speed Internet service, Charter transmits personally identifiable and non-personal identifiable information about You over the Service when You send and receive e-mail and instant messages, transfer and share files, make files accessible, visit websites, or otherwise use the Service and its features. Our transmission of this information is necessary to allow You to use the Service as You have chosen and to render the Service to You.

Who sees the information collected by Charter?

Charter will only disclose personally identifiable information to others if: (a) Customer provides written or electronic consent in advance, or (b) it is permitted or required under federal or applicable state law. Specifically, federal law allows Charter to disclose personally identifiable information to third parties:

- when it is necessary to provide Charter's services or to carry out Charter's business activities;
- as required by law or legal process; or
- for mailing list or other purposes, subject to Your ability to limit this last type of disclosure.

To provide services and carry out our business activities, certain authorized people have access to Your information, including our employees, entities affiliated through common ownership or control with Charter and third parties that provide and/or include: billing and collection services; installation, repair and customer service subcontractors or agents; program guide distributors; software vendors; program and other service suppliers for audit purposes; marketers of Charter's products and services; third party auditors; our attorneys and accountants; and/or strategic partners offering or providing products or services jointly or on behalf of Charter. The frequency of disclosures varies according to business needs, and may involve access on a regular basis. Charter restricts third parties' use of Your information to the purposes for which it is disclosed and prohibits third parties from further disclosure or use of Your personally identifiable information obtained from us, whether for that third party's own marketing purposes or otherwise.

Unless You object in advance, federal law also allows Charter to disclose through "mailing lists," personally identifiable information, such as Your name, address and the level of Your service subscription, to non-affiliated entities, including advertisers and marketing entities, for non-service related purposes, including product advertisement, direct marketing and research. Under no circumstances will Charter disclose to these advertising entities the extent of Your viewing habits or the transactions You make over the system. Charter, or our contractors or agents, may from time to time share non-personal and/or aggregate information such as the number of Service subscribers who match certain statistical profiles (for example, the number of subscribers in various parts of the

country) with our advertisers, content providers, or other third parties with whom we have a relationship.

We may provide anonymous data to third parties who may combine it with other information to conduct more comprehensive audience analysis for us and for television advertisers. This data helps program networks and cable operators decide on which programs, channels, and advertising to carry. Charter may also use that information to distribute targeted advertising to You without having disclosed any of Your personally identifiable information to the advertisers. These advertisements may invite interactive or transactional follow-up from You. By using any of Charter's interactive services, You consent to our collection of this additional information. Unless You consent first or except as required by law, only anonymous information is disclosed to audience measurement services.

As part of its business activities, if Charter enters into a merger, acquisition, or sale of all or a portion of our assets, Charter may transfer Customers' personally identifiable and non-personal information as part of the transaction.

If You subscribe to our telephone service, Your name, address and/or telephone number may be transmitted via Caller ID, published and distributed in affiliated or unaffiliated telephone directories, and available through affiliated or unaffiliated directory assistance operators. We take reasonable precautions to ensure that non-published and non-listed numbers are not included in the telephone directories or directory assistance services, although we cannot guarantee that errors will never occur. Please note that Caller ID blocking may not prevent the display of Your name and/or telephone number when You dial certain business numbers, 911, 900 numbers or toll-free 800, 866, 877 or 888 numbers.

If allowed by and after complying with any federal law requirements, Charter may disclose personally identifiable information about Customer to representatives of government or to comply with valid legal process, except as provided below, disclosures shall not include records revealing Customer's selection of video programming. Disclosures to representatives of government may be made pursuant to an administrative subpoena, warrant, court order, our reasonable discretion in cases of emergency or serious physical injury, or other permitted means. In these situations, Charter may be

required to disclose personally identifiable information about a Customer without Customer's consent and without notice to the Customer. Law enforcement agencies may, by federal or state court order, and without notice to You, obtain the right to install a device that monitors Your Internet and e-mail use, including addresses of email sent and received and in some cases the content of those communications; and/or Your use of our telephone service, including listings of incoming and outgoing calls and in some cases the content of those calls. In some instances where there are valid legal requests for or orders for disclosure of Your information, we may notify You of the requests or orders and then it may be up to You to object or take specific action to prevent any disclosures pursuant to those requests or orders.

Where a governmental entity is seeking personally identifiable information of a Customer who subscribes to Charter's video services only or records revealing Customer's selection of video programming, the Cable Act requires a court order and that the video subscriber be afforded the opportunity to appear and contest in a court proceeding relevant to the court order any claims made in support of the court order. At such a proceeding, the Cable Act requires the governmental entity to offer clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the prosecution of the case. Except in certain situations (such as with respect to those who owe, or are owed, welfare or child support) state welfare agencies may obtain the names, addresses, and certain other Customer information as it appears in Charter's subscriber records under the authority of an administrative subpoena.

We may also use or disclose personally identifiable information about You without Your consent (a) to protect our Customers, employees, or property, (b) in emergency situations, (c) to enforce our rights in court or elsewhere, or directly with You, for violations of service terms, conditions or policies and/or (d) in order to comply with the Digital Millennium Copyright Act or as otherwise required by law, for example, as part of a regulatory proceeding.

Note to California Customers Regarding Your Privacy Rights:

California law requires Charter provide to certain Customers, upon request, certain information regarding the sharing of personally identifiable information to third parties for their direct marketing purposes. As mentioned above, Charter does not share personally identifiable information with unaffiliated third parties for their own direct marketing purposes. However, Charter may share personally identifiable information with some same-branded affiliates for those affiliates' direct marketing purposes (and, if a Charter telephone subscriber, then subject to the restrictions in the attached CPNI Policy). If You make a request by phone or on-line, Charter will provide You with the number of its same-branded affiliates in California and a list of personal information that it may have shared with some or all such affiliates.

Can I prohibit or limit Charter's use and disclosure of my personally identifiable information?

If You do not want Your name, address, level of service or other personally identifiable information disclosed to third parties in a "mailing list" as explained above, please register this preference at <http://unsubscribe.charter.com> or by contacting us by telephone at 1-888-GET-CHARTER. Customers of our video service cannot opt-out of the collection of audience measurement data.

Also, if You do not want to receive marketing messages (e.g., phone calls, emails, and direct mail) from Charter, You may call 1-888-GET-CHARTER or visit <http://unsubscribe.charter.com> and make a request to have Your privacy preferences updated. Please note that such request will not eliminate all telephone calls, emails or direct mail sent to You from Charter as Charter may still continue to send non-marketing account-related messages to You.

How long does Charter maintain personally identifiable information?

Charter will maintain personally identifiable information about You as long as You are a subscriber to Charter's Service and as long as necessary for the purpose for which it was collected. If You are no longer a subscriber to any Charter Service and the information is no longer necessary for the purpose for which it was collected, Charter will only keep personally identifiable information as long as necessary to

comply with laws governing our business. These laws include, but are not limited to, tax and accounting requirements that require record retention. Charter will also maintain personally identifiable information to satisfy pending requests for access by a subscriber to his/her information or pursuant to a court order. Charter will destroy Customers' personally identifiable information when the information is no longer necessary for the purpose for which it was collected, when there are no longer pending requests for such information, and when it is no longer necessary to retain the information under applicable laws.

How does Charter protect customer information?

Charter takes the security of our Customers' personally identifiable information seriously. Charter takes such actions as are reasonably necessary to prevent unauthorized access by entities other than Charter to personally identifiable information. Charter uses security and/or encryption technology to secure certain sensitive personally identifiable information when it collects such information over the system. Charter restricts access to its customer database and secures the content by use of firewalls and other security methods. Charter limits access to databases containing Customers' personally identifiable information to those specifically authorized employees and agents of Charter and other parties identified in the "Who sees the information collected by Charter?" section above. However, we cannot guarantee that these practices will prevent every unauthorized attempt to access, use, or disclose personally identifiable information.

You need to help protect the privacy of Your own information. You and others who use Your equipment must not give identifying information to strangers or others whom You are not certain have a right or need to the information. You also must take precautions to protect the security of any personally identifiable information that You may transmit over any home networks, wireless routers, wireless fidelity (WiFi) networks or similar devices by using encryption and other techniques to prevent unauthorized persons from intercepting or receiving any of Your personally identifiable information. You are responsible for the security of Your information when using unencrypted, open access or otherwise unsecured networks in Your home. For more information on things You can do to help protect the privacy of Your own information, visit www.charter.com/security or www.OnGuardOnline.gov.

If Your organization is subject to the Health Insurance Portability and Accountability Act (HIPAA), you can learn how HIPAA applies to Your Charter services by reviewing our

[HIPAA Policy](#), which is incorporated by references into this Policy.

Can I see the information that Charter collects about me?

You have a right under the Cable Act to see Your personally identifiable information that Charter collects and maintains. The information Charter has about its Customers is maintained at the local offices where service is provided, in our systems, and at our corporate headquarters. If You would like to see Your information, please send a written request to Your local Charter office. To find the location of Your local office please visit www.charter-business.com. Charter will be glad to make an appointment for You to come in to Your local office during regular business hours. If Your review reveals an error in our records, Charter will correct it. You may also be able to access certain information about You or Your account by telephone or online at www.charter-business.com, depending upon the information You have provided.

Does Charter protect children's privacy?

Charter is concerned about children's privacy and does not knowingly collect personally identifiable information from anyone under the age of 13 over its Service unless otherwise expressly identified. At those specific parts of our Service, Charter will provide a special notice or other information describing the additional privacy protections that may apply. Charter urges children to always obtain a parent or legal guardian's permission before sending any information about themselves over the Internet and urges parents and legal guardians to be vigilant regarding children's Internet usage. Other services or web pages accessed through Charter's Service may have different policies on collection of information pertaining to children and You should consult their privacy policies and read their notices if You have any concerns about the collection or use of such information by those entities.

How does Charter use cookies and web beacons?

A cookie is a small file that stores information in Your browser on Your computer. Charter places cookies in Your browser that contain some of the information You provide when You

register with us and when You set up a personalized service or customize Your settings and preferences on our websites. Charter does not store highly sensitive personal information such as Your password, e-mail address or credit card number in cookies. Cookies enable Charter to summarize overall usage patterns for analysis. In addition, Charter uses cookies to provide personalized services such as saving Your astrological sign on Charter.net. Charter may also use cookies to provide a more useful online experience, such as allowing You to quickly enter a sweepstakes if You're already logged on.

A web beacon is an invisible graphic on a web page that is programmed to collect non-personally identifiable information about Your use of a given site. Like cookies, web beacons allow Charter and its technology providers to summarize overall usage patterns for our analysis and provide personalized services. Charter does not share or provide personally identifiable information we may collect, such as names, e-mail addresses and phone numbers with our advertisers without Your express permission. However, Charter may provide site usage information linked to Your personally identifiable information to law enforcement or others in compliance with valid legal process or in other situations as stated in the "Who Sees the Information Collected by Charter?" paragraphs above.

You may opt-out of the cookies delivered by Charter on its websites by changing the setting on Your browser. Depending on Your privacy settings, please be aware that this may disable all cookies delivered to Your browser, not just the ones delivered by Charter. Because a "Do Not Track" protocol has not yet been finalized, Charter's information collection and disclosure practices, and the choices that we provide to consumers, will continue to operate as described in this Privacy Policy, whether or not a Do Not Track signal is received.

Targeted Advertisements

Charter wants to make the advertisements it provides more relevant to You. Charter collects and uses non-personal information, such as information about your visits to our websites, ZIP Code, IP address and information from third parties. We may also combine that information with personally identifiable information, such as information You provide Charter and from Your Charter account. (See "What type of Information does Charter Collect"). In addition, Charter may partner with third-party advertising companies who may utilize

cookies, web beacons, or other technology to deliver or facilitate the delivery of targeted advertisements.

Charter also uses third-party advertising companies to identify and present tailored online advertisements for its goods and services and uses anonymous ZIP Codes to geographically target online advertisements for our other clients. Charter will not provide our online partners with access to Your name, address, e-mail address, telephone number or other personally identifiable information without Your permission. When targeted online advertisements displayed on third-party websites are based on Your personally identifiable information or general location derived from your Charter IP address, You may opt-out by going to <http://unsubscribe.charter.com> and updating Your privacy preferences. After doing so, we recommend that You also remove any unwanted cookies from Your browser. For more information on how to adjust these settings go to Charter.com > Support > Internet Help.

Some of the advertisements You see on cable channels are placed by us. Some of those advertisements are placed in particular shows or channels; others are shown in particular geographic areas. Some of our cable advertisements will ask for Your permission to take certain actions, like mail You information or allow the advertiser to contact You; if You grant permission, we will use Your personal information for the permitted purposes only. In some areas we will be able to target cable advertisements to Your household that will be more relevant to Your interests based on information You provide us or information that we receive from third parties. When those cable advertisements are directed to You based on Your personal information, You can elect not to receive them. You may opt-out by going to <http://unsubscribe.charter.com> and updating Your privacy preferences.

If you change or get a new account, You will need to review all of Your opt-out choices.

What can I do if I believe Charter has violated my rights?

You may enforce the limitations imposed on us by federal law with respect to the collection and disclosure of personally identifiable subscriber information about You, through a civil action under federal law, in addition to other rights and remedies that may be available to You under federal or other applicable laws.

What if I have any questions?

If You have any questions about our privacy protections and policies, please contact Your local customer service office. You can find the phone number for Your local customer service office on Your monthly bill statement or by visiting Charter's website at www.charter-business.com.

IMPORTANT NOTE:

This Policy does not apply to Your use of any Charter website. You should review the privacy policy applicable to each site, which is available under the "Your Privacy Rights" or "Privacy Policy" section of each Charter website. This Policy also does not apply to those residential customers who subscribe to Charter's residential video programming, high-speed Internet and/or telephone service. The Residential Subscriber Privacy Policy is available under the "Your Privacy Rights" section of www.charter.com.

Effective: December 16, 2013

Charter Commercial Customer Proprietary Network Information (CPNI) Policy

The following CPNI Policy is in addition to requirements set forth in Charter's Commercial Subscriber Privacy Policy and is subject to some permitted uses and disclosures of Your name, address, and/or telephone number outlined in the Privacy Policy. The information that we have (1) relating to the quantity, technical configuration, type, destination, location, and amount of Your use of telephone service, and / or (2) contained on Your telephone bill concerning the telephone services that You receive is subject to additional privacy protections. That information, when matched to Your name, address, and telephone number is known as "Customer Proprietary Network Information," or CPNI for short. Examples of CPNI include information typically available from details on a customer's monthly telephone bill – the type of line, technical characteristics, class of service, current telephone charges, long distance and local service billing records, directory assistance charges, usage data, and calling patterns. As a subscriber to our telephone services, You have the right, and Charter has a duty, under federal law to protect the confidentiality of CPNI. Charter offers many communications-

related services, such as, for example, Charter Internet services. From time to time we would like to use the CPNI information we have on file to provide You with information about our communications-related products and services or special promotions. Our use of CPNI may also enhance our ability to offer products and services tailored to Your specific needs. We would like Your approval so that we, our agents, affiliates, joint venture partners, and independent contractors may use this CPNI to let You know about communications-related services other than those to which You currently subscribe that we believe may be of interest to You. You do have the right to restrict this use of CPNI.

IF WE DO NOT HEAR FROM YOU WITHIN 30 DAYS OF THIS NOTIFICATION, WE WILL ASSUME THAT YOU APPROVE OUR USE OF YOUR CPNI FOR THE PURPOSES OF PROVIDING YOU WITH INFORMATION ABOUT OTHER COMMUNICATIONS-RELATED SERVICES. YOU HAVE THE RIGHT TO DISAPPROVE OUR USE OF YOUR CPNI, AND MAY DENY OR WITHDRAW OUR RIGHT TO USE YOUR CPNI AT ANY TIME, BY CALLING THE TELEPHONE NUMBER REFLECTED ON YOUR MONTHLY BILLING STATEMENT OR 1-888-GET-CHARTER. We will also honor any restrictions applied by state law, to the extent applicable. Charter also offers various other services that are not related to the communications services to which You subscribe. Under the CPNI rules, some of those services, such as Charter video services, are considered to be non-communications related services. Occasionally, You may be asked during a telephone call with one of our representatives for Your oral consent to Charter's use of Your CPNI for the purpose of providing You with an offer for products or services not related to the telephone services to which You subscribe. If You provide Your oral consent for Charter to do so, Charter may use Your CPNI for the duration of such telephone call in order to offer You additional services. Any action that You take to deny or restrict approval to use Your CPNI will not affect our provision to You, now or in the future, of any service to which You subscribe. You may disregard this notice if You previously contacted us in response to a CPNI Notification and denied use of Your CPNI for the purposes described above. Any denial of approval for use of Your CPNI outside of the service to which You already subscribe is valid until such time as Your telephone services are discontinued or You affirmatively revoke or limit such approval or denial. The CPNI Policy above may be required by law to apply to our Voice over Internet Protocol, or, IP voice services.

Effective: May 4, 2009

WEST RICHLAND AGENDA ACTION ITEMS

<i>AGENDA ITEM:</i>	6h	<i>TYPE OF ACTION NEEDED</i>			
<i>MEETING DATE:</i>	August 16, 2016	<i>Execute Contract</i>		<i>Consent Agenda</i>	X
<i>SUBJECT:</i>	RES. __-16 Amending Personnel Summary for the 2015 - 2016 Biennium Budget.	<i>Pass Resolution</i>	X	<i>Public Hearing</i>	
		<i>Pass Ordinance</i>		<i>1st Discussion</i>	
<i>Prepared by:</i>	Roscoe C. Slade III, PW Director <i>RS</i> Jessica Platt, Finance Director	<i>Pass Motion</i>		<i>2nd Discussion</i>	
<i>Reviewed by:</i>	Brent Gerry, Mayor <i>BG</i>	<i>Other</i>		<i>Other</i>	

COUNCIL STRATEGIC FOCUS AREA:

SFA # 3 – Financial & Operational Effectiveness, Stability and Accountability

Goal # 1 – Conduct City operations using best management practices

ATTACHMENTS:

- Copy of Personnel Summary for the 2015-2016 Biennium Budget
- Copy of RES. __-16 Amending Personnel Summary

BACKGROUND INFORMATION:

RCW 35A.33.050 – Proposed preliminary budget – states in the last paragraph, last sentence: The salary or salary range for each office, position or job classification shall be set forth separately together with the title or position designation thereof: PROVIDED, That salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached to and made a part of the budget document.

SUMMARY:

The Biosolids Processing Facility (screw press) is substantially complete and currently being operated by the Public Works Sewer Department employees while the contractor completes the remaining punch list items for the project. The Industrial Wastewater Treatment Plant (I-Plant) is nearing substantial completion with start-up of the facility scheduled for the week of August 8, 2016. The Public Works Sewer Department employees will begin operating the facility for the crush of 2016. The Public Works Sewer Department consists of 6 FTEs with only one of the FTEs classified as a Wastewater Treatment Plant Operator (see attached Personnel Summary). The two new facilities were originally not anticipated to be operational until the end of 2016 and not require another operator position until January 2017. With the two facilities becoming operational ahead of schedule, there is a need to accelerate the hiring of another operator.

The attached Resolution would amend the Personnel Summary for the 2015 -2016 Biennium Budget as follows:

Wastewater Treatment Plant Operator Position would increase from 1 to 2 FTEs.

Maintenance Worker Position would decrease from 9 to 8 FTEs.

The number of FTEs within the Public Works Department would remain the same; the goal is to promote an existing Maintenance Worker II employee to the Wastewater Treatment Operator Position. The Sewer Operations Supervisor believes that the three facilities could be currently operated and maintained with two operators. The future need for an additional Maintenance Worker to replace the maintenance worker promoted will be reviewed during the 2017-18 Budget process.

RECOMMENDATION:

Staff recommends Council pass Resolution __-16 amending the Personnel Summary for the 2015-2016 Biennium Budget.

ALTERNATIVES:

As amended by City Council

FISCAL IMPACT (Indicate amount, fund and impact on budget):

Approximately \$4,000 from the 401 Sewer Fund. A future budget amendment is not needed for this action.

MOTION:

I move to pass RES ___-16 amending the Personnel Summary for the 2015-2016 Biennium Budget.

**CITY OF WEST RICHLAND
RESOLUTION NO. __-16**

A RESOLUTION OF THE CITY OF WEST RICHLAND, WASHINGTON, AMENDING THE
PERSONNEL SUMMARY FOR THE 2015-2016 BIENNIUM BUDGET

WHEREAS, the City Council of the City of West Richland is responsible by RCW to establish a budget which includes a salary schedule and positions for all City personnel; and

WHEREAS, the Council has determined that the best interest of the City is served by amending the Personnel Summary for the 2015-2016 Biennium Budget;

NOW THEREFORE, the West Richland City Council does resolve as follows:

1. The Personnel Summary is hereby amended to include:

Position	2015	2016
Wastewater Treatment Plant Operator	1.00	2.00
Maintenance	9.00	8.00

PASSED by the City Council of the City of West Richland, Washington, this 16th day of August, 2016.

Brent Gerry, Mayor

ATTEST:

Julie Richardson, City Clerk

APPROVED AS TO FORM:

Bronson Brown, City Attorney

PERSONNEL SUMMARY:

POSITION***:	2011	2012	2013	2014	2015	2016
Public Works:						
Public Works Director	1.00	1.00	1.00	1.00	1.00	1.00
Analyst*	3.00	1.00	-	-	-	-
Human Resources Specialist*	0.15	-	-	-	-	-
Utility Billing Manager*	0.98	-	-	-	-	-
Administrative Assistant I	-	0.50	0.00	0.00	-	1.00
Custodian	-	-	-	-	1.00	1.00
City Engineer	1.00	1.00	1.00	1.00	1.00	1.00
Civil Engineer II	1.00	1.00	1.00	2.00	2.00	2.00
Engineering Technician	1.00	1.00	1.00	1.00	1.00	1.00
Engineering Technician-Administrative	-	-	1.00	1.00	1.00	1.00
Operations Supervisor	3.00	3.00	3.00	3.00	3.00	3.00
Wastewater Treatment Plant Operator	-	1.00	1.00	1.00	1.00	1.00
Cross Connection Specialist	1.00	1.00	1.00	1.00	1.00	1.00
Collections Technician	-	-	-	1.00	1.00	1.00
Maintenance	9.00	9.00	10.00	9.00	9.00	9.00
Maintenance Technician	-	-	-	-	1.00	1.00
Wastewater Treatment Plant Lab Technician	-	-	0.75	0.75	1.00	1.00
Meter Reader	-	-	1.00	1.00	1.00	1.00
Work Study Student	0.50	-	-	-	-	-
Seasonal	5.00	6.00	6.60	6.60	8.50	8.50
Subtotal Public Works	26.63	25.50	28.85	29.85	33.50	34.50
Total Personnel	52.50	55.50	59.90	61.40	69.55	71.55

Summary of Changes:

Finance & Accounting:

Administrative Assistant 1.0 beginning in 2015.

Necessary to keep up with demands on workload growth has created.

Police Services:

Three police officers 2.0 in 2015, 1.0 in 2016.

Conversion of an existing FTE to a Sergeant beginning in 2015.

Animal Control Officer from 0.75 to 1.00 beginning in 2015.

Strengthen Police Services within the community to be funded with increased sales taxes.

Community & Economic Development:

Seasonal 0.25 beginning in 2015.

Furtherance of code enforcement efforts and City beautification and outreach.

Public Works:

Maintenance Technician 1.0 beginning in 2015.

Custodian 1.0 beginning in 2015

Wastewater Treatment Plant Lab Technician from 0.75 to 1.00 beginning in 2015.

Administrative Assistant 1.0 beginning midway through 2016.

Additional Seasonal 1.90 beginning in 2015.

Necessary to keep up with demands on workload growth has created. Additional Administrative Assistant for Public Works Operations Facility when completed and to ensure better custodian services for City facilities.

2015/2016 BIENNIAL BUDGET

WEST RICHLAND AGENDA ACTION ITEMS

AGENDA ITEM:	6i	TYPE OF ACTION NEEDED			
MEETING DATE:	August 16, 2016	<i>Execute Contract</i>		<i>Consent Agenda</i>	X
SUBJECT:	Motion Authorizing Public Works Director to apply for Transportation Improvement Board Grants.	<i>Pass Resolution</i>		<i>Public Hearing</i>	
		<i>Pass Ordinance</i>		<i>1st Discussion</i>	
Prepared by:	Roscoe C. Slade III, PW Director 	<i>Pass Motion</i>	X	<i>2nd Discussion</i>	
Reviewed by:	Brent Gerry, Mayor 	<i>Other</i>		<i>Other</i>	

STRATEGIC FOCUS AREA:

SFA #3 Financial & Operational Effectiveness, Stability and Accountability

Goal #4 Improve quality and efficiency of services and cost savings through collaboration with other public and private entities.

BACKGROUND INFORMATION:

The Transportation Improvement Board (TIB) is currently accepting grant applications for their Urban Arterial Program (UAP). Applications are to be post marked by August 19, 2016 to be considered. Projects selected to receive TIB Grant funding will be notified around mid-November 2016. The UAP program requires a 15% local match.

SUMMARY:

The Public Works Department is currently in the process of drafting a grant application for TIB's UAP program and is requesting permission from Council to submit an application for grant funding. Projects selected to receive TIB Grant funding will be notified around mid-November 2016.

Previously Bombing Range Road Phase 8 (Silver Lake Ct. to Arena Road) received a Federal STP-UL Grant to complete the design, environmental permitting and road row acquisition phases of the project. This project is truly "shovel ready"; only needing construction funding to complete the project. The project would widen Bombing Range Road from a 32' rural roadway section to a 46' wide roadway section with curb/gutter and sidewalks (matching the other improved sections of Bombing Range Road). The roadway portion of the project is estimated to be \$600,000. A UAP Grant, if successful, would cover 85% of the cost (with a local match of 15% = \$90,000 from the 355 Fund). There are also water and sewer improvements that are not eligible for TIB reimbursement that would need to be completed with the roadway project; \$25,000 for Sewer (442 and/or 452 Sewer Fund) and \$100,000 for Water (441 and/or 451 Water Fund). If the project was selected for funding and Council wanted to proceed with constructing the project, Council would need to authorize the Mayor to execute a grant agreement and also authorize a future budget amendment.

RECOMMENDATION:

Staff recommends that Council authorize the Public Works Director to submit a TIB UAP Grant Application for the Bombing Range Road Phase 8 Project.

ALTERNATIVES:

As amended by Council.

FISCAL IMPACT (Indicate amount, fund and impact on budget):

Potential Grant Revenue of:

\$510,000 for Bombing Range Road Phase 8 Project

City's Local Match would be \$90,000 from the 355 Fund, \$25,000 from the 442 and/or 452 Sewer Fund and \$100,000 from the 441 and/or 451 Water Fund for the Bombing Range Road Phase 8 Project.

MOTION:

I move to authorize the Public Works Director to submit a TIB UAP Grant application for Bombing Range Road Phase 8 Project.

WEST RICHLAND AGENDA ACTION ITEMS

AGENDA ITEM:	6j	TYPE OF ACTION NEEDED			
MEETING DATE:	August 16, 2016	Execute		Consent Agenda	X
SUBJECT:	Interlocal Agreement	Pass Resolution	X	Public Hearing	
		Pass Ordinance		1st Reading	
Prepared by:	Chief Brian McElroy	Pass Motion		2nd Reading	
Reviewed by:	Bronson Brown, City Attorney	Other		Other	

BACKGROUND INFORMATION: West Richland Police Department currently has Mutual Aid Agreements with all local law enforcement agencies in Benton and Franklin Counties. We also maintain agreements with other jurisdictions from around the State of Washington. In the event of major incidents we call upon these other organizations for assistance. We also respond to request for assistance from those very same agencies. The most serious of these type requests is an incident which involves the loss of life or grievous bodily harm. However, the mutual aid agreement does not specify an organizational structure, training standards or protocols for investigation. The SIU is designed to investigate major incidents involving loss of life or grievous bodily harm. The SIU is governed by a set protocol which an investigative team follows while objectively investigating criminal incidents resulting in this type injury. The organizational structure and established protocols favors a thorough, objective and fair investigation which benefits all parties involved.

In February of 2011 the City of West Richland entered into the SIU Interlocal and now there is a need to amend this interlocal to update the SIU to include other law enforcement agencies who would like to participate.

SUMMARY: The SIU Interlocal Agreement is intended to establish the framework for a Special Investigations Unit consisting of law enforcement officers from the various local law enforcement agencies, to help facilitate orderly, thorough and objective investigations of incidents involving law enforcement officers that result in grievous or fatal injury to another person or to an officer resulting from acts of another person. The West Richland Police Department is not obligated to use the services of the SIU, but as a member agency we would have the services of SIU available to us. There is no cost associated by participating in the SIU other than costs associated with our [WRPD] own officer(s).

RECOMMENDATION: Pass a resolution authorizing Mayor Gerry to sign on behalf of the City of West Richland the Special Investigative Unit Interlocal Agreement.

ALTERNATIVES: To not participate.

FISCAL IMPACT (Indicate amount, fund, and impact on budget): No additional financial impact to the West Richland Police Department budget.

MOTION: I move to pass Resolution __16 authorizing the Mayor to sign on behalf of the City of West Richland the Special Investigative Unit Interlocal Agreement.

**CITY OF WEST RICHLAND
RESOLUTION NO. ____-16**

**A RESOLUTION OF THE CITY OF WEST RICHLAND, WASHINGTON,
AUTHORIZING AN INTERLOCAL AGREEMENT FOR SPECIAL
INVESTIGATIONS UNIT TO INVESTIGATE OFFICER INVOLVED
INCIDENTS.**

WHEREAS, the City of West Richland and West Richland Police Department recognize the value of partnering with other law enforcement agencies to provide a highest level of safety and service to the community; and

WHEREAS, the City of West Richland in February, 2011, entered into an Interlocal Agreement for Special Investigations Unit (SIU) with local law enforcement agencies to help facilitate the most complete and objective investigation of incidents involving law enforcement officers that result in grievous or fatal injury to another person or to an officer resulting from acts of another person; and

WHEREAS, Benton, Franklin, and Walla Walla Counties, and the municipalities of West Richland, Kennewick, Richland, Prosser, Pasco, Connell, Walla Walla, Washington State Patrol, and Washington State Department of Fish and Wildlife (parties) desire to update the SIU Interlocal Agreement and include other law enforcement agencies who would like to participate; and

NOW, THEREFORE, be it resolved that the Interlocal Agreement by and between the City of West Richland, City of Richland, City of Pasco, City of Prosser, City of Connell, City of Walla Walla, Washington State Patrol, Washington State Department of Fish and Wildlife, Benton County, Franklin County and Walla Walla County is hereby approved and the Mayor is authorized to sign and execute said agreement.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND,
WASHINGTON**, this 16th day of August, 2016.

Brent Gerry, Mayor

ATTEST:

Julie Richardson, City Clerk

APPROVED AS TO FORM:

Bronson Brown, City Attorney

RESOLUTION 2016 594

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE BENTON COUNTY SHERIFF TO SIGN THE INTERLOCAL AGREEMENT FOR SPECIAL INVESTIGATIONS UNIT TO INVESTIGATE OFFICER INVOLVED INCIDENTS; RESCINDING RESOLUTION 11-147

WHEREAS, as per Resolution 11-147 dated February 28, 2011, the Board of Benton County Commissioners entered into an Interlocal Agreement for Special Investigation Unit (SIU) with local law enforcement agencies to help facilitate investigations of incidents involving law enforcement officers that result in grievous or fatal injury to another person or to an officer resulting from acts of another person investigate officer involved incidents; and

WHEREAS, Benton, Franklin, and Walla Walla Counties, and the municipalities of Kennewick, Richland, West Richland, Prosser, Pasco, Connell, Walla Walla, Washington State Patrol, and Washington State Department Of Fish And Wildlife (parties) desire to update the SIU Interlocal Agreement and include other law enforcement agencies who would like to participate; and

WHEREAS, the SIU is a multijurisdictional team consisting of members from some or all of the parties hereto and who are selected and shall operate in accordance with the Special Investigations Unit Protocol, attached as Exhibit A and incorporated by reference "SIU Protocol" in the attached Interlocal Agreement; and

WHEREAS, each agency shall be responsible for their employees' wages and associated employee costs of the SIU and any other costs further outlined in Section 5 of the SIU Protocol;
NOW, THEREFORE

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby concurs with the attached Interlocal Agreement and authorizes the Benton County Sheriff to sign the Interlocal Agreement between Benton, Franklin, and Walla Walla Counties, and the municipalities of Kennewick, Richland, West Richland, Prosser, Pasco, Connell, Walla Walla, Washington State Patrol, and Washington State Department Of Fish And Wildlife for Special Investigations Unit (SIU) to investigate officer involved incidents; and

BE IT FURTHER RESOLVED, the term of the Agreement shall commence upon signature of all parties and continue through December 1, 2018 and shall automatically extend for consecutive one (1) year terms, unless terminated pursuant to the terms of the agreement; and

BE IT FURTHER RESOLVED, the attached Interlocal Agreement supersedes all prior negotiations, agreements and understandings with respect thereto including but not limited to the SIU Interlocal Agreement executed by several of the parties in early 2011; and

BE IT FURTHER RESOLVED, Benton County Resolution 11-147 is hereby rescinded.

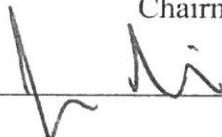
Dated this 2 day of Aug, 2016



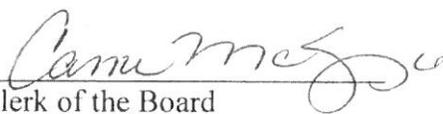
Chairman of the Board



Chairman Pro-Tem



Member

Attest: 

Clerk of the Board

Constituting the Board of County
Commissioners of Benton County, Washington

INTERLOCAL AGREEMENT FOR
SPECIAL INVESTIGATIONS UNIT TO INVESTIGATE
OFFICER INVOLVED INCIDENTS

THIS INTERLOCAL AGREEMENT is effective upon the date executed by all parties and its recording with the Benton County Auditor. In consideration of the mutual covenants below, the parties agree as follows:

1. **PARTIES**. The parties to this Agreement are Benton, Franklin and Walla Walla counties, political subdivisions of the State of Washington, the municipalities of Kennewick, Richland, West Richland, Prosser, Pasco, Connell, Walla Walla, the Washington State Patrol and the Washington State Department of Fish and Wildlife, an agency of the State of Washington.

2. **AUTHORITY**. This Agreement is entered into pursuant to Chapter 10.93 (Washington Mutual Aid Peace Officers Powers Act) and Chapter 39.34 (Interlocal Cooperation Act) of the Revised Code of Washington.

3. **PURPOSE**. The parties hereto desire to establish a Special Investigations Unit consisting of law enforcement officers from the various local law enforcement agencies to help facilitate orderly, thorough and objective investigations of incidents involving law enforcement officers that result in grievous or fatal injury to another person or to an officer resulting from acts of another person. Any party may request assistance from SIU considering the complexity of an investigation that requires additional resources.

4. **FORMATION**. There is hereby created a multi-jurisdictional team to be known as the "SPECIAL INVESTIGATIONS UNIT" ("SIU"), the members of which shall be officers from some or all of the parties hereto and who shall be selected and shall operate in accordance with the Special Investigations Unit Protocol, attached as Exhibit A and incorporated herein by reference ("SIU Protocol").

5. **DURATION AND TERMINATION**. The term of this Agreement shall be through December 1, 2018. This Agreement shall automatically extend for consecutive one (1) year terms, unless terminated pursuant to the terms of this Agreement.

A party may terminate this Agreement or, alternatively, withdraw its participation in SIU by providing written notice to the chief law enforcement officer for each party of its intent to terminate or withdraw from this Agreement. A notice of termination or withdrawal shall become effective upon the latter of: a) ninety (90) days after service of the notice on the chief law enforcement officers for all parties; or b) at the conclusion of any SIU investigation that is pending on the date specified by (a) above.

6. GOVERNANCE. SIU shall be governed by the SIU Protocol attached hereto and incorporated by reference. The SIU Protocol may be amended from time to time by written approval of the Sheriffs and Chiefs for all parties to this Agreement. Upon such amendment, the amended SIU Protocol will be provided to each Sheriff and Chief and shall supercede any prior versions of that document.

7. ASSIGNMENT OF OFFICERS. The parties agree to cooperate with respect to the assigning of officers to the SIU and that the appointment of SIU officers will be in accordance with the SIU Protocol.

8. REQUEST FOR SIU ASSISTANCE. As stated in the SIU Protocol, departments are under no obligation to request the assistance of SIU. If the assistance of the SIU is requested, the SIU shall be activated and will operate pursuant to the SIU Protocol.

9. ALLOCATION OF LIABILITY/INDEMNIFICATION. Each of the parties agrees that any liability or claim for property damages arising out of the actions or inactions of an officer that has been appointed to the SIU and acting within the course and scope of the officer's duties as a member of the SIU shall be the responsibility of the party that requests SIU assistance. Each of the parties agrees that any other liability or claim arising out of the actions or inactions of an officer that has been appointed to the SIU and acting within the course and scope of the officer's duties as a member of the SIU shall be the responsibility of the agency employing the SIU officer(s) whose actions or inactions are in question. These provisions are intended to expressly allocate liability by written agreement as authorized by RCW 10.93.040. These provisions are not intended to require indemnification or payment by any party of that portion of any judgment against any members of the SIU team or

party hereto based on intentional wrongful conduct that is outside the scope of employment of any members of the SIU or of that portion of any judgment for punitive damages against a SIU team member or party to this Agreement. Payment of punitive damages, if any, shall be the sole responsibility of any individual against whom said judgment is rendered unless his or her employer elects to make said payment voluntarily.

In the event that a claim or lawsuit is brought against a party or its employee(s) for actions arising out of their conduct in the operation of the SIU, such party shall promptly notify all other parties in writing that said claim or lawsuit has been filed or commenced.

10. COMPLETE AGREEMENT. This Agreement and the exhibit attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded. This Agreement supersedes all prior negotiations, agreements and understandings with respect thereto including but not limited to the SIU interlocal agreement executed by several of the parties in early 2011. This Agreement may only be amended by a written document duly executed by all parties.

11. INTERLOCAL COOPERATION ACT PROVISIONS. No special budget or funds are anticipated nor created to implement this Agreement. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property contemplated other than as specifically provided within the terms of this Agreement. The Chief of Police for the City of Richland or his or her designee shall be the Administrator of this Interlocal Agreement.

12. FILING WITH AUDITOR. This Agreement shall be filed with the Benton County Auditor.

13. AUTHORIZED SIGNATORIES. By signing below, the signor certifies that he or she has the authority to sign this Agreement on behalf of the party, and the party agrees to the terms of this Agreement.

BENTON COUNTY

Steve Keane, Sheriff
Date: 7/25/16

Andy Miller, Prosecuting Attorney
Date: JULY 25, 2016

Attest:

By: _____

Approved as to form:

Ryan Brown
Ryan Brown, Chief Deputy Prosecutor

FRANKLIN COUNTY

Jim Raymond, Sheriff
Date: _____

Shawn Sant, Prosecuting Attorney
Date: _____

Attest:

By: _____

Approved as to form:

Ryan Verhulp, Deputy Prosecutor

CITY OF KENNEWICK

Ken Hohenberg, Chief of Police
Date: _____

Marie Mosley, City Manager
Date: _____

Attest:

By: _____

Approved as to form:

Lisa Beaton, City Attorney

CITY OF PASCO

Robert Metzger, Chief of Police
Date: _____

Dave Zabell, City Manager
Date: _____

Attest:

By: _____

Approved as to form:

Leland B. Kerr, City Attorney

CITY OF RICHLAND

Chris Skinner, Chief of Police
Date: _____

Cindy Johnson, City Manager

CITY OF CONNELL

Chris Turner, Chief of Police
Date: _____

Bruce Blackwell, Mayor

Date: _____

Attest: _____

By: _____

Approved as to form:

Heather Kintzley, City Attorney

CITY OF WEST RICHLAND

Brian McElroy, Chief of Police

Date: _____

Brent Gerry, Mayor

Date: _____

Attest:

By: _____

WASHINGTON STATE PATROL

John R. Batiste, Chief of

Washington State Patrol

Date: _____

**WASHINGTON STATE DEPARTMENT OF
FISH AND WILDLIFE**

Chris Anderson, Chief

Date: _____

City of Walla Walla

Scott Bieber, Chief of Police

Date: _____

Nabiel Shawa, City Manager

Date: _____

Attest: _____

By: _____

Approved as to form:

Dan Hultgrenn, City Attorney

CITY OF PROSSER

David Giles, Chief of

Police

Date: _____

Dave Stockdale, City Administrator

Date: _____

Attest:

By: _____

**Walla Walla County Sheriff's
Office**

John A Turner, Sheriff

Date: _____

James L Nagle, Walla Walla County
Prosecutor

Date: _____

Date: _____

Attest: _____

By: _____

Approved as to form:

Tim Donaldson, City Attorney

EXHIBIT A

[SIU Protocol]



SPECIAL INVESTIGATIONS UNIT

Protocol

Member Agencies:

Benton County Sheriff's Office	Franklin County Sheriff's Office
Kennewick Police Department	Pasco Police Department
Richland Police Department	Washington State Patrol
West Richland Police Department	Connell Police Department
Prosser Police Department	Benton County Prosecutor
Franklin County Prosecutor	Walla Walla County Prosecutor
Walla Walla Police Department	Walla Walla County Sheriff's Office
Washington State Department of Fish and Wildlife	

Revised May 18, 2016

Special Investigations Unit (SIU)
Protocol

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1. MISSION AND PURPOSE OF SIU

The purpose of the Special Investigations Unit (SIU) is to investigate officer-involved incidents that occur within Benton, Franklin and Walla Walla Counties which involve great bodily harm or death. The SIU will conduct a criminal investigation to develop relevant information to allow a determination of the presence or absence of criminal liability on the part of those involved in the incident, specifically:

- A. To determine whether the nature and the quality of the involved conduct is prohibited by statutes which provide for criminal penalties upon conviction, and
- B. If criminal conduct does exist, determine the identity of the person(s) responsible, and
- C. If criminal conduct does exist, determine the degree of crime(s), the existence of any factual or legal defenses to that crime, and the presence or absence of any factors which could mitigate or aggravate punishment for that crime.

While SIU does not investigate administrative concerns the Employer Agency may have, it is recognized the criminal investigation results are of interest to the Venue and Employer Agencies for their internal use. The results of the SIU criminal investigation will be fully available to the Venue and Employer Agencies for that purpose unless otherwise prohibited by law.

SIU criminal investigations shall follow the rules of law established by the state and federal constitutions, and statutory and case law which apply to criminal investigations. The investigation shall be performed in a manner that provides both the appearance and the reality of a thorough, fair, complete and professional investigation that is free of conflicts of interest.

2. GOALS OF SIU

- A. To perform the criminal investigation of officer-involved incidents likely to result in great bodily harm or death.
- B. To promote public trust by conducting professional and consistent multi-jurisdictional investigations of officer-involved incidents which involve great bodily harm or death.
- C. To maximize the availability and sharing of the latest technological equipment and techniques.
- D. To consolidate and share the skills of the most experienced commanders, supervisors and investigators.
- E. To conduct thorough investigations in a timely fashion.
- F. Any party may request assistance from SIU considering the complexity of an investigation in their venue that requires additional resources.

3. GOVERNANCE

The creation and operation of the Special Investigations Unit (SIU) will be governed by an Inter-Local Agreement signed by the Chief/Sheriff for participating law enforcement agencies, and participating Prosecutors and Coroners. SIU Protocol will identify operational aspects of the Unit.

4. CRIMINAL INVESTIGATION AND ADMINISTRATIVE REVIEW

*Special Investigations Unit (SIU)
Protocol*

The Employer Agency shall be responsible for any administrative investigation and/or review of officer-involved incidents. The SIU criminal investigation has investigative priority over the administrative investigation and/or review. Employer Agency personnel conducting an administrative investigation and/or review should not be involved in an SIU investigation, nor will they normally be present or engage in SIU interviews with Subject or Witness Officers.

An allowable exception may be if the Involved Officer or Witness Officer requests to provide a single, voluntary (non-compelled Garrity) statement, and requests that Employer Agency personnel conducting an administrative investigation and/or review be allowed to observe the SIU criminal investigation interview. The Administrative Investigator shall be allowed to monitor the interview, but shall not be part of the SIU criminal investigative interview. The Administrative Investigator can then conduct the administrative interview after the SIU Investigators have completed their criminal investigation interview and left the room.

5. COSTS

Each Member Agency shall be responsible for their employees' wages and associated employee costs of the SIU.

Any necessary equipment or other associated investigative costs that are not covered by the shared resources of the Member Agencies shall be the responsibility of the Venue Agency upon the approval of the Venue Agency Chief/Sheriff. This includes potential costs for a private company to transcribe SIU recorded interviews. The SIU Commander shall consult with the Venue Agency Chief/Sheriff prior to committing to any additional costs.

The SIU will not be responsible for handling claims of damage to private property as a result of the Officer-Involved Incident or subsequent criminal investigation. Responsibility for handling such claims shall fall upon the Venue Agency Chief/Sheriff.

6. DEFINITIONS

A. OFFICER-INVOLVED INCIDENT

Incidents in which the member of a participating agency is an Involved Officer, or the victim of an action, that involves great bodily harm or death. The incident may include but is not necessarily limited to:

- (1) Intentional and accidental shootings, including police tactical incidents involving specialized response units.
- (2) Intentional and accidental use of any other dangerous or deadly weapon.
- (3) Assaults upon law enforcement officers; assaults on other law enforcement employees who are on duty or are acting for a law enforcement purpose.
- (4) Attempts by law enforcement employees to make arrests or to otherwise gain physical control for a law enforcement purpose.
- (5) Any fatal injury or great bodily harm received while in police custody, including custodial trauma or custodial suicide, but excluding fatal injuries of prisoners which occur while the inmate is under a physician's treatment for a disease or other natural condition which has been diagnosed prior to death.
- (6) Vehicular collisions, and specifically:
 - a. Including any vehicle fatality which occurs
 - i. After, although not necessarily as a result of, police gunfire directed at the suspect or the suspect vehicle.

*Special Investigations Unit (SIU)
Protocol*

- ii. In connection with the use of vehicle(s) by police as a "legal intervention" technique intended to apprehend a suspect. "Legal intervention" includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact.
- iii. As a result of a police pursuit.
- b. Excluding any vehicle fatality which involves:
 - i. Off-duty non-sworn law enforcement employees who are not, at the time of the incident, acting for an actual, apparent, or purported law enforcement purpose.
 - ii. Solo vehicular collisions in which the only injury is suffered by a law enforcement employee who was the driver and sole occupant of a vehicle which was not involved in a collision with any other occupied vehicle.

B. POLICE EMPLOYEE

This protocol applies to employees and to certain other people affiliated with the participating agencies, as follows:

- (1) Full-time, part-time, and hourly sworn and unsworn employees, whether on-duty or off-duty, who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident.
- (2) Reserve law enforcement officers who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident.
- (3) Temporary employees and volunteers, whether paid or unpaid, who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident.

C. INVOLVED OFFICER

- (1) The police employee who used lethal force, or potentially lethal force, in connection with an incident involving a fatal injury or great bodily harm.
- (2) An officer who operated a motor vehicle while on-duty that was involved in a fatal injury and meets the criteria identified in Section 6A(6), "Definitions."

D. FATAL INJURY

Death or great bodily harm.

E. GREAT BODILY HARM

As defined by RCW 9A.04.110(4)(c), great bodily harm means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.

F. WITNESS OFFICER

An officer who witnessed the use of force by the Involved Officer, and whose action was not a use of lethal force, or potentially lethal force, in connection with an incident involving a fatal injury or great bodily harm.

G. VENUE AGENCY

The Member Agency or Agencies within whose geographical jurisdiction the officer involved incident occurs.

When an officer-involved incident occurs in part in two or more jurisdictions, each of those jurisdictions is a Venue Agency.

[Type text]

*Special Investigations Unit (SIU)
Protocol*

When an incident occurs on the boundary of two jurisdictions, or at a location where the relevant boundary is not readily ascertainable or is in dispute, the Venue Agency should be:

- (1) The Employer Agency if the Involved Officer is employed by either boundary agency, or
- (2) The agency with the greater interest in the case by virtue of having the predominant police involvement in the incident or by virtue of having had the majority of acts leading up to the fatality occur within its jurisdiction.

For custodial deaths, the agency having custody of the person at the time his/her distress was first discovered is a Venue Agency. Also, a Venue Agency is the one within whose jurisdiction any fatal action was inflicted.

If the death was caused by conduct which was apparently criminal, the lead Venue Agency is the agency within whose geographical jurisdiction the act occurred. If there is apparently no criminal conduct involved in the cause of death, the lead Venue Agency is the one having custody of the victim when distress was first discovered.

If an Involved Officer is in an incident which occurs within the jurisdiction of another Member Agency, and if that officer was acting in the performance of his/her duty at the time of the incident, the Venue Agency may elect to relinquish its role in the criminal investigation.

H. VENUE COUNTY

The county in which the incident occurs.

I. EMPLOYER AGENCY

The Member Agency that employs the Involved Officer, or employs an officer who is the victim of a fatal or grievous bodily injury. In many cases the Venue Agency will also be the Employer Agency.

J. MEMBER AGENCIES

Those agencies that have reviewed and agreed to the terms of the Inter-Local Agreement that adopts this Protocol.

- (1) Voting Member Agency: A Member Agency that has a representative assigned to SIU. These agencies will be allowed to vote on matters related to SIU (i.e. proposed revisions to the SIU Protocol).
- (2) Non-Voting Member Agency: A Member Agency that does not have a representative assigned to SIU. These agencies may be allowed to participate in SIU discussions, but will not be allowed to vote on matters related to SIU.

7. UNIT MEMBERS

A. UNIT COMMANDER

The SIU Commander shall be from a Member Agency with the rank of Commander, Captain, or Undersheriff, appointed by the Chiefs and Sheriffs. The Unit Commander has the overall responsibility to manage and coordinate assigned incidents as well as ensure the readiness and training of the Unit. The Unit Commander will serve as liaison between the Unit and the Chief/Sheriff of the Venue Agency and Employer Agency. The Unit Commander shall determine which SIU Members and other resources will be used to investigate each incident.

B. ASSISTANT UNIT COMMANDERS

[Type text]

*Special Investigations Unit (SIU)
Protocol*

The Assistant SIU Commanders shall be from a Member Agency with the rank of Commander, Captain, Undersheriff or Lieutenant, appointed by the Chiefs and Sheriffs. An Assistant Commander assumes the Unit Commander's duties and responsibilities in the absence of the Unit Commander. The Assistant Unit Commander should not be from the same agency as the Unit Commander.

C. ADMINISTRATIVE COMMANDER

The Administrative Commander shall be from a Member Agency with the rank of Commander, Captain, Undersheriff or Lieutenant, appointed by the Chiefs and Sheriffs. The responsibilities of the Administrative Commander include: arranging, coordinating, and documenting all training for the Unit, maintaining records of Unit call-outs, Unit personnel records/roster, Unit equipment inventory, and managing the financial transactions/records of the Unit. The Administrative Commander acts as the SIU Commander in the absence of the SIU Commander and Assistant Commander. The Administrative Commander should not be from the same agency as the Unit Commander or Assistant Unit Commander.

D. INVESTIGATIVE UNIT SUPERVISORS

Investigative Unit Supervisors shall be from a Member Agency with a supervisory rank. SIU Supervisors will be appointed by the Chiefs and Sheriffs based upon recommendations from the Unit Commander. Investigative Unit Supervisors shall be assigned by the Unit Commander to respond to and supervise assigned aspects of an officer-involved incident. Unit Supervisors shall report directly to the Unit Commander. If an additional supervisor(s) is needed, the Unit Commander shall designate an acting supervisor from within SIU. Unit Supervisors should not be from the same agency.

E. INVESTIGATORS

Investigators shall be commissioned officers from a Member Agency, preferably with previous experience as a Detective. They shall be appointed by their respective agencies. Investigators should work in teams of two or complete specific investigatory tasks at the direction of a SIU supervisor.

F. EVIDENCE TECHNICIAN

The Evidence Technician shall be from a Member Agency. The SIU Evidence Technician will help with documenting evidence, collecting evidence, packaging evidence, transporting evidence, data collection and other duties assigned.

G. CORONER REPRESENTATIVE

A coroner representative from each participating county will be assigned to SIU to perform the Coroner's function during the investigation of an SIU incident. The representative from the Venue County Coroner's Office will be activated for incidents involving death to aid in the investigation of that particular incident.

H. PROSECUTOR REPRESENTATIVE

A prosecutor representative from each participating county will be assigned to SIU to serve as a legal consultant. The representative from the Venue County will be activated to provide legal advice in the investigation of that particular incident.

8. UNIT COMPOSITION

SIU should be comprised of the below-listed members. It may not be necessary to have all members activated to respond to an incident. The Unit Commander shall determine which SIU resources are needed for each incident.

- A. Unit Commander (1)
- B. Assistant Unit Commander (2)
- C. Administrative Commander (1)
- D. Supervisors (4)
- E. Investigators (16)
- F. Evidence Technician (3)
- G. Coroner Representative (3 – one from each participating county)
- H. Prosecutor Representative (3 – one from each participating county)

9. APPOINTMENT/SELECTION OF UNIT MEMBERS

A. APPOINTED MEMBERS

- (1) The Chiefs and Sheriffs shall appoint the SIU Unit Commander, Assistant Unit Commander and Administrative Commander.
- (2) The SIU Supervisors shall be appointed by the Chiefs and Sheriff's based upon recommendations from the Unit Commander.

B. SELECTED MEMBERS

SIU Investigators should be selected through the following process:

- (1) The SIU Commander shall make written notification to the Member Agency's Sheriffs and Police Chiefs soliciting personnel from their respective agencies for assignment to SIU.
- (2) The SIU Administrative Commander shall ensure all applicants meet prerequisites.
- (3) Qualified applicants shall be interviewed by a Review Board approved by the SIU Commander.
- (4) All applicants shall be interviewed using criteria pertinent for the position of a SIU Investigator. The same questions should be asked of each applicant.
- (5) At the conclusion of the Review Board the SIU Commander should consider the recommendations of the Board and submit the recommendations to the Chiefs and Sheriffs for final selection.

C. PREREQUISITES

- (1) The applicant's agency must be a Member Agency of SIU.
- (2) The applicant must have the recommendation from their Chief/Sheriff.
- (3) The agency and applicant must be willing to make a commitment of 3 years service to SIU (excludes promotion/exigent circumstances)
- (4) The agency and applicant should be willing to make a commitment to 8 hours of training each quarter.
- (5) The applicant must be willing to be on call and reasonably available for call-out.
- (6) The applicant shall be a commissioned officer, preferably with previous experience as a Detective.
- (7) The applicant should meet the basic training requirements identified in the SIU Protocol.

D. PERIODIC APPOINTMENT REVIEW

The Chiefs/Sheriffs shall review the appointment of their SIU Members who have served three years for possible rotation or replacement.

10. CONFIDENTIALITY

Information obtained by SIU investigations will generally be confidential while the investigation is pending. SIU Members shall not voluntarily share confidential information with individuals other than SIU Members. The SIU Commander is allowed to share information with the Venue and Employer Agencies' Chief/Sheriff, but no other personnel, to include non-involved Chiefs or Sheriffs.

Once the investigation is complete, the investigation file will be subject to requests under the Public Records Act. Refer to Section 33, "Release of Information/Public Information Officer."

11. REMOVAL FROM UNIT

Members can be removed from SIU by their respective Chief/Sheriff in accordance with the agency's policies or practices.

12. UNIT MEMBERS FROM AN EMPLOYER AGENCY

To maintain proper objectivity, any SIU member from an Employer Agency should not participate in the investigation of that particular incident. An exception may apply to the Washington State Patrol, which includes the Washington State Patrol Crime Labs and Crime Scene Response Team, since they are a statewide agency.

13. TRAINING

SIU members should have received the basic training identified below prior to appointment with SIU. Some courses may be waived based upon the member's experience and/or on-the-job training, as determined by the SIU Commander. The advanced training, taken before and/or during their SIU appointment, is desirable and Member Agencies should make reasonable effort to provide this training.

A. BASIC TRAINING

- (1) Basic Homicide Investigation
- (2) Crime Scene Investigation
- (3) Interviewing and Interrogation
- (4) Crime Scene Photography (which may include Videography)

B. ADVANCED TRAINING

- (1) Advanced Homicide Investigation
- (2) Advanced Interviewing and Interrogation
- (3) Officer-Involved Shooting Investigation
- (4) Blood Spatter
- (5) Crime Scene Laboratory Services
- (6) DNA
- (7) In-Custody Death Investigation (which may include Excited Delirium and Positional Asphyxia)

*Special Investigations Unit (SIU)
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- (8) Other related training, seminars, and conferences or on-going training as offered by WSCJTC or other training venues on an as available basis.

C. IN-SERVICE TRAINING

The SIU shall strive to maintain a unit of highly skilled and trained investigators. SIU should train together as a unit at least twice annually. Quarterly training should be allowed based upon need.

14. SIU RECORDS

Records shall be maintained by the SIU Administrative Commander of all Unit activity including:

- A. Selection Process
- B. Personnel History
- C. Call-out activity
- D. Unit and individual training

15. REQUESTING SIU ASSISTANCE

Departments are under no obligation to request the assistance of SIU. The Venue Agency may choose to investigate the incident without SIU assistance. Each department should establish their own guidelines as to when and if they will request assistance from SIU.

The Protocol identified in this document becomes effective upon the activation of SIU.

Member Agencies may request SIU activation upon the occurrence of any sensitive or critical event involving a law enforcement employee which may have possible criminal liability attached. Upon this unilateral invocation, the matter will be investigated under the provisions of this Protocol. Such incidents may include:

- A. A fatality which is not covered by this protocol and guideline.
- B. An officer-involved incident where the injuries are not fatal.
- C. Any other sensitive or critical event involving a law enforcement employee where criminal conduct is a possibility to be investigated.

While formed primarily to investigate officer-involved incidents, SIU may be requested for non-officer involved incidents.

16. ACTIVATION

- A. A Chief of Police/Sheriff, or their designee, should make the request for SIU through their respective communications center.
- B. The communications center shall contact the SIU Commander or an SIU Assistant Commander if the Commander is not available per SIU call-out instructions.
- C. The SIU Commander should call the Venue Agency supervisor at the scene to obtain all available information.
- D. The SIU Commander shall determine what and how many SIU resources are needed. Not all incidents may require activation of the entire SIU.
- E. Call-out instructions for the SIU shall be provided to communication centers by the SIU Commander.

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17. AUTHORITY

Once the agreement has been made for SIU to investigate an incident, as requested by the Venue Agency representative, the SIU Commander shall have sole and exclusive authority concerning the criminal investigation of the incident.

Washington State Patrol policy directs that the WSP will investigate use of lethal force by its personnel, and that the WSP will not attempt to prevent a concurrent investigation by other agencies with jurisdiction. The SIU and WSP should work jointly to criminally investigate the incident if the Involved Officer is a WSP trooper.

18. VENUE AGENCY RESPONSIBILITIES

- A. The Venue Agency shall be a Member Agency in order for the SIU to be activated.
- B. Venue Agency first responders should ensure that emergency life saving measures are taken.
- C. The on-scene Venue Agency supervisor may attempt to obtain critical information pertinent to the safety of officers and citizens. Refer to Section 19, "Obtaining Critical Information."
- D. The Venue Agency should ensure proper crime scene protection. This includes, but is not limited to, immediately securing the crime scene, controlling access into the crime scene, and recording the names of individuals who have entered the crime scene. Written reports are expected from those who enter a designated crime scene.
- E. The Venue Agency should identify, and take reasonable steps to protect, perishable evidence at the scene.
- F. The Venue Agency should attempt to identify witnesses who are present at the scene. Potential witnesses (including Witness Officers) should be sequestered as soon as reasonably possible. Witness Officers should be directed by their Employer Agency supervisor or commander to not discuss details of the case with the Involved Officer or other Witness Officers until SIU has completed their interviews with those officers.
- G. If, prior to the arrival of SIU personnel, a person is transported to a hospital with life-threatening or fatal injuries, the Venue Agency should provide an officer to accompany that person in order to:
 - (1) Locate, preserve, safeguard and maintain the chain of custody for physical evidence.
 - (2) Obtain a dying declaration, spontaneous statement, and/or statement of then-existing, or previous, mental or physical state.
 - (3) Maintain custody of the person if he/she has been arrested.
 - (4) Provide information to medical personnel about the incident that is relevant to treatment, and obtain information from medical personnel relevant to the criminal investigation.
 - (5) Identify relevant people, including witnesses and medical personnel.
- H. If a law enforcement officer has been injured and transported to a hospital, the agency in whose jurisdiction the hospital is located should provide appropriate security and assistance. The Employer Agency should be responsible for providing necessary assistance to the officer's family at the hospital.
- I. The Venue Agency representative should make the initial request for the SIU.
- J. The Venue Agency should provide a Supervisor or Incident Commander who is available at the scene. That person should update SIU personnel upon their arrival at the scene.
- K. The Venue Agency should make department personnel available to the SIU.
- L. For incidents in which a suspect is taken into custody, the Venue Agency will coordinate appropriate security measures with the SIU Commander and bear the costs of security until

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Protocol*

the suspect is available for booking. It is understood that special circumstances may dictate that another Non-Venue Agency may provide assistance and security upon request of the Venue Agency's Chief/Sheriff.

- M. The Venue Agency should turn over to SIU in a timely manner all evidence that is in their possession.
- N. The Venue Agency should make all documents, reports, and information on the incident available to the SIU in a timely manner.
- O. The Venue Agency should allow use of space and equipment as needed by the SIU.

19. OBTAINING CRITICAL INFORMATION

The Involved Officer may have information that is pertinent to the safety of officers and citizens, as well as the proper preservation of the crime scene. Such information may include, but not be limited to; medical aid that is needed, information necessary to apprehend suspect(s), and identification of perishable evidence. For purposes of this protocol, the reasons or basis for the use of force by an Involved Officer, or details of that use of force, is not considered critical information.

The Venue Agency on-scene supervisor may, based upon that agency's training, policy or guidelines, attempt to obtain critical information from the Involved Officer that is reasonably necessary to aid injured persons, apprehend suspect(s) and protect perishable evidence

All Member Agency supervisors and commanders should be familiar with *Garrity v. New Jersey* and the consequences to a criminal investigation of directing or ordering an employee to answer questions.

- A. The SIU investigation shall not consider or use any compelled information provided by an Involved Officer who was directed or ordered to provide such information.
- B. Any supervisor or other agency member who has directed or ordered an employee to answer questions shall immediately report that fact to the first-arriving SIU investigator and the SIU Commander upon his/her arrival at the scene.
 - (1) Details of the compelled information learned from the employee shall not be provided to SIU personnel.
- C. The SIU Commander shall attempt contact with the Involved Officer to inquire if he/she was directed or ordered to answer any questions.
 - (1) Details of the compelled information shall not be obtained.
 - (2) The SIU Commander shall ensure that no compelled information is used as part of the SIU investigation unless authorized by the Venue Agency prosecutor.

20. TURNING OVER CONTROL OF THE CRIME SCENE TO SIU

The Venue Agency Supervisor or Incident Commander shall turn over control of the crime scene to the SIU Commander upon his/her arrival. SIU then becomes responsible for the crime scene and initiation of the criminal investigation. The Venue Agency shall maintain perimeter control of the crime scene if requested by the SIU Commander.

A criminal act or investigation (i.e. robbery, burglary, search or arrest warrant service) may have preceded the Officer-Involved Incident. If so, the SIU Commander shall consult with the Venue Agency Incident Commander to determine which agency should investigate that preceding event, to include pursuing criminal charges related to that event. If so requested, SIU shall assume responsibility for the criminal investigation of the preceding event. Otherwise, SIU will limit its criminal investigation to the Officer-Involved Incident.

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21. SIU GUIDELINES

The SIU is comprised of personnel from multiple agencies, whose specific investigative roles may change from case to case. The SIU recognizes it is important to maintain consistency in the quality and type of investigation that is performed. Therefore, the SIU Commander will devise guidelines to be used during SIU investigations. SIU members will follow the guidelines as a part of their investigation.

22. SEIZING AN OFFICER'S WEAPON

If, upon arrival of SIU personnel, an Involved Officer is still in possession of a firearm or other weapon that was used in the incident, the SIU Commander will coordinate obtaining that firearm or weapon with the Employer Agency Supervisor or Incident Commander.

The SIU Commander shall ensure an inspection is conducted of all Witness Officer's (or other officers who may have been present at the time that force was applied) firearms, ammunition or other weapons. These inspections will be coordinated through that officer's Employer Agency Supervisor or Incident Commander.

23. RECOGNIZING POTENTIAL TRAUMA

The duties and responsibilities of a law enforcement officer may place an officer in a position in which he/she may justifiably need to use deadly force, or result in an officer being the victim of a crime.

It is recognized the Involved Officer or Witness Officer may encounter psychological trauma from an incident that is a result of them fulfilling their duties and responsibilities. SIU personnel will be alert for signs that indicate an officer may be suffering from such trauma. SIU personnel will treat involved officers with sensitivity and awareness as to the potential of acute stress reaction and/or other psychological trauma.

24. REMOVING OFFICERS FROM THE SCENE

If, upon arrival of SIU personnel, an Involved Officer or Witness Officer is still present at the scene, the SIU Commander will coordinate with the Venue and Employer Agency Supervisor or Incident Commander the removal of those officers from the scene.

To assure witness credibility these officers should, whether they are removed from the scene prior to or after SIU arrival, be kept separated from each other until statements are obtained by SIU. Witness Officers should be directed by their Employer Agency supervisor or commander to not discuss details of the case with the Involved Officer or other Witness Officers until SIU has completed their interviews with those officers.

25. PEER SUPPORT GROUP COUNSELORS

It is recognized that the Employer Agency may have guidelines in place that allow Peer Support Group Counselors who are not involved in the incident to have access to the Involved or Witness Officers. These discussions are considered privileged communications pursuant to

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RCW 5.60.060. SIU will allow Peer Support Group Counselor involvement per the Employer Agency's policy or guideline.

26. DOCUMENTING THE INVOLVED OFFICER'S CONDITION

SIU Members should photograph and document any injuries the Involved Officer, or any other officer, may have received. The Involved Officer's clothing will also be photographed and documented. The clothing may be seized as evidence.

27. INTERVIEWING LAW ENFORCEMENT EMPLOYEES

It is recognized that officers who justifiably use deadly force as a part of their duties and responsibilities may be subject to civil litigation. It is acknowledged that the SIU criminal investigation interview with Involved Officer(s) and Witness Officer(s) may be used by the Employer Agency in the administrative investigation and/or review of the incident to determine if any policy violations may have occurred. However, Employer Agency personnel conducting an administrative investigation and/or review should not be involved in an SIU investigation, nor will they normally engage in SIU interviews with Involved or Witness Officers. An allowable exception may be if the Involved Officer or Witness Officers agree to provide a single voluntary (non-compelled Garrity) statement, and requests that Employer Agency personnel conducting an administrative investigation and/or review be allowed to observe the SIU criminal investigation interview.

SIU recognizes that each agency's collective bargaining agreements (CBA) may establish guidelines for interviewing the Involved Officer and Witness Officers. SIU members will familiarize themselves with the Employer Agency's CBA as it pertains to this topic.

Any interview with the Involved Officer or Witness Officer will be scheduled by the SIU Commander through the Employer Agency's Chief/Sheriff or his/her designee.

With the officer's consent, formal interviews by SIU Members with the Involved Officer and Witness Officer(s) will be ~~tape~~ digitally recorded and transcribed.

A. Interview with the Involved Officer.

- (1) Unless the Involved Officer is a suspect involving possible criminal charges, the interview with the officer should be treated as a witness interview balancing the need to obtain all necessary information with sensitivity for the circumstances of the necessity of the interview. This approach is to be consistent with similar interviews with non-law enforcement officers. An example would be interviewing the parents of a deceased child when there is no probable cause to believe that a parent has committed a crime.
- (2) Research indicates an Involved Officer's memory often will be helped by revisiting the crime scene and doing a walk through after evidence and evidence markers have been removed, and before the officer has been interviewed. It is recognized this process can be instrumental in separating a true picture of the event from perceptually distorted recollections, and that the officer may recognize things in the scene that will stimulate recall. Consequently, if requested by the Involved Officer, SIU will generally allow the officer, with only his/her legal counsel, to do a walk-through of the scene prior to a formal interview. The legal right to do a walk-through after investigators have left the scene (i.e.

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*Special Investigations Unit (SIU)
Protocol*

public property crime scene versus private property crime scene) will need to be considered. The same approach is often used in homicide cases involving witnesses or suspects who are not law enforcement officers.

- (3) It is recognized the interview may take place as soon as practical after the incident occurred.
- (4) The Involved Officer should be allowed to provide a written statement prior to the interview if they so desire.
- (5) The Involved Officer will be treated with sensitivity and awareness as to the potential of acute stress reaction and/or other psychological trauma.
- (6) The Involved Officer has the same constitutional rights as any other citizen. The officer has the right to have legal counsel present during the interview. The officer should be provided a reasonable time to consult with legal counsel prior to the formal interview.
- (7) If the Involved Officer requests a Guild Representative (other than an attorney) be present during the interview, the SIU Interviewer(s) will notify the SIU Commander. The Commander will then consult with the Venue County's prosecutor and the Employer Agency Chief/Sheriff. A decision will then be made as to whether a Guild representative can be present during the interview. If a Guild Representative is allowed to sit in on the interview, the Representative will not be allowed to interfere with or obstruct the interview process.
- (8) As determined by legal standards, the Miranda Rights are generally required only when a criminal suspect is in custody and is subjected to interrogation. Consequently, an Involved Officer should only be advised of Miranda at the beginning of an SIU interview if it meets this standard.

SIU Investigators shall consult with the Venue Agency prosecutor concerning possible advisement of Miranda prior to a formal interview with the Involved Officer. There may be case specific circumstances which may prompt the Venue County prosecutor to request an Involved Officer be advised of Miranda prior to the SIU interview. If such a request is made, SIU Investigators shall advise the Involved Officer of Miranda at the beginning of the interview.

- (9) Prior to the beginning of an interview, the Involved Officer will be advised that they are being questioned related to a criminal investigation and that they are free to leave.
- (10) SIU Members will obtain statements from the Involved Officer only if it is "free and voluntary." If an Involved Officer indicates he/she will not provide a statement unless compelled to do so, the interview will be stopped. SIU Interviewer(s) shall notify the SIU Commander, who will notify the Venue County prosecutor's office and the Employer Agency Chief/Sheriff.
- (11) Should an Involved Officer elect to not provide a voluntary, non-compelled statement to SIU Investigators, the Venue County prosecutor may:
 - Request a Coroner's Inquest be convened pursuant to RCW 36.24.020 to aid in determining facts of the case and the cause of death, or
 - Request a Special Inquiry be convened pursuant to RCW 10.27.170.

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B. Interview with a Witness Officer.

- (1) Interviews with Witness Officer(s) will likely need to be arranged on the same day that the incident occurred. Witness Officers will be interviewed separately.
- (2) Unit Members should be alert for signs the Witness Officer(s) are traumatized and may need some time to decompress prior to giving a statement.
- (3) Generally, an officer who is a witness to the use of force and is not involved in the application of force in any manner and not a subject of the investigation, does not have a right to union representation during his/her interview. That is unless the Witness Officer reasonably believes his/her statement may result in discipline. Under such circumstances, if the officer requests Guild representation, he/she may be allowed to have a Guild Representative present during the interview. The Representative will not be allowed to interfere with or obstruct the interview process.
- (4) Witness Officer(s) may, if appropriate, be asked to participate in a walk-through of the scene with SIU investigators.

28. INTOXICANT TESTING

Law enforcement employees have the same rights and privileges that any civilian would have regarding intoxicant testing. If SIU Members determine a law enforcement employee's state of sobriety is relevant to the criminal investigation, they may:

- A. Obtain the blood and/or urine sample by valid consent.
- B. Apply for a search warrant to obtain the samples.
- C. When applicable, utilize the provisions of the Motor Vehicle Code of state statutes for vehicle driving incidents.

29. RELIEVING INVOLVED OFFICERS OF DUTY

SIU will not be involved in relieving any Involved Officer or Witness Officer of their duties. Any such action will be the responsibility of the Employer Agency.

30. PLANNED POLICE ACTION

If the Officer-Involved Incident is a result of a planned police action (i.e. search warrant service, arrest warrant service, tactical operation), documents and materials associated with the planning and execution of that action shall be turned over to SIU. Personnel involved in the action shall be interviewed by SIU. Those personnel should not debrief the incident amongst themselves until the last SIU interview is conducted with those involved.

31. AUTOPSY

Autopsies will be coordinated with the SIU Coroner Representative and will be conducted through the Venue County Coroner's office. A SIU Member will be present during autopsy and take all appropriate investigative steps.

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32. KEEPING THE VENUE/EMPLOYER AGENCY INFORMED

The SIU Commander should ensure the Venue Agency and Employer Agency's Chief/Sheriff is kept informed of the progress of the criminal investigation.

33. RELEASE OF INFORMATION / PUBLIC INFORMATION OFFICER

The SIU Commander, the Venue Agency and Employer Agency Chief/Sheriff should identify a single Public Information Officer for release of information to the public. Release of detailed information pertaining to the criminal investigation requires notification to the SIU Commander. Under no circumstances should information be released that may compromise a SIU investigation, unless required by law.

Requests for Release of Public Records of SIU investigative reports preferably would be made through the Venue Agency. However, individual agencies represented on the Unit will be required to follow applicable statutes for reports of their Unit members should a request for public records be filed with that agency. Release of any reports or records will follow the policy or guideline of the respective agencies. The SIU Commander will be notified by the Venue Agency, Employer Agency or any Unit Members that receive a records request related to the incident while the investigation is pending.

34. RELEASE OF THE CRIME SCENE

Only the SIU Commander, in consultation with and approval from the Venue Agency Prosecutor, may authorize release of the crime scene upon completion of the criminal investigation. The SIU Commander shall notify the Employer and Venue Agency Chief/Sheriff of the intent to release the scene prior to it actually being released.

35. REFERRAL TO THE COUNTY PROSECUTOR

In coordination with the SIU Prosecutor Representative, the SIU Commander will present the SIU investigative file to the Venue County Prosecutor for consideration of a Coroner's Inquest, referral to the Department of Justice, and review of filing on any potential criminal charges.

The Prosecutor shall also be available for consultation on search warrants, special inquiry proceedings, special inquiry subpoenas, and issues regarding statements by law enforcement officers when Garrity or other issues are raised.

36. EVIDENCE STORAGE

All evidence should be stored under the control of, and at the evidence storage facility of, a Non-Employer Member Agency designated by the SIU Commander. The SIU Commander shall coordinate with that Member Agency's Chief/Sheriff. The SIU Evidence Technician shall work with that Member Agency's Evidence Technician on details of inventorying and storage of evidence items.

The Venue Agency shall be responsible for storage and handling costs of extraordinary items such as vehicles, HAZMAT, etc.

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37. CASE FILES

All original reports, statements, and other documentation of Venue Agency employees should be filed and maintained by the Venue Agency. Copies of those reports, statements, and other documentation shall be submitted to the SIU Commander in a timely manner.

SIU will file reports under the assigned Venue Agency case number. The Venue Agency face sheet and original report will be completed by a Venue Agency officer, other than the Involved Officer. It is recognized the original report may be brief, and will be supplemented by detailed SIU reports.

Justifiable homicides often occur in conjunction with other criminal offenses. The National Incident Based Reporting System (NIBRS) data collection guidelines identify the justifiable homicide must be reported as a separate incident from the other criminal offense. For the justifiable homicide case, NIBRS requires that the Involved Officer be listed as a "suspect," and the perpetrator who is killed be listed as a "victim." Other officers or civilians should be listed as "witness" or "involved other."

SIU members shall file their reports on a standard supplemental report template, different than the I-Leads electronic report system. Those reports shall be printed and submitted to the SIU Commander upon completion. The SIU Commander will establish a master page number for each page of the report. The SIU Commander shall be responsible for ensuring all people listed on SIU reports are entered into the I-Leads database, and the completed report is scanned in and electronically attached to the Venue Agency report. Reading access capabilities to the electronic version of the report will be restricted and locked until the criminal investigation and administrative review is completed. It shall be unrestricted only with authorization from the Venue Agency Chief/Sheriff. The procedure in Section 33, "Release of Information," will be followed for requests for release of public records.

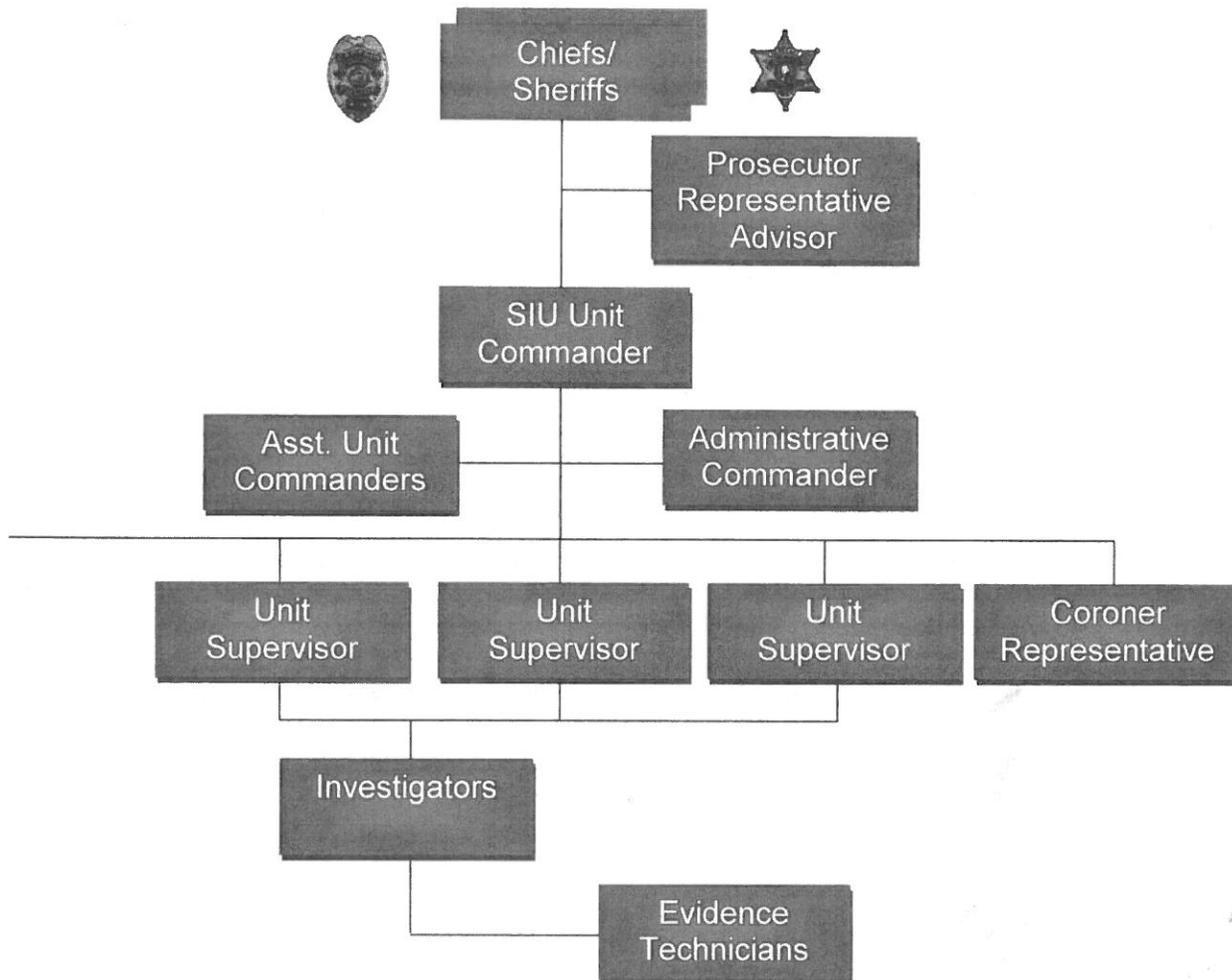
SIU reports will be completed in a timely manner. The SIU Commander and Venue Agency Chief/Sheriff will coordinate where the original SIU investigative file will be stored. Upon completion of the investigation and after the case has been referred to the Venue County prosecutor's office, copies of the SIU investigative file should be made available to the Venue/Employer Agency Chief/Sheriff with the approval of the Venue County Prosecutor.

38. INCIDENT DEBRIEFING

An incident debriefing for SIU members will be conducted as soon as practical after each activation. The debriefing will be scheduled and conducted by the SIU Commander.

Special Investigations Unit (SIU)
Protocol

39. ORGANIZATIONAL CHART



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WEST RICHLAND AGENDA ACTION ITEMS

AGENDA ITEM:	7a	TYPE OF ACTION NEEDED			
MEETING DATE:	August 16, 2016	Execute Contract		Consent Agenda	
SUBJECT:	Amending the 2015-2016 Budget	Pass Resolution		Public Hearing	
		Pass Ordinance	X	1st Discussion	
Prepared by:	Jessica Platt, Finance Director	Pass Motion	X	2nd Discussion	
Reviewed by:	Brent Gerry, Mayor	Other		Other	

SFA 3 – Financial & Operational Effectiveness, Stability, and Accountability

BACKGROUND INFORMATION: The budget amendment ordinance provides an opportunity to formally appropriate items previously approved by Council.

The budget adjustments include the following:

001 General Fund

- Recognize additional revenue in 2015-2016. The City anticipates collecting more revenue for utility inspection fees due to additional development activity.
- Increase engineering services appropriation for additional services provided due to increased development activity.
- Recognize additional revenue in 2015-2016. The City received revenue from the insurance company to compensate for damages to the Police facility while roofing repairs were being made.
- Increase general facilities repairs and maintenance appropriation to repair damages to police facility while roofing repairs were being made.

442 Sewer System Development Fund/ 452 Sewer Line Development

- On December 15, 2015 the City awarded the Industrial Process Water Treatment Facility contract. At the time the contract was awarded, it was anticipated that an additional \$150,000 would be required for the specifications outlined in the December 15, 2015 agenda item 6f. In addition to the cost of the original contract, there has been an estimated \$100,000 in change orders for the project. The majority of the change order costs are due to an unanticipated rock outcropping that was discovered during excavation. This amendment recognizes a total increase in appropriation for the Iplant Sewer Extension of \$75,000, which will be funded by a transfer from fund 452 Sewer Line Development Fund. This amendment will also recognize an increase in appropriation for the I-Pond project in the amount of \$175,000 which will be funded by a \$7,000 decrease in appropriation from the completed Paradise/Belmont Widening project that had less than anticipated expenditures. The remaining \$168,000 will be funded from the ending fund balance.
- The City's General Fund uses a sophisticated model called an Indirect Cost Allocation Plan (ICAP) to identify the costs of support services (i.e. Accounting/Finance, City Clerk, etc.) that the City's General Fund pays for that should be reimbursed by other City funds. Other City funds reimburse the City's General Fund because they are receiving a benefit from these costs. These are typically costs which these funds would have to procure on their own if the City's support service divisions did not exist (i.e. accounts payable, payroll/human resource and accounting services, etc.). The City contracted with FCS Group in 2011 to build the ICAP and the plan is updated by staff on an annual basis using the prior year's actuals.

The Sewer System Development Fund has had more activity than anticipated during 2015-2016 biennium. This has increased the amount of support services the Sewer System Development Fund uses; thus, increasing the appropriation needed for the interfund charges for services. This amendment recognizes the increased appropriation of \$25,172 funded by decreasing the ending fund balance.

SUMMARY: The attached ordinance modifies the budget (as detailed in the supporting worksheets) to reflect changes in the spending plans of the City.

RECOMMENDATION: Passage of the attached ordinance.

ALTERNATIVES: Without an amendment, the City has no authority to complete these transactions and funds would not be accounted for in a proper manner.

FISCAL IMPACT (Indicate amount, fund and impact on budget): This amendment authorizes an increase in the 2015-2016 appropriation in the amount of \$349,400 and recognizes an increase in resources in the amount of \$156,228 bringing the revised budget to a total of \$75,038,745.

MOTION: I move to pass Ordinance -16 amending the City of West Richland 2015-2016 biennial budget.

**CITY OF WEST RICHLAND
ORDINANCE NO. -16**

**AN ORDINANCE OF THE CITY OF WEST RICHLAND, WASHINGTON
AMENDING THE BUDGET FOR THE CITY FOR THE BIENNIUM ENDING
DECEMBER 31, 2016**

WHEREAS, on August 16, 2016, the City Council of the City of West Richland considered the budget for the City for the biennium ending December 31, 2016; and

WHEREAS, the City Council having made such adjustments and changes as it deemed necessary and proper, and it appearing in the best interests of the City;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, do ordain as follows:

Section 1. The 2015-2016 biennial budget for the City of West Richland is hereby amended.

Section 2. The following accounts contained in the 2015-2016 Budget are hereby amended as set forth in Exhibit "A".

Section 3. The explanations of the amendments are listed in Exhibit "B".

Section 4. This ordinance shall be in full force and effective five days following the date of its publication in the official newspaper of the City.

PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, this 16th day of August, 2016.

Brent Gerry, Mayor

ATTEST:

Julie Richardson, City Clerk

APPROVED AS TO FORM:

Bronson Brown, City Attorney

CITY OF WEST RICHLAND ~ 2015/2016 BUDGET AMENDMENT ~ August 16, 2016

Exhibit A:

FUND	REVENUES/RESOURCES						EXPENDITURES/USES							
	Beginning Fund Balance			Revenues			Expenditures			Ending Fund Balance				
	Previous Budget	Proposed Budget	Adjustment	Previous Budget	Adjustment	Proposed Budget	Previous Budget	Adjustment	Proposed Budget	Previous Budget	Adjustment	Proposed Budget		
General Fund:														
001 General	2,591,729	2,591,729		12,904,670	81,228	12,985,898	13,669,064	81,228	13,750,292	1,827,335		1,827,335		15,577,627
002 Cumulative Reserve	331,322	331,322		250,476		250,476	166,557		166,557	415,241		415,241		581,798
003 Real Estate Conservation/Management	28,911	28,911		5,100		5,100	29,000		29,000	5,011		5,011		34,011
Total General Fund(s)	2,951,962	2,951,962	-	13,160,246	81,228	13,241,474	13,864,621	81,228	13,945,849	2,247,567	-	2,247,567	-	16,193,436
Other Funds:														
101 Street	118,508	118,508		1,933,915		1,933,915	2,018,206		2,018,206	34,217		34,217		2,052,423
104 Park Impact	440,967	440,967		164,000		164,000	365,647		365,647	239,320		239,320		604,967
105 Criminal Justice	308,671	308,671		1,433,493		1,433,493	1,383,934		1,383,934	358,229		358,229		1,742,164
121 Library Services	152,261	152,261		819,565		819,565	879,740		879,740	92,086		92,086		971,826
301 Capital Imp - Real Estate Excise Tax I	300,443	300,443		542,664		542,664	499,596		499,596	343,511		343,511		843,107
302 Capital Imp - Real Estate Excise Tax II	565,310	565,310		327,000		327,000	666,117		666,117	226,193		226,193		892,310
309 Capital Imp - Yakima River Trail	427,864	427,864		1,609,519		1,609,519	2,037,383		2,037,383	-		-		2,037,383
312 Capital Imp - Paul Keith Wetland Restoration	-	-		125,832		125,832	125,832		125,832	-		-		125,832
320 Capital Imp - Belmont	-	-		1,252,310		1,252,310	1,252,310		1,252,310	-		-		1,252,310
355 Capital Imp - Transp Improvement Program	254,150	254,150		2,286,481		2,286,481	2,373,666		2,373,666	166,965		166,965		2,540,631
360 Capital Imp - Streets	-	-		-		-	-		-	-		-		-
374 Capital Imp - Van Giesen Redevel Ph 1	276,425	276,425		350		350	276,775		276,775	-		-		276,775
Water/Sewer Utility:														
401 Water/Sewer Operating	5,390,791	5,390,791		13,710,583		13,710,583	15,713,225		15,713,225	3,388,149		3,388,149		19,101,374
441 Water System Development	1,229,876	1,229,876		7,360,998		7,360,998	7,820,029		7,820,029	770,845		770,845		8,590,874
442 Sewer System Development	1,098,293	1,098,293		5,062,057		5,137,057	5,877,382		6,145,554	282,968		282,968		6,235,350
451 Water Line Development	33,161	33,161		65,936		65,936	74,942		74,942	24,155		24,155		99,097
452 Sewer Line Development	71,523	71,523		10,400		10,400	81,923		81,923	-		-		81,923
Total Water/Sewer Utility	7,823,644	7,823,644	-	26,209,974	75,000	26,284,974	29,567,501	268,172	29,835,673	4,466,117	(193,172)	4,272,945	(193,172)	34,108,618
Other Proprietary Funds:														
402 Irrigation Utility	63,503	63,503		165,335		165,335	183,436		183,436	45,402		45,402		228,838
404 Stormwater Utility	404,688	404,688		1,499,900		1,499,900	1,603,662		1,603,662	300,926		300,926		1,904,588
405 Solid Waste Utility	179,804	179,804		2,468,558		2,468,558	2,475,448		2,475,448	172,914		172,914		2,648,362
461 Public Works Operations Facility	2,289,325	2,289,325		2,311,850		2,311,850	4,601,175		4,601,175	-		-		4,601,175
482 Street Sweeping Decant Facility	-	-		2,014,000		2,014,000	2,014,000		2,014,000	-		-		2,014,000
Total Budgeted Funds	16,557,525	16,557,525	-	58,324,992	156,228	58,481,220	66,189,049	349,400	66,538,449	8,693,467	(193,172)	8,500,295	(193,172)	75,038,745

CITY OF WEST RICHLAND ~ 2015/2016 BUDGET AMENDMENT ~ August 16, 2016

Exhibit B:

FUND	G/L ACCOUNT	ACCOUNT TITLE	2015/2016 PREVIOUSLY APPROVED BUDGET	2015/2016 PROPOSED AMENDMENT	2015/2016 NEW AMENDED BUDGET	DESCRIPTION
001 - General Fund						
	<u>Revenues/Resources:</u>					
	001-000-342-40-00-000	Utility Inspection Fee	155,481	64,000	219,481	Increase revenue projection for inspection fees for increase in development activity.
	001-000-395-20-00-000	Insurance Recoveries - Cap A:	38,549	17,228	55,777	Recognize revenue from WCIA for Police Building Damage while roof was being replaced.
Increase/(Decrease) in Revenues/Resources				81,228		
	<u>Expenditures/Uses:</u>					
	Public Works - Engineering Services					
	001-710-538-20-10-000	Salaries and Wages	160,857	35,000	195,857	Increase budget for salary and benefits due to increase in engineering staff time spent on new developments
	001-710-538-20-20-000	Personnel Benefits	79,168	8,750	87,918	Increase budget for salary and benefits due to increase in engineering staff time spent on new developments
	001-710-538-20-41-000	Professional Services	25,000	20,250	45,250	
	Non-Departmental/General Facilities					
	001-902-594-30-48-000	Repairs & Maintenance	22,000	17,228	39,228	Increase budget to repair damages to Police building while the building was being re-roofed.
Increase/(Decrease) in Appropriations				81,228		
	001-000-508-80-00-000	Ending Fund Balance			-	

CITY OF WEST RICHLAND ~ 2015/2016 BUDGET AMENDMENT ~ August 16, 2016

Exhibit B:

FUND	G/L ACCOUNT	ACCOUNT TITLE	2015/2016 PREVIOUSLY APPROVED BUDGET	2015/2016 PROPOSED AMENDMENT	2015/2016 NEW AMENDED BUDGET	DESCRIPTION
442 - Sewer System Development						
<u>Revenues/Resources:</u>						
	442-000-397-35-00-452	Transfer In - Sewer Line Development	-	75,000	75,000	Transfer from Sewer Line Development Fund to pay for portion of I-Plant Sewer Extension.
Increase/(Decrease) in Revenues/Resources				75,000		
<u>Expenditures/Uses:</u>						
	442-710-535-80-41-888	Interfund Charges for Services	26,132	25,172	51,304	The large number of projects funded in fund 442 has increased the amount of support services from the general fund.
	442-710-594-35-60-001	I-Pond	2,576,866	175,000	2,751,866	See staff report
	442-710-594-35-63-105	Paradise/Belmont Widening	19,215	(7,000)	12,215	See staff report
	442-710-594-35-63-216	Iplant Sewer Extension	200,000	75,000	275,000	See staff report
Increase/(Decrease) in Appropriations				268,172		
	442-710-508-10-00-000	Ending Fund Balance		(193,172)		
452 - Sewer Line Development						
<u>Revenues/Resources:</u>						
Increase/(Decrease) in Revenues/Resources				-		
<u>Expenditures/Uses:</u>						
	452-710-594-34-63-000	Other Improvements	81,768	(75,000)	6,768	
	452-710-597-35-00-442	Transfer Out - Sewer System Development	-	75,000	75,000	See staff report
Increase/(Decrease) in Appropriations				-		
	452-710-508-10-00-000	Ending Fund Balance		-		