

## **ORDINANCE NO. 854**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YELM, WASHINGTON, GRANTING A NON-EXCLUSIVE MULTI-MEDIA COMMUNICATION FRANCHISE TO DIGITARIA COMMUNICATION NETWORKS LLC FOR THE CONSTRUCTION, OPERATION, RECONSTRUCTION AND MAINTENANCE OF CABLE AND TELECOMMUNICATION SERVICES WITHIN THE CITY LIMITS

WHEREAS, the City of Yelm is authorized to grant nonexclusive franchises for the operation of cable systems within the City rights-of-way; and

WHEREAS, Digitaria Communication Networks LLC. has requested a franchise to construct, operate, and maintain a multi-media communication system within the jurisdictional boundaries of Yelm, and

WHEREAS, the terms, conditions, and obligations provided herein are necessary to protect the safety and welfare of the citizens of Yelm and provide for the communication needs of the community;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF YELM, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

### **Section 1: Purpose.**

This Ordinance shall establish a non-exclusive Franchise, which constitutes an agreement between the City of Yelm (hereinafter the "City") and Digitaria Communication Networks, LLC, (hereinafter "Grantee") agrees to construct, maintain, and operate a Multi-media Communication System for the distribution of telephone, internet, and cable services pursuant to the terms of this Franchise. The City agrees to grant Grantee all necessary rights and privileges to use public rights of way necessary for a Cable System. This agreement shall, as of its effective date, supersede and replace all existing franchises previously granted by the City of Yelm to Grantee or any of its predecessors, subsidiaries or affiliated companies.

### **Section 2: Definitions.**

For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- 2.1 "Basic Cable" is the lowest priced tier of service that includes the retransmission of local broadcast television signals.
- 2.2 "Cable Act" collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996.
- 2.3 "Cable Services" shall mean
- (A) the one-way transmission to Customers of
    - i. VoIP telephone service
    - ii. high speed broadband internet connections
    - iii. video applications, including cable channel programming
    - iv. other programming service, and
  - (B) Customer interaction, if any, which is required for the selection or use of such video programming or other programming service
- 2.4 "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Customers within a community, but such term does not include
- (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations,
  - (B) a facility that serves Customers without using any Public Way;
  - (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System (other than for purposes of Section 621 (c) of the Cable Act) to the extent such facility is used in transmission of video programming directly to Customers unless the extent of such use is solely to provide interactive on-demand services,
  - (D) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934, or
  - (E) any facilities of any electric utility used solely for operating its electric utility system.
- 2.5 "City" means the City of Yelm or the lawful successor, transferee, or assignee thereof.
- 2.6 "Customer" means a Person who lawfully receives services of the Cable System with the Grantee's express permission.
- 2.7 "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- 2.8 "Franchise" shall mean the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license,

resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System.

- 2.9 "Grantee" means Digitaria Communication Networks, LLC or the lawful successor, transferee, or assignee thereof.
- 2.10 "Gross Revenues" means any revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, including: Basic Service, Expanded Basic Service, Digital Cable Service, Premium and Pay-Per-View Services, installation, connection and reconnection fees and revenues from advertising sales, leased access and home shopping. Provided, however, that such phrase shall not include any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a cable Grantee, or Customer, or both, solely because of their status as such. Gross Revenue shall not include amounts which cannot be collected by the Grantee, and are identified as bad debt; provided; that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they are collected.
- 2.11 "Institutional Network" or "I-NET" means the institutional network connecting public facilities and organizations within the Franchise Area described in greater detail in this Agreement.
- 2.12. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 2.13 "Public Way" or "Street" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning, entitle the City and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

2.14 "Service Area" or "Franchise Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

### **Section 3: Grant of Franchise.**

#### **3.1 Grant**

(A) The City hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Streets within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services subject to the terms and conditions set forth in this Franchise and applicable federal, state and local law

(B) This Agreement is intended to convey limited rights and interests only as to those Streets in which the City has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide Grantee any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise does not deprive the City of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on, or to regulate the use of land to control the City's Streets covered by this Franchise, including without limitation the right to perform work on its roadways, right-of-way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

(C) This Agreement is subject to the general lawful police power of the City affecting matters of municipal concern and not merely existing contractual rights of Grantee. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by City.

#### **3.2 Use of Public Ways and Streets**

Subject to City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Streets, including rights-of-way and public easements within the Service Area such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter, and must obtain any and all necessary permits from the City prior to commencing any construction activities.

### 3.3 Duration

The term of this Franchise and all rights, privileges obligations and restrictions pertaining thereto shall be ten (10) years from the effective date of this Franchise unless extended or terminated sooner as hereafter provided.

### 3.4 Effective Date

This Ordinance shall take effect five (5) days from the date of publication, following adoption by the City Council. The Franchise granted by this Ordinance shall not become effective until Grantee files written acceptance thereof in accordance with Section 23.4. If Grantee fails to provide such acceptance and post the security required hereunder, this Franchise shall become null and void, and any and all rights of Grantee to operate a Cable System within the Service Area under this Franchise are hereby terminated.

### 3.5 Franchise Nonexclusive

This Franchise shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by the City to any Person to use any Street, right-of-way, easement, or property for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. City may at any time grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional Franchises for Cable Systems, as City deems appropriate.

### 3.6 Grant of Other Franchises

(A) In the event the City enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than the Grantee to enter into the City's public ways for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, in which Grantee is actually providing Cable Service under the terms and conditions of this Franchise, or is required to extend Cable Service to under the provisions of Section 12 of this Franchise, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

(B) If the City grants a franchise to a third party to provide Cable Service to an area that Grantee is not actually serving or required to extend service to, and which has material provisions that are not reasonably comparable to those contained herein, the City shall offer Grantee a Franchise to serve the same area under terms and conditions that are reasonably comparable to those set

forth in the franchise agreement entered into with the third party.

### 3.7 Police Powers

This Franchise and all rights and privileges granted under the Franchise are subject to, and Grantee must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City's exercise of Its police and other powers and applicable law. This Franchise does not confer rights or immunities upon Grantee other than as expressly provided herein. In the case of any conflict between the express terms of this Franchise with any ordinance of general application enacted pursuant to the City's police power, the ordinance shall govern. Grantee does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

## **Section 4: Administration and Regulation by the City.**

Grantee's Service Area shall be the entire incorporated area of the City of Yelm, in its present incorporated form or in any later reorganized, consolidated, enlarged, or re-incorporated form.

### 4.1 Authority

The City is vested with the power and right to regulate the exercise of the privileges permitted by this Franchise in the public interest in accordance with applicable law, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.

### 4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by City to the full extent authorized by applicable federal, state and local laws.

### 4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all Customers receiving similar Cable Service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the Service Area. Grantee shall provide equivalent Cable Service to all residential Customers at similar rates and to commercial Customers as authorized by applicable laws. Nothing herein shall be

construed to prohibit:

- (A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
- (B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens.
- (C) Grantee from establishing different and nondiscriminatory rates and charges and classes of service for commercial Customers, as well as different nondiscriminatory monthly rates for classes of commercial Customers as allowable by federal law and regulations; or
- (D) Grantee from establishing different and nondiscriminatory rates and charges for residential Customers as allowable by federal law and regulations.

Grantee will continue to voluntarily provide a 30% discount off of Basic Cable service to qualifying low-income disabled Subscribers and low-income senior Subscribers, age 65 and older. Grantee will qualify discount applicants in accordance with its standard practices.

#### 4.4 Filing of Rates and Charges

- (A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Service provided hereunder. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.
- (B) Grantee shall provide, upon request from the City, a complete schedule of current rates and charges for any and all leased access channels, or portions of such channels provided by Grantee in the Service Area. The schedule shall include a description of the price, terms and conditions established by Grantee for such leased access channels.

#### 4.5 Renewal of Franchise

- (A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
- (B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of all of its assessments regarding the identity of future

cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. The City further agrees that such preliminary assessments shall be provided to Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of Its term.

Notwithstanding anything to the contrary set forth in this Section, Grantee and the City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and the City consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act.

#### 4.6 Conditions of Sale

If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the City either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

Grantee and the City agree that in the case of a final determination of a lawful revocation of the Franchise, at the Grantee's request, Which shall be made in Its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The City further agrees that during such a period of time, it shall authorize Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the City, Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of Its Cable System during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of any rights of either the City or Grantee.

#### 4.7 Transfer of Franchise.

Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with Grantee, without the prior consent of the City, such consent not to be unreasonably withheld. No such consent shall be required however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee In the Franchise or Cable System in order to secure indebtedness.

Within thirty (30) days of receiving the request for transfer, the City shall, in accordance with FCC rules and regulations, notify Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the City has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the City shall be deemed given.

## **Section 5: Franchise Fees.**

### **5.1 Franchise Fee**

As consideration for the benefits and privileges granted under this Franchise and in consideration of permission to use City's Streets and Public Ways, Grantee shall pay as a Franchise fee to City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues derived from the operation of the Cable System to provide Cable Services in the Service Area. Accrual of such Franchise fees shall commence as of the effective date of this Franchise. The Franchise fees are in addition to all other fees, assessments, taxes or payment of general applicability that Grantee may be required to pay under any federal, state or local law. This Franchise and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

### **5.2 Payments**

Grantee's Franchise fee payments to the City shall be computed quarterly. Each quarterly payment shall be due and payable no later than forty-five (45) days after the last day of the preceding quarter.

### **5.3 Acceptance of Payment Computation**

No acceptance of any payment shall be construed as an accord by City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

### **5.4 Quarterly Reports**

Each payment shall be accompanied by a written report to the City, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

## 5.5 Annual Reports

Grantee shall, no later than one-hundred twenty (120) days after the end of each calendar year, furnish to City a statement stating the total amount of Gross Revenues and all payments, deductions and computations for the period covered by the payments. Such statement shall be reviewed and certified by an officer of Grantee prior to submission to City.

## 5.6 Franchise Fee Audits

On an annual basis, upon thirty (30) days' prior written notice, City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that Franchise fees have been underpaid by ten percent (10%) or more, Grantee shall pay the total cost of the audit.

## 5.7 Interest on Late Payments

In the event that a franchise fee payment or other sum is not received by the City on or before the due date, or is underpaid, Grantee shall pay, in addition to the payment or sum due, interest from the due date at a rate equal to the highest rate permissible under the laws of the State of Washington.

## 5.8 Costs of Publication

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Franchise and any amendments thereto, as such notice or publication is reasonably required by the City or applicable law.

## 5.9 Tax Liability

Payment of the Franchise fees under this Franchise shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by City.

## **Section 6: Upgrade**

### **6.1 Upgrade**

No later than thirty-six (36) months from the effective day of this Franchise, the Grantee shall upgrade the Cable System to the following specifications:

- (A) The Cable System will use a fiber to the neighborhood node architecture. This will involve deployment of fiber optic cable from the headend to the node throughout those portions of the Cable System to be upgraded. The upgraded plant will tie into a hybrid fiber-coaxial Cable System already serving Subscribers.
- (B) The Cable System will serve no more than 1,500 subscribers per fiber node.
- (C) All active electronics will be 550 MHz capable equipment, or equipment of higher bandwidth.
- (D) Passive devices will pass a minimum bandwidth of 550 MHz.
- (E) As designed, upgraded and maintained, the facilities on the Cable System must be able to deliver high quality Signals that meet or exceed FCC technical quality standards regardless of the particular manner in which the signal is transmitted.

### **6.2 Construction Information and Schedule**

Construction information and a construction schedule shall be submitted to the City in accordance with the City's permitting process.

## **Section 7: Emergency Alert System**

Upon completion of the Cable System upgrade, and in accordance with the provisions of FCC Regulations Part II, Subpart D, Section 11.51, as such provisions may from time to time be amended, Emergency Alert System ("EAS") activation will be accomplished in compliance with the FCC approved Washington State EAS plan and the Local Area EAS plan that applies to Thurston County, which has already been submitted for approval to the Washington State Emergency Communications Committee (WSECC).

## **Section 8: Emergency Power**

Grantee shall provide a standby power system to automatically activate equipment at the headend and hubs, if applicable in event of primary electrical failure

## **Section 9: Coverage**

The City shall be provided with Cable Service In the entire Franchise area. If such a condition does not now exist, the Grantee shall complete such wiring and be in a position to offer Cable Service to all residents within twelve (12) months from the grant of the Franchise. Areas subsequently annexed shall be provided with cable availability within twelve (12) months of annexation.

## **Section 10: Cable Availability.**

Cable Service shall not be denied to any group of potential residential cable Customers because of the income of the residents of the local area in which such group resides.

## **Section 11: Extraordinary Installation**

All residents requesting cable service and living within one hundred twenty-five (125) feet of existing cable distribution lines shall have the cable installed at the prevailing published installation rate.

In the event a request is made for service and the residence is more than one hundred twenty-five (125) feet from an existing cable distribution line, such installation shall be completed on a time and material cost basis for that portion of the service line extending beyond one hundred twenty-five (125) feet.

## **Section 12: Distribution Line Extension.**

Cable Service shall be available to all residents within the City provided there are at least thirty-five (35) dwelling units per street mile.

In the event a request is made for service by a resident(s) living in an area not meeting such criteria, Grantee shall enter into a contractual agreement with the resident(s) requesting Cable Service wherein Grantee shall be reimbursed for its construction costs.

Whenever any subsequent Customer who did not contribute to the original cost of the extension connects to the extended distribution service line, that Customer shall pay his/her pro rata share directly to Grantee prior to obtaining Cable Service. Grantee shall then promptly tender such payment to the original Customer so long as the agreement remains in force.

Reimbursement shall be calculated on a front foot basis as a percentage of the total cost of the service line extension. Reimbursement shall be made to the original Customer for a period of up to five (5) years or to the point when Grantee has recovered its incremental costs to construct the distribution service line.

## **Section 13: Complimentary Cable Service to Public Buildings**

Grantee shall provide, without charge for installation or monthly rate, Basic Service, one outlet and converter if needed, to those City offices, fire station(s), police station(s) and accredited school buildings, as well as other such buildings that may be constructed during the period of the Franchise, that are passed by the Cable System and are within one hundred fifty (150) feet of the trunk or distribution plant.

## **Section 14: Customer Service**

### **14.1 Customer Service Standards**

Grantee shall meet or exceed any customer service standards adopted by the FCC and, to the extent the same are stricter or address different matters, those adopted now or in the future by the City

### **14.2 Subscriber Privacy**

Grantee will comply with privacy rights of Customers in accordance with federal, state and local law.

## **Section 15: Books and Records**

### **15.1 Open Records**

(A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City shall have access to, and the right to inspect any books and records of Grantee that are reasonably related and necessary to the administration or enforcement of the terms of this Franchise, as determined by the City. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to City at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request in writing within ten (10) days, that City inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) working days. If any books or records of Grantee are not kept in a local area office and not made available in copies to City upon written request as set forth above, and if City determines that an examination of such records is necessary or appropriate to the performance of any of City's duties, administration, or enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be

paid by Grantee.

(B) Grantee shall at all times maintain and allow the City access to, and the right to review a complete set of plans, records and "strand" maps showing the location of the Cable System installed in the Service Area. These maps shall be maintained in an industry standard format and medium.

## 15.2 Confidentiality

The City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If City believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, City agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person.

## Section 16: Programming

### 16.1 Parental Control Device

Upon request by any Customer, Grantee shall make available a parental control or lockout device; traps or filters to enable a Customer to control access to both the audio and video portions of any or all channels. Grantee shall inform its Customers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

### 16.2 Leased Access Channels

Grantee shall meet the requirements for leased access channels imposed by federal law.

### 16.3 Continuity of Service

(A) It shall be the right of all Customers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the *force majeure* provisions of this Franchise, Grantee

shall use its best efforts to ensure that all Customers receive continuous, uninterrupted Cable Service regardless of the circumstances.

(B) In the event of a change in ownership, or in the event a new cable operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the City and such new cable operator in maintaining continuity of service to all Customers.

#### 16.4 Service for Disabled

Grantee shall comply with the Americans With Disabilities Act, any amendments thereto, and any other applicable federal, state or local laws or regulations.

### **Section 17: Public, Educational and Governmental ("PEG") Access**

#### 17.1 PEG Access Channels

Upon request from the City, the Grantee shall provide up to three (3) channels for public, educational and governmental access pursuant to the provisions of the Cable Act, Section 611 (47 USC 531), to be promoted and administered by the City or its designee.

#### 17.2 Capital Contribution for PEG Access Equipment

The City reserves its right to require Grantee to provide a Capital Contribution for public, educational and governmental access capital requirements of the City. Upon ninety (90) days prior written notice, Grantee shall make a one-time Capital Contribution payment to the City. The payment shall not exceed the number of current subscribers multiplied by the number of months remaining in the Franchise term multiplied by \$1.00, and shall be discounted to reflect the current cost of funds. The City agrees that all amounts paid by the Grantee as the Capital Contribution may be added to the price of Cable Services and collected from Subscribers as "external costs", as such term is used in 47 C.F.R. §76.922 on the date of this Franchise. In addition, all amounts paid as the Capital Contribution may be separately stated on Customers' bills as permitted in 47 C.F.R. §76.985.

#### 17.3 Reporting of Use of PEG Funds

The City shall submit a report annually to the Grantee accounting for the use of the Capital Contribution. The City shall submit the report to the Grantee within one hundred twenty (120) days of the close of the City's fiscal year. To the extent that information in the report is audited in the normal course of the City's fiscal accounting, the report shall be audited. The Grantee may review records of the Franchising Authority regarding the use of the channels provided and the Capital Contribution, to verify that the funds have been used for payment of PEG access capital costs.

## **Section 18: General Street Use and Construction**

### **18.1 Construction**

- (A) Subject to applicable laws, regulations, and ordinances of City and the provisions of this Franchise, Grantee may perform all construction necessary for the operation, maintenance, upgrading, and repair of its Cable System. All construction and maintenance of any and all of Grantee's Cable System facilities within the Streets and Public Ways shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.
  
- (B) Prior to beginning any construction, in accordance with the City's permitting processes, Grantee shall provide the City with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Franchise and all applicable City Ordinances and Codes. When obtaining a permit, Grantee shall be notified, insofar as is reasonably possible, of other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practical to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce as far as possible the number of Street cuts.

### **18.2 Location of Facilities**

Within forty-eight (48) hours after notification of any proposed Street excavation, Grantee shall, at Grantee's expense:

- (A) Mark on the surface all of its underground facilities within the area of the proposed excavation;
  
- (B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or
  
- (C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

### **18.3 Relocation**

The City shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by City, the City may

effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the Streets, the City shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

#### 18.4 Restoration of Streets

- (A) Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to City.
- (B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration in accordance with applicable regulations of the City within the area affected by the excavation. City may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The City may, after providing notice to Grantee, remove or repair any work done by Grantee which, in the determination of City, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Franchise, and this Section in particular, shall be done in strict compliance with all rules, regulations, and ordinances of City. Prior to making any Street or right-of-way cuts or openings, Grantee shall provide written notice to City.

#### 18.5 Maintenance and Workmanship

- (A) Grantee's Cable System shall be constructed and maintained in such manner as to not interfere with sewers, water pipes, or any other property of City, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, City's authority.
- (B) Grantee shall provide and use any equipment necessary to control and carry Grantee's cable television Signals so as to prevent injury to City's property or property belonging to any Person. Grantee, at its own expense, shall repair, change, and improve its facilities to keep them in good repair, and safe and presentable condition.

#### 18.6 Reservation of City Street Rights

Nothing in this Franchise shall prevent City or utilities owned, maintained, or operated by public entities other than City, from constructing sewers, grading, paving, repairing, or altering any Street; repairing or removing water mains, or constructing or establishing

any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Grantee's Cable System shall be removed or replaced in the manner City shall direct, and City shall in no event be liable for any damage to any portion of Grantee's Cable System. Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust, or relocate its facilities by the date established by City's written notice to Grantee, City may effect such removal, adjustment, or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by City due to Grantee's delay

#### 18.7 Use of Grantee's Facilities by City

Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Public Way; provided that:

- (a) such use by the City does not interfere with a current or future use by the Grantee;
- (b) the City holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs if applicable, to the extent such claims are caused in whole or in part by negligent or intentional act or omission of the City, its officers, employees, contractors or agents; and
- (c) at the Grantee's sole discretion, the City may be required either to pay a reasonable rental fee or otherwise reasonably compensate the Grantee for the use of such poles, conduits, or equipment; provided, however, that the Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Service Area.

#### 18.8 Street Vacation

If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to the City, remove its facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the City. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City to restore, repair or reconstruct such Street, the City may do such work, or cause it to be done, and the reasonable cost thereof, as found and declared by the City, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation.

18.9 Discontinuing Use of Facilities

Whenever Grantee intends to discontinue using any facility within the Streets, Grantee shall submit for the City’s approval, a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, City may require Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. If Grantee abandons its facilities; the City may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental or educational purposes.

18.10 Hazardous Substances

- (A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Streets.
- (B) Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System at such intervals as are agreed to between the parties or, if there is no agreement, at such times as the City reasonably prescribes. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

18.11 Undergrounding of Cable

- (A) Where electric and telephone utility wiring is installed underground at the time of Cable System construction, or when such wiring is subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other wire line service at no additional expense to the City. Related Cable System equipment such as pedestals must be placed in accordance with applicable Code requirements and underground utility rules as interpreted by the City’s Public Works Director. In areas where electric or telephone utility wiring is aerial, Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial Installation.
- (B) Grantee shall utilize existing poles and conduit wherever possible.

## 18.12 Repair and Restoration of Property

- (A) Grantee shall protect public and private property from damage. If damage occurs, Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.
- (B) If public or private property is disturbed or damaged, Grantee shall restore the property to its former condition, normal wear and tear excepted. Public right-of-way or other City property shall be restored in a manner and within a timeframe approved by the City's Director of Public Works. If restoration of public right-of-way or other property of the City is not satisfactorily performed within a reasonable time, the Public Works Director may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at Grantee's expense and recover the cost of those repairs from Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Grantee shall pay the City. If suit is brought upon Grantee's failure to pay for repair or restoration, and if judgment in such a suit is entered in favor of the City, then Grantee shall pay all of the City's actual costs and expenses resulting from the non-payment, including damages, interest from the date the bill was present, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than seventy-two (72) hours.
- (C) Prior to entering onto private property to construct, operate, or repair its Cable System, Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents, and users.

## 18.13 Movement of Cable System For and By City

The City may remove, replace, modify, or disconnect Grantee's facilities and equipment located in the public right-of-way or on any other property of the City in the case of fire, disaster, or other emergency, or when a project or activity of the City's makes the removal, replacement, modification or disconnection necessary or less expensive for the City. Except during an emergency, the City shall attempt to provide reasonable notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action. Following notice by the City, Grantee shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other property of the City, except that the City shall provide at

least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If Grantee fails to complete this work within the time prescribed, and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to Grantee within thirty (30) days of receipt of an itemized list of those costs, Grantee shall pay the City.

#### 18.14 Movement for Other Franchise Holders

If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary change requested by the responsible entity. The franchisees shall determine how costs associated with the removal or relocation shall be allocated.

#### 18.15 Movement for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower, or remove its wires as necessary to permit the moving of a building, vehicle, equipment, or other Item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance

#### 18.16 Tree Trimming

Subject to acquiring prior written permission of the City, Grantee shall have the authority to trim trees that overhang a Public Way or Street so as to prevent the branches of such trees from coming in contact with its Cable System. Such tree trimmmg shall be done in accordance with applicable codes and regulations and current, accepted professional tree trimming practices. However, if an emergency situation exists or in order to restore Cable Service to Customers, Grantee shall have the authority to trim particular trees, in keeping with such standards and practices, so long as the City is notified within forty-eight (48) hours of such trimming.

#### 18.17 Codes

Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, City may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question.

## 18.18 Standards

- (A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. Grantee must comply with all safety requirements, rules and practices, and employ all necessary devices as required by applicable law during construction, operation, and repair of its Cable System. By way of illustration and not limitation, Grantee must comply with the National Electric Code, National Electrical Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.
- (B) Grantee shall ensure that its cable drops are properly bonded to the electrical power ground at the home, consistent with the requirements of the National Electric Code and the National Electrical Safety Code. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

## Section 19: Enforcement and Termination

### 19.1 Notice of Violation

In the event the City believes that Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing, stating the nature of the alleged noncompliance.

### 19.2 Grantee's Right to Cure or Respond

Grantee shall have thirty (30) days from receipt of the notice described above to

- (a) respond to the City contesting the assertion of noncompliance, or
- (b) to cure such default, or
- (c) In the event that, by the nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

Grantee may request an extension of time if construction is suspended or delayed by the City, or where unusual weather, acts of God (e g. earthquakes, floods, etc.), extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of Grantee, delay progress. Grantee shall not, through its own actions or inactions, substantially contribute to the delay and the amount of time allowed shall be reasonable as determined by the City. The extension of time in any case should not be less than the extent of the actual delay experienced by Grantee in such cases where the City finds that the delay was beyond the control of Grantee.

### 19.3 Failure to Correct

Failure of Grantee to respond to the notice or correct such noncompliance, except in those circumstances cited above, may result in the City calling a hearing to investigate

the default and to determine if liquidated damages should be imposed upon Grantee, or if a material violation of the franchise has occurred. Such public hearing shall be held at the next regularly scheduled meeting of the City Council, but no less than five (5) days therefrom. The City shall notify Grantee in writing of the time and place of such meeting and provide Grantee with an opportunity to be heard.

#### 19.4 Enforcement

In case of substantial default of a material provision of the Franchise, whether so labeled in this agreement or otherwise, subject to applicable federal and state law, in the event the City, after such meeting, determines that Grantee is in default of any provision of the Franchise, the City may:

- (A) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
- (B) Impose liquidated damages as set forth below for each day beyond thirty (30) days that Grantee has not fulfilled the requirements for:
  - (1) Upgrade improvements in accordance with Section 6, \$200.00 per day;
  - (2) PEG Channels and Capital Contribution in accordance With Section 17 Public, Educational and Governmental Access, \$200.00 per day;
  - (3) Provision of Cable Service to annexed areas in accordance with Section 9 Coverage, \$200.00 per day.

Grantee and the City agree that any of the above described violations, unless excused, or not corrected by Grantee within the time allotted, shall constitute failure to comply with a material provision of the Franchise.

- (C) In the case of substantial default of a material provision of the Franchise, including but not limited to those specifically listed, declare the Franchise to be revoked in accordance with the following:

The City shall give written notice to Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing, and to state its reasons for such objection. In the event the City has not received a response satisfactory from Grantee, it may then seek termination of the Franchise at a public meeting. The City shall cause to be served upon Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

At the designated meeting, the City shall give Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. Grantee may appeal such determination to an

appropriate court, which shall have the power to review the decision of the City "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within Sixty (60) days of the issuance of the determination of the City.

(D) No penalty, bond forfeiture, or termination shall be imposed for delays where such delays are result of causes beyond the reasonable control and/or without substantial fault or negligence of Grantee, as reasonably determined by the City.

## 19.5 Alternative Remedies

The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

## **Section 20: Insurance and Indemnification**

### 20.1 Insurance Requirements

Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$2,000,000 combined single limit for bodily injury, and property damage. Grantee shall provide a Certificate of Insurance designating the City as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the City. Any such canceled Certificate of Insurance shall be replaced with another Certificate of Insurance, providing equal or greater coverage, prior to such cancellation.

### 20.2 Indemnification

Grantee agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of Grantee's construction, operation, or maintenance of Its Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the City shall give Grantee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

## **Section 21: Security for Performance**

### 21.1 Security for Performance

Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The City acknowledges that the legal, financial, and technical

qualifications of the Grantee are sufficient for compliance with the terms of the Franchise and the enforcement thereof. The Grantee and the City recognize that the costs associated with bonds and other surety may ultimately be borne by the Customers in the form of increased rates for services. In order to minimize such costs, the City agrees to require bonds and other surety only in such amounts and during such time as there is a reasonably demonstrated need therefore. The City agrees that In no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$100,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that a bond or other surety is required in the future, the City agrees to give the Grantee at least Sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

## **Section 22: Miscellaneous Provisions**

### **22.1 Grantee Not an Agent of the City**

This Franchise shall not be construed to provide that Grantee is the agent or legal representative of the City for any purpose whatsoever. Grantee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City, or to bind the City in any manner or thing whatsoever.

### **22.2 Entire Agreement**

This Franchise represents all of the covenants, promises, agreements, and conditions, both oral and written, between the parties. However, the City reserves the right to waive any of these Sections without affecting the applicability of other Sections not so specifically waived. Waiver of any Franchise requirement by the City shall be in writing in order to be effective.

### **22.3 Successors or Assigns**

This Franchise shall be binding on the Grantee, its heirs, successors, and assigns.

### **22.4 Acceptance**

This grant of Franchise and its terms and provisions shall be accepted by Grantee by the submission of a written instrument, executed and sworn to by a corporate officer of Grantee before a Notary Public, and filed with the City Clerk within Sixty (60) days after the effective date of this Franchise. Such instrument shall evidence the unconditional acceptance of this Franchise and the promise to comply with and abide by all its

provisions, terms and conditions.

## 22.5 Severability

Each Section, Subsection or other portion of this Ordinance shall be severable and the invalidity of any Section, Subsection, or other portion shall not invalidate the remainder.

## 22.6 Force Majeure

Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation, or other event that is reasonably beyond Grantee's ability to anticipate and control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Grantee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

## **Section 23: Notice**

Written notices shall be deemed to have been duly served if delivered in person to the individual or entity for whom it was intended, or if delivered at or sent by registered or certified United States mail to the last business address known to the party who gives the notice. All notices and requests shall be addressed to the City of Yelm and the Grantee as follows:

CITY:                   City Clerk  
                          City of Yelm  
                          PO Box 479  
                          Yelm, WA 98597

GRANTEE:           Digitaria Communication Networks LLC  
                          PO Box 1351  
                          Enumclaw, WA 98022

PASSED by the City Council of Yelm this 12<sup>th</sup> day of September, 2006.

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Ron Harding, Mayor

AUTHENTICATED:

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Agnes Bennick, City Clerk.

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