

RECEIVING NO. 4095
DATE 10-16-08
CITY CLERK [Signature]

08-127

**AGREEMENT FOR SERVICES
BETWEEN THE CITY OF WOODINVILLE AND
RIVER OAKS COMMUNICATIONS CORPORATION**

THIS AGREEMENT, is made this 14th day of October, 2008, by and between the City of Woodinville (hereinafter referred to as "City"), a Washington Municipal Corporation, and River Oaks Communications Corporation (hereinafter referred to as "River Oaks"), doing business at 8 South Nevada Avenue, Suite 515, Colorado Springs, Colorado 80903.

WHEREAS, River Oaks is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with River Oaks to engage the professional services and assistance of a consultant to assist a consortium of cities in negotiation in accordance with the terms of a letter agreement dated September 24, 2008, attached as Exhibit A hereto and an Interlocal Agreement, attached as Exhibit B hereto; and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. **Description of Work.** River Oaks shall perform work as described in Exhibit A, Scope of Work, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. River Oaks shall not perform any additional services without the express permission of the City. The City is the lead agency, contracting for services to be provided to the Consortium described in Exhibit B.
2. **Payment.** River Oaks will bill each and every participating jurisdiction in accordance with the terms of Exhibit A and the Interlocal Agreement for that entity's portion of billings. River Oaks shall be paid by the City for its portion of completed work for services rendered under this Agreement as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.
 - A. Payment for work accomplished under the terms of this Agreement shall be as set forth in the Scope of Work and the authorization provided under paragraph 1 above, provided that the payment for work performed pursuant to this Agreement not exceed the sum of One Hundred Fifty-Five Thousand and NO/100 Dollars (\$155,000), unless otherwise agreed in accordance with the Interlocal Agreement.
 - B. River Oaks shall submit monthly payment invoices to the City and other Consortium members after such services have been performed, and the City shall make payment as soon as reasonably practicable, but no later than forty-five (45) days after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the

tasks performed, and shall separate all charges for clerical work and reimbursable expenses. The City shall have no liability for services performed at the request of an individual Consortium member nor for the obligations of the Consortium as a whole.

C. If the City objects to all or any portion of any invoice, it shall so notify River Oaks of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.

3. **Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As River Oaks is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of River Oaks shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to River Oaks or its employees, agents, representatives or subcontractors. River Oaks will be solely and entirely responsible for its acts and for the acts of River Oaks' agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that River Oaks performs hereunder.

4. **Project Name.** Cable Franchise Consortium.

5. **Duration of Work.** River Oaks shall complete the work described in Exhibit A on or before October 14, 2009.

6. **Termination.**

A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to River Oaks. Individual parties to the Consortium may withdraw from the Consortium as provided in Exhibit B. Such withdrawal shall not terminate this agreement unless the withdrawing party is the City.

B. Termination for Cause. If River Oaks refuses or fails to complete the tasks described in Exhibit A, or completes such work in a manner unsatisfactory to the City, then the City may, by written notice to River Oaks, give notice of its intention to terminate this Agreement. After such notice, River Oaks shall have ten (10) days to cure, to the satisfaction of the City or its representative. If River Oaks fails to cure to the satisfaction of the City, the City shall send River Oaks a written termination letter which shall be effective upon deposit in the United States mail to River Oaks' address as stated below.

C. Rights upon Termination. In the event of termination, the City and Consortium Members shall only be responsible to pay for all services satisfactorily performed by

River Oaks to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed for the City. The Consortium shall make the final determination as to services performed on behalf of the Consortium. .

7. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, River Oaks, its subcontractors or any person acting on behalf of River Oaks shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
8. **Indemnification/Hold Harmless.** River Oaks shall defend, indemnify and hold the City, the Consortium Members and their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the negligence or intentional wrongful act of the City or a Consortium Member.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of River Oaks and the City, its officers, officials, employees, and volunteers, River Oaks' liability hereunder shall be only to the extent of River Oaks' negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes River Oaks' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

9. **Insurance.** River Oaks shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by River Oaks, its agents, representatives, employees or subcontractors.
 - A. **Minimum Scope of Insurance.** River Oaks shall obtain insurance of the types described below:
 1. *Automobile Liability* insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 2. *Commercial General Liability* insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations,

personal injury and advertising injury, and liability assumed under an insured contract.

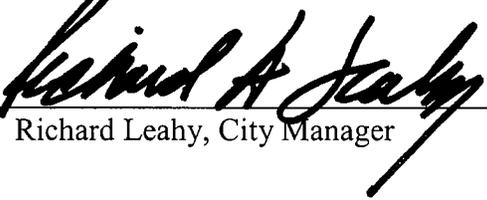
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, if applicable to River Oaks.
 - B. **Minimum Amounts of Insurance.** River Oaks shall maintain **automobile liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.**
 - C. **Professional Liability Insurance.** River Oaks shall maintain for the duration of this Agreement, Professional Liability insurance with the coverage amount of \$1,000,000 per claim.
 - D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
 - E. **Verification of Coverage.** River Oaks shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of River Oaks before commencement of the work.
10. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
11. **City's Right of Supervision, Limitation of Work Performed by River Oaks.** Even though River Oaks works as an independent contractor in the performance of its duties under this Agreement, the work must meet the approval of the City and the Consortium, and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, River Oaks shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to River Oaks' business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
12. **Work Performed at River Oaks' Risk.** River Oaks shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at River Oaks' own risk, and River Oaks shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
13. **Ownership of Products and Premises Security.**

- A. All reports, plans, specifications, data maps, and documents produced by River Oaks in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
 - B. While working on the City's premises, River Oaks agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
- 14. Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and River Oaks.
- 15. Assignment.** Any assignment of this Agreement by River Oaks without the written consent of the City shall be void.
- 16. Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
- 17. Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.
- 18. Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

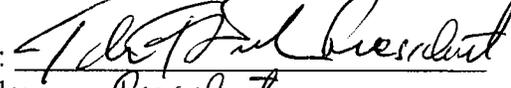
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IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF WOODINVILLE

By: 
Richard Leahy, City Manager

RIVER OAKS COMMUNICATIONS CORPORATION

By: 
Title: President
Taxpayer ID #: 84-1043862

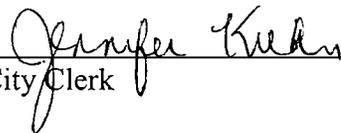
CITY CONTACT

Justina Tate
City of Woodinville
17301 133rd Avenue NE
Woodinville, WA 98072
Phone: 425-489-2700
Fax: 425-489-2705

SERVICE PROVIDER CONTACT

Tom Duchon, President
River Oaks Communications Corporation
8 South Nevada Avenue, Suite 515
Colorado Springs, Colorado 80903
Phone: (719) 477-6850
Fax: (719) 477-0818

ATTEST/AUTHENTICATED

By: 
City Clerk

APPROVED AS TO FORM

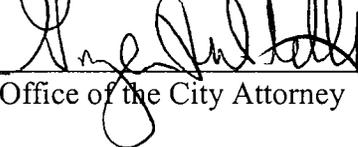
By: 
Office of the City Attorney

Exhibit A

River Oaks Communications Corporation

Denver Office:

6860 South Yosemite Court, Suite 2000
Centennial, Colorado 80112
Telephone: (303) 721-0653
Fax: (303) 721-1746
E-Mail: bduchen@rivoaks.com

Colorado Springs Office:

8 South Nevada Avenue, Suite 515
Colorado Springs, Colorado 80903
Telephone: (719) 477-6850
Fax: (719) 477-0818
E-Mail: tduchen@rivoaks.com

October 2, 2008

Richard Leahy
City of Woodinville
17301 - 133rd Avenue NE
Woodinville, WA 98072

Dear Mr. Leahy:

We are writing regarding the interest of Snohomish County and the jurisdictions of Woodinville, Edmonds, Kenmore, Shoreline, Bothell, Woodway, Mercer Island, Lake Forest Park and Carnation and additional jurisdictions (the jurisdictions collectively termed the "Other Communities") (Snohomish County and Other Communities being referred to herein as the "Cable Franchise Consortium") in entering into an agreement with River Oaks Communications Corporation ("River Oaks") to work on the Cable Franchise Consortium's behalf regarding the cable franchise renewal project with Comcast. A Scope of Work is attached to this letter agreement.

River Oaks shall invoice Snohomish County and the Other Communities for services as outlined in the Scope of Work that pertain to the development of the baseline cable franchise with Comcast (Phases I-IV). Payment shall be remitted by Snohomish County and the Other Communities to River Oaks as soon as reasonably practicable, but no later than forty-five (45) days after receipt of River Oaks' invoice(s). The City of Woodinville shall not be responsible for the portion of the bill exceeding the pro rata share of the City of Woodinville as established by the Cable Franchise Consortium Interlocal Agreement.

River Oaks shall separately invoice Snohomish County and Other Communities for services as outlined in the Scope of Work that pertain to individually tailoring the template cable franchise for each jurisdiction. Payment shall be remitted by Snohomish County and Other Communities to River Oaks as soon as reasonably practicable, but no later than forty-five (45) days after receipt of River Oaks' invoice(s).

River Oaks is an independent contractor hereunder. This letter agreement sets forth the entire agreement between the parties concerning the subject matter hereof. Please sign below and return a copy of this letter agreement to us.

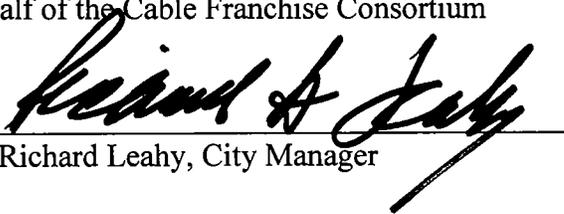
Sincerely,

Robert M. Duchon
Vice President

Accepted and agreed to as of the 14th day of October, 2008.

City of Woodinville, Washington
On Behalf of the Cable Franchise Consortium

By:


Richard Leahy, City Manager

SCOPE OF WORK

The following is the Scope of Work regarding the Cable Franchise renewal project with Comcast as agreed to by the Cable Franchise Consortium and River Oaks (the "Consultant") relating to Consultant's services:

Services for the Cable Franchise Consortium:

Phase I:

1. Review existing Cable Franchises, Letter Agreements and any renewal or transfer agreements between member jurisdictions of the Cable Franchise Consortium and all cable operators and OVS operators and their affiliates and their predecessors (this includes, but is not limited to Comcast, Verizon, Millennium and Black Rock).
2. Review the existing Master Cable Ordinances for the Cable Franchise Consortium members and their impact upon Comcast.
3. Review 626 Letters sent out by Comcast to Cable Franchise Consortium members and assist, as needed, in drafting responses to these letters.
4. Work with the Cable Franchise Consortium to identify goals/objectives to be addressed in the template for the Cable Franchise Consortium/Comcast Cable Franchise.
5. Inform the Cable Franchise Consortium with respect to the First/Second FCC Orders and their impact upon Comcast.

Phase II:

1. Review what Comcast has agreed to in several franchises in the Puget Sound area and other franchises from around the country.
2. Participate in meetings, as needed, with the Cable Franchise Consortium and Comcast via conference calls and in person meetings as approved by the Cable Franchise Consortium.
3. The Consultant will confer with the Cable Franchise Consortium's designated representatives insofar as providing appropriate advice and guidance regarding the development and negotiation of the baseline Cable Franchise.
4. Draft the initial negotiating template for the Cable Franchise Consortium/Comcast Cable Franchise.

5. Participate in the negotiating sessions with Comcast as requested by the Cable Franchise Consortium.

6. Draft and negotiate Customer Service Standards with Comcast on behalf of the Cable Franchise Consortium.

Phase III:

1. Address technical provisions in the proposed Comcast Franchise regarding capabilities of the Comcast system.

2. At the request of the Cable Franchise Consortium, attend and participate in up to two joint workshops with interested members of the Consortium for Public Works and other City and County Departments.

Phase IV:

1. Identify other matters for consideration by the Cable Franchise Consortium regarding issues outside of the Comcast franchise.

Confidentiality

All services and work product provided by Consultant are deemed confidential. Consultant is required to maintain confidentiality regarding all work product developed on behalf of the Cable Franchise Consortium, specifically the initial negotiation template, until the completion of the negotiation process. The negotiation process for the template is considered complete upon the public approval or denial of the Comcast franchise by one of the Cable Franchise Consortium members.

Related Services for Individual Communities

At the request and cost of individual communities (which is defined as Cable Franchise Consortium members, members who have withdrawn, or additional cities that are not initially members of the Cable Franchise Consortium), Consultant will perform some or all of the following additional services:

1. In addition to its work on the template Cable Franchise, the Consultant may work with each individual jurisdiction to tailor the template for that specific jurisdiction.

2. Further review of existing Cable Franchises and Master Cable Ordinances as they pertain to Comcast or other cable providers.

3. Work on developing appropriate Needs Assessment programs (for example, a written Subscriber Survey, a Web Survey, Focus Groups, Workshops, Jurisdiction Meetings, etc.).

4. Perform a technical assessment of Comcast's cable system (this would involve teaming with a technical firm).
5. Initiate a franchise fee audit or agreed-upon procedures review (this would involve a CPA).
6. Address PEG Access/I-Net-related issues given existing PEG Access/I-Net facilities in each jurisdiction.
7. Develop provisions for PEG Access facilities and equipment to be provided by Comcast.
8. Assist each jurisdiction in determining the number and location of free cable drops/services provided by Comcast.
9. Present the tailored Franchise to the requesting jurisdiction's governing body for final approval.
10. Work with each jurisdiction, as necessary, in the formal cable franchise renewal process (this could involve building a written record, administrative hearings, etc.).
11. Perform other cable consulting services as requested by the individual jurisdiction.

FEE SCHEDULE

In consideration of the services to be performed pursuant to the Scope of Work, the Cable Franchise Consortium agrees to pay the Consultant on a time and reimbursable cost basis according to the following schedule:

Hourly billing rates: \$245.00/hour (one-half the hourly rate for travel which will be further reduced when trips are combined for clients in addition to the Cable Franchise Consortium)

Reimbursable direct costs:

Federal Express (on an as-needed basis)

Postage

Long Distance Telephone Charges

Outside Clerical

Fax

Copies

Travel (coach class tickets and reasonably priced rental cars), Meals (moderately priced) and Lodging (will seek discounted rates from competitively priced hotels)

Consultant will work to obtain economies of scale by combining trips for multiple clients in order to reduce travel expenditures. It is estimated that from October 15, 2008 until October 14, 2009, Consultant will work on the Cable Franchise Consortium's behalf in connection with matters described in Phases I-IV of the Scope of Work in the amount of \$155,000 (including expenses) for the County and nine (9) Other Communities. That figure does not include the fees and expenses of Ogden Murphy Wallace. The total cost of Consultant's services shall not exceed \$155,000 without the prior written consent of the Cable Franchise Consortium. If the total number of communities including the County and Other Communities goes above ten (10), the Cable Franchise Consortium and Consultant will work to equitably adjust the baseline amount since additional work would be required. Also, these figures may further increase by mutual agreement of the parties, it being understood and agreed that the cooperation or lack of cooperation by Comcast will have a significant bearing upon the total cost.

In addition, upon request of an individual jurisdiction, from October 15, 2008 until October 14, 2009, Consultant will work on the individual jurisdiction's behalf in connection with matters described in the Scope of Work on an hourly basis plus expenses and bill each jurisdiction accordingly. That work could entail Consultant taking the lead on the matter or assisting the City/County Attorney and Staff.