

Ordinance No. 121497

Council Bill No. 114893

AN ORDINANCE related to Cable Communications; authorizing an agreement to continue a cable subscriber service center at the City's Department of Neighborhoods facility at 23rd Avenue S. and S. Jackson Street; increasing an appropriation in the 2004 Department of Neighborhoods budget; and creating new positions in that department, all by a three-fourths vote of the City Council.

CF No. \_\_\_\_\_

Date Introduced: MAY 3 - 2004		
Date 1st Referred: MAY 3 - 2004	To: (committee) Parks, Neighborhoods & Education	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: 6-7-04	Full Council Vote: 9-0	
Date Presented to Mayor: 6-7-04	Date Approved: 6-18-04	
Date Returned to City Clerk: 6-21-04	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input checked="" type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department  
Council Bill/Ordinance sponsored by: \_\_\_\_\_

Committee Action

Pass

Move - Steinknecht

Second - Gadden

Aye - Bella, Steinknecht, Gadden

Nay -

6-7-04 Passed 9-0

This file is complete and ready for presentation to Full Council.

Law Department

Law Dept. Review

OMP  
Review

  
City Clerk  
Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by:

 DELLA  
Councilmember

**Committee Action:**

Pass

Mare - Steinknecht

Second - Godden

Aye - Della, Steinknecht, Godden

Nay - 0

6-7-04 Passed 9-0

This file is complete and ready for presentation to Full Council.


Committee:

(Initial/Date)

*Law Department*

Law Dept. Review

OMP  
Review

  
City Clerk  
Review

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ks, Neighborhoods  
Education

T.O. ☒  
F.T. ☒

ORDINANCE 121497

AN ORDINANCE related to Cable Communications; authorizing an agreement to continue a cable subscriber service center at the City's Department of Neighborhoods facility at 23rd Avenue S. and S. Jackson Street; increasing an appropriation in the 2004 Department of Neighborhoods budget; and creating new positions in that department, all by a three-fourths vote of the City Council.

WHEREAS Comcast of Washington IV, Inc., and Comcast of Washington I, Inc., ("Comcast") and Millennium Digital Media Systems, LLC ("MDM") have cable franchises with the City to provide cable television and Internet services; and

WHEREAS, the City of Seattle enacted Ordinance 119402, as amended by Ordinance 120775, which established the Cable Customer Bill of Rights (codified at SMC 21.60.800 et seq.); and

WHEREAS, SMC 21.60.820B requires that cable companies operating in Seattle shall provide at least one (1) in-town customer service center for each seventy-five thousand (75,000) customers served; and

WHEREAS, Comcast and MDM, pursuant to Section 10.1 (G) of their respective cable franchises, are required to provide in-city subscriber service centers; and

WHEREAS, Comcast and MDM desire to fulfill their obligations for one of the service centers required by SMC 21.60.820B and their respective cable franchises by supporting a subscriber service center at the City of Seattle Department of Neighborhoods (DON) facility at 23rd Avenue S. and S. Jackson Street ("Pay Station") for Comcast and MDM customers ("Customers") in the City to make payments for cable television and Internet services and limited equipment transactions; and

WHEREAS, the City enacted Ordinance 121129, which authorized a one-year pilot arrangement with Comcast and MDM to establish a cable subscriber service center at the City's Department of Neighborhoods facility at 23rd Avenue S. and S. Jackson Street, which has proved to be mutually beneficial to the City, customers, Comcast and MDM; and

WHEREAS, Comcast, MDM, and the City now agree to continue this arrangement for nineteen months; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:



Section 1. The Director of the Department of Neighborhoods or her designee is authorized to execute for and on behalf of the City of Seattle an agreement, substantially in the form attached as Exhibit A ("Agreement"), with Millennium Digital Media Systems, LLC and Comcast of Washington IV, Inc., and Comcast of Washington I, Inc., under which the City will receive a total of One Hundred Twenty-eight Thousand Eight Hundred Seventy-seven Dollars (\$128,877) from the two cable operators combined and the companies will receive services from the City.

Section 2. Contingent upon the execution of the agreement authorized in Section 1 above, and in order to pay for necessary costs and expenses for which insufficient appropriations were made, the appropriation for the following in the 2004 Budget is increased from the fund shown, as follows:

Fund	Department	Budget Control Level	Amount
General Subfund (00100)	Department of Neighborhoods	Customer Service (I3200)	\$128,877
Total			\$128,877

The appropriation of funds in this ordinance shall carry forward from year-to-year unless expressly abandoned by ordinance.

Section 3. To carry out the purpose of the agreement authorized in Section 1, and contingent upon the execution of that agreement, the following positions are created in the Department of Neighborhoods, such positions to continue only so long as funding therefor is available from said agreement or from a similar agreement:

Department	Budget Control Level	Positions
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Department of Neighborhoods	Customer Service (13200)	1.0 FTE Sr. Customer Service Representative 0.5 FTE Customer Service Representative
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The positions will sunset if the funding from the cable companies, Comcast and Millennium, ends.

Section 4. Any acts consistent with the authority granted by and prior to the effective date of this ordinance, are hereby ratified and confirmed.

Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by a three-fourths (3/4) vote of all of the members of the City Council the 7<sup>th</sup> day of June, 2004, and signed by me in open session in authentication of its passage this 7<sup>th</sup> day of June, 2004.

Jan Drago  
President of the City Council

Approved by me this 18 day of June, 2004.

Gregory J. Nickels  
Gregory J. Nickels, Mayor

Filed by me this 22 day of June, 2004.

Jason E. Pappas  
City Clerk

(Seal)

Exhibit A: Agreement

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## City of Seattle

Gregory J. Nickels, Mayor

### Office of the Mayor

April 6, 2004

Honorable Jan Drago  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

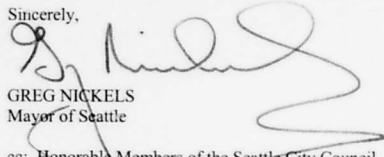
Dear Council President Drago:

The attached proposed Council Bill will provide Seattle residents with the ability to pay Comcast and Millennium Digital Media Systems, LLC cable bills in a centrally located site within the City of Seattle. As a part of the Cable Customers Bill of Rights (CCBOR) and franchise obligations, Comcast and Millennium cable companies are required to provide an in-city bill paying location. The Office of Cable Communications in the Department of Information Technology has worked with the Department of Neighborhoods, Comcast and Millennium to develop a program for Comcast and Millennium to provide in-city bill paying opportunities at the Central Neighborhood Service Center (NSC) located at 23<sup>rd</sup> Avenue S and S Jackson. This legislation will authorize the Department of Neighborhoods Director to enter into a 19-month agreement with Comcast and Millennium and accept a total of \$128,877 from the cable companies for staffing this service at the Central NSC. It also authorizes 1.5 FTE staffing positions to carry out this work in the Department.

In May 2003 the Office of Cable Communications, Department of Neighborhoods, Comcast, and Millennium entered into a yearlong pilot to offer a "pay-in-person" location at the Central NSC. During this pilot, Comcast and Millennium have been providing funding to the Department of Neighborhoods for their increment staffing costs. So far, the Central NSC has processed over 3,000 transactions. This pilot has been a tremendous success: customers have had the benefit of being able to access the services of the Central NSC from 8 a.m. to 7 p.m. Monday through Friday and from 9 a.m. to 5 p.m. on Saturday. The City, Comcast, and Millennium Digital Media are all interested in continuing this agreement for 19 months with a total cost of \$128,877 which will be funded by the cable companies.

Not only will this agreement continue to allow Seattle residents to pay their Comcast and Millennium cable payments in person at a safe and conveniently located City site, but they will also be able to get same-day credit for their payments, thereby stopping potential disconnection of cable service. Thank you for your consideration of this legislation. Should you have questions, please contact Hazel Bhang at 615-0885 or DaVonna Johnson at 684-0261.

Sincerely,

  
GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E-mail: mayors.office@seattle.gov

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DaVonna Johnson/JLB  
March 30, 2004  
DON 2004 Cable Payment Ordinance  
Version #: 2

Form revised March 16, 2004

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Department of Neighborhoods	Hazel Bhang, 615-0885 DaVonna Johnson, 684-0261	Sara Levin, 684-8691

**Legislation Title:**

AN ORDINANCE related to Cable Communications; authorizing an agreement to continue a cable subscriber service center at the City's Department of Neighborhoods facility at 23rd Avenue S. and S. Jackson Street; increasing an appropriation in the 2004 Department of Neighborhoods budget; and creating new positions in that department, all by a three-fourths vote of the City Council.

• **Summary of the Legislation:**

This proposed legislation authorizes the execution of an agreement between the City of Seattle and Millennium Digital Media Systems, LLC, and Comcast of Washington for financial assistance to continue the cable subscriber service at the City's Department of Neighborhoods facility at 23rd Avenue S. and S. Jackson Street. The legislation increases the 2004 Department of Neighborhoods' budget by \$128,877 (to be reimbursed by both cable companies) and position authority by 1.5 FTE.

- **Background:** The purpose of the legislation will be to continue to provide Seattle citizens with the ability to pay Comcast and Millennium Digital Media cable bills at a centrally located site within the City of Seattle. In 2003, the Office of Cable Communications in the Department of Information Technology worked with the Department of Neighborhoods, Comcast, and Millennium to develop a program for Comcast and Millennium to satisfy franchise and Cable Customer Bill of Rights (CCBOR) obligations to provide in-city bill paying opportunities at the Central Neighborhood Service Center (NSC) located at 23<sup>rd</sup> Avenue and S. and S. Jackson Street. This was a one-year pilot agreement that will expire May 31, 2004. This arrangement has provided 1.25 FTE to staff expanded hours of operation so Seattle residents would have the ability to pay their Comcast and Millennium cable payments in person at a safe and conveniently-located site. They can also receive same-day credit for their payments, thereby stopping potential shut-off of cable service.

- Please check one of the following:

     **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

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DaVonna Johnson/JLB  
March 30, 2004  
DON 2004 Cable Payment Ordinance  
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X **This legislation has financial implications.** (Please complete all relevant sections that follow.)

**Appropriations:**

Fund Name and Number	Department	Budget Control Level*	2004 Appropriation	2005 Anticipated Appropriation
General Subfund (00100)	Department of Neighborhoods	Customer Service I3200	\$128,877	0
<b>TOTAL</b>			<b>\$128,877</b>	<b>0</b>

*Notes: Funds will be fully appropriated in 2004, but will be carried over into 2005 to reflect the length of the contract. See anticipated revenue and expenditure tables below.*

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:**

Fund Name and Number	Department	Revenue Source	2004 Revenue	2005 Revenue
General Subfund (00100)	Department of Neighborhoods	Comcast, Millennium Cable Franchisees	\$40,523	\$88,354
<b>TOTAL</b>			<b>\$40,523</b>	<b>\$88,354</b>

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DaVonna Johnson/JLB  
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 DON 2004 Cable Payment Ordinance  
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**Notes:**

**Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact:**

Position Title and Department*	Fund Name	Fund Number	Part-Time/Full Time	2004 Positions	2004 FTE	2005 Positions**	2005 FTE**
Sr. Customer Service Representative, Department of Neighborhoods	General Subfund	(00100)	FT	1	1.0 FTE	1	1.0 FTE
Customer Service Representative, Department of Neighborhoods	General Subfund	(00100)	PT	1	0.5 FTE	1	0.5 FTE
<b>TOTAL</b>				<b>2</b>	<b>1.5 FTE</b>	<b>2</b>	<b>1.5 FTE</b>

\* List each position separately

\*\* 2005 positions and FTE are total 2005 position changes resulting from this legislation, not incremental changes. Therefore, under 2005, please be sure to include any continuing positions from 2004

**Notes:**

The funding for this agreement provided for 1 (.875 FTE) Sr. Customer Service Representative and 1 (0.5 FTE) Customer Service Representative. Due to the business need we are requesting 1.0 FTE Sr. Customer Service Representative with the intent to underfill a CSR position to cover the incremental costs.

**Do positions sunset in the future?**

Yes, these positions will sunset December 31, 2005 if the agreement is not renewed. The term of the agreement is 19 months from the date the agreement is signed with the option to renew at that time.

**Spending/Cash Flow:**

Fund Name and Number	Department	Budget Control Level*	2004 Expenditures	2005 Anticipated Expenditures
General Fund (C01)	Department of Neighborhoods	Customer Service I3200	\$40,523	\$88,354
<b>TOTAL</b>			<b>\$40,523</b>	<b>\$88,354</b>

**Notes:**

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- **What is the financial cost of not implementing the legislation?**

If the legislation is not implemented, then the Cable companies become out of compliance with the Franchise agreement with the City, which will generate additional cost to the City to enforce compliance with the franchise agreement. This legislation will allow the Department of Neighborhoods to open the Central Neighborhood Service Center to the public for 23 additional hours a week at no additional cost to the City.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

The two cable companies could jointly and/or separately open and operate their own pay-in-person locations in a central location that is easily accessible to customers.

- **Is the legislation subject to public hearing requirements:**

No

- **Other Issues:**

If either the cable companies or the Department of Neighborhoods does not agree to renew the agreement to provide pay-in-person services at the Central Neighborhood Service Center, the 0.5 FTE Customer Service Representative and the 1.0 FTE Senior Customer Service Representative positions will sunset at the end of the agreement.

**Please list attachments to the fiscal note below:**

None

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### PAY STATION AGREEMENT

This Pay Station Agreement (the Agreement) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the City of Seattle ("City"), Millennium Digital Media Systems, LLC ("MDM") and Comcast of Washington IV, Inc., and Comcast of Washington I, Inc., (collectively for convenience, "Comcast").

#### RECITALS

WHEREAS, AT&T Broadband provided cable television and Internet service in the City under Ordinance 117956, as amended, and subsequent agreements (the "AT&T Broadband Franchise"); and

WHEREAS, on June 24, 2002, City Council authorized the transfer of control of the AT&T franchise to Comcast, pursuant to Ordinance 20835; and

WHEREAS, MDM provides cable television and Internet service in the City under Ordinances 118361 and 117955, as amended, and subsequent agreements (the "MDM Franchises"); and

WHEREAS, the City of Seattle adopted the Cable Customer Bill of Rights, SMC 21.60.800-21.60.830; and

WHEREAS, the Cable Customer Bill of Rights requires that cable companies operating in Seattle shall provide at least one (1) service center for each seventy-five thousand (75,000) customers served; and

WHEREAS, Comcast and MDM desire to comply with and avoid any disputes regarding the obligations of SMC 21.60.820(B) by supporting a subscriber service center at the City of Seattle Department of Neighborhoods facility at 23<sup>rd</sup> Avenue S and S Jackson Street ("Pay Station") for Comcast and MDM customers ("Customers") in the City to conduct payment for cable television and Internet services and limited equipment transactions; and

WHEREAS, the parties entered into this Agreement with the understanding that this Agreement will provide a 19 month temporary alternative (with the possibility of renewal) to: (1) Comcast's requirement to provide a second in-city subscriber service center, set forth at Section 10.1(G) of Ordinance 117956 and the provisions of Seattle Municipal Code Section 21.60.820(B); and (2) MDM's requirement to maintain an in-city office, set forth at Section 10.1 (g) of Ordinance 117955, and the provisions of Seattle Municipal Code Section 21.60.820 (B). In agreeing to this alternative, Comcast and MDM do not waive any rights to contest the interpretation or applicability of any provision.

Exhibit A: Agreement



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Now, therefore,

#### AGREEMENT

In consideration of the mutual covenants made by the parties hereto, and of other good and valuable consideration as provided in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

#### **SERVICES**

The City, as a part of this Agreement, agrees to provide on behalf of Comcast and MDM the following services:

- 1.) Staffing, using normal City personnel practices and policies, the Pay Station as set forth in this Agreement.
- 2.) Accepting, in accordance with normal City practice, policy and procedures, all forms of payment (except credit cards) from Customers and making necessary cash change for Customers. However, the City is not authorized to negotiate adjustments, on behalf of MDM and Comcast, to the total amount owing on Customer billing statements.
- 3.) Except for "drop box" payments, issuing Customer receipts.
- 4.) After 3:00 P.M. daily, collecting, batching, posting and electronically transferring all payment transactions by name, account number and payment amount to First Data Corporation, or any other mutually agreeable payment processing vendor as may be engaged from time-to-time.
- 5.) Depositing all customer receipts on a daily basis to appropriate MDM and Comcast bank accounts.
- 6.) As necessary for additional service, directing customers to the courtesy phone located in the Pay Station office to speak with the appropriate MDM or Comcast representatives.
- 7.) Serving as a limited equipment drop-off location. The City is authorized and agrees to collect MDM and Comcast equipment from Customers. Upon receipt of Customer equipment, the City is authorized and agrees to issue a receipt to the Customer. The City does not accept responsibility for condition of equipment returned by the Customer.
- 8.) The City will segregate the returned equipment by ownership and shall store all equipment in a secure location. At least twice per week and not more than three times per week, MDM and Comcast shall arrange for the pick up by motor carrier of all equipment collected by the City.
- 9.) The City is authorized and agrees to provide a locked payment drop box where Customers may make payment for services. The payment box shall be in a location accessible to all Customers. Access to the payment box shall be by lock



and key, and the City shall make reasonable efforts to prevent unauthorized access to the payment box.

Under this Agreement MDM and Comcast agree to:

- 1.) Ensure substantially equivalent services to those provided by company offices, including same-day credit for customer payments. Where same-day credit is requested by the Customer, the City shall initiate a contact with the appropriate Cable Operator on behalf of the Customer. Once the City has made an effort to contact the company office to verify customer payment, the Cable Operator shall be obligated to provide same-day credit.
- 2.) Adopt common procedures for receipt of Customer payments and drop-off of equipment, and to train and work closely with City staff on the services described above. In the event of inconsistent procedures between the City and either of the Cable Operators, the City's procedures and/or contractual labor practices shall be made known to MDM and Comcast and take precedence, however, where the City's procedures result in failure to adhere to service standards set forth in this Agreement, in a franchise agreement, or in the Cable Customer Bill of Rights, the affected Cable Operator shall not be considered to be out of compliance with the relevant obligation..
- 3.) In cooperation with the City and property owner, develop and place appropriate signage at the Pay Station identifying the Cable Operators.
- 4.) In cooperation with the City, promote the Pay Station location, services provided and hours of operation via customary communications to Customers. Such promotion shall, at a minimum, include mailed notice (e.g. such as a bill message and bill insert) to all customers.
- 5.) Install a courtesy phone for Customer calls to local MDM and Comcast offices, supply a shelf, desk, and provide promotional materials. MDM and Comcast shall pay any local monthly phone charges for courtesy phone used as authorized under this Agreement.
- 6.) Provide supplies of Customer receipts and other necessary business forms to the City.

#### TERM

The term of this Agreement shall be for a period of 19 months from the execution of this Agreement by all parties. At least 120 days prior to the expiration of this Agreement, the parties shall provide written notice to each other indicating their intent to renew or terminate this Agreement. In the event that all parties express the intent to renew the Agreement, the parties shall take steps to determine whether this Agreement shall be continued, and to propose and come to terms on any desired amendments. In the event one or more parties do not desire to renew the Agreement, it shall expire at the end of the term; provided, however, termination by one Cable Operator shall not prevent the other Cable Operator from entering into or continuing contract renewal negotiations with the City if both remaining parties so desire.



At such time as the Agreement expires or terminates, Comcast and Millennium Digital Media shall have the immediate obligation to comply with the franchise requirements in Section 10.1 (G) of their respective franchises. Failure to comply with the requirements in Section 10.1 (G) of their respective franchises shall be considered an immediate violation of the franchise and subject each Cable Operator to the remedial provisions of its franchise agreement. As long as this Agreement shall continue in effect, it shall meet obligations for compliance of one office as required under Section 10.1 (G) of their respective franchises and under SMC 21.60.820 (B).

In the event that either Cable Operator fails to make timely payment, the City may immediately cease performing the services provided herein for the nonpaying Cable Operator and said Cable Operator shall be deemed to be in violation of its franchise and the Cable Customer Bill of Rights and shall be subject to the damages/penalties provided therein. Further, in order to collect on payments owed by said Cable Operator, the City may reimburse itself from security funds under the franchise agreement and/or the Cable Customer Bill of Rights.

#### **COST**

The total annual cost of the service for the year beginning on \_\_\_\_\_ 2004 under this Agreement to MDM and Comcast shall be \$128,877. The cost shall be divided between Comcast and MDM on a pro rata basis using the number of payments and equipment returns processed for each party as the determining factor. On an annual basis, the City may adjust the cost to cover reasonable adjustments in compensation. Cost adjustments subsequent to the initial term of this Agreement shall be subject to negotiation by the parties.

#### **HOURS OF OPERATION**

The Pay Station will be open Monday-Friday from 8:00 a.m.-7:00 p.m. and Saturdays from 9:00 a.m.-5:00 p.m. The Pay Station will be closed on Sundays and Holidays as designated by the City. The City of Seattle shall have exclusive authority for determining whether any modification of required hours is warranted. If Pay Station hours are reduced and if the City's costs have been covered, to the extent that there is a subsequent reduction in costs, such reduction shall result in a proportionate reduction in the compensation paid to the City under this Agreement by the Cable Operators.

#### **PAYMENT & REPORTING**

The City will separately invoice MDM and Comcast for services on a quarterly basis. The invoice shall include a report showing the total number of payment transactions and equipment returns by month, processed by the City, broken out by entity and the





associated total monthly costs for each party based on the pro rata basis described above. Reimbursement shall be due to the City within 30 days of receipt of invoice. The City shall maintain, in accordance with standard government accounting principles and practices uniformly and consistently applied in a format that will permit audit, accurate records of all equipment and payments accepted by it from Customers. The City agrees that such records will be available for audit by MDM and Comcast or their agent's at all reasonable times during the term hereof and up to six (6) months after termination of this Agreement.

#### **SURRENDER OF RECORDS**

Upon termination of this Agreement for any cause whatsoever, the City shall immediately surrender to MDM and/or Comcast full, true and complete copies of records in connection with this Agreement, working papers and other property of MDM and/or Comcast used or kept by the City, as well as all amounts collected by City from MDM and/or Comcast's Customers.

#### **CONFIDENTIALITY**

The City acknowledges that all information relating to customers' bills, payment history, level of broadband cable television and/or Internet services received or any other "personally identifiable information," as that term is defined in 47 U.S.C. § 551, is confidential and the City will only release such information to the Cable Operator, the customer who is the holder of the account, or by order of a court. Any other requests for such information should be directed to MDM or Comcast representatives, as may be appropriate.

#### **INDEMNIFICATION**

MDM and Comcast shall indemnify, defend, and hold the City, its elected officials, officers, employees and agents harmless from any and all claims, actions, suits, proceedings, damages, costs, and expenses (including reasonable fees of attorneys and paralegal assistants) whatsoever arising out of any act or omission of MDM and/or Comcast or any of their officers, employees, agents, licensees, or invitees under this Agreement including patent, trademark and copyright infringement; or arising out of or relating to any concurrent act or omission of MDM and/or Comcast or any of their officers, employees, contractors or agents and the City or any City officer, elected official, employee or agent; Provided, that nothing herein shall be construed as requiring MDM and Comcast to indemnify the City against liability for bodily injury or damage to property caused by or resulting from the sole negligence of the City or of any of its officers, elected officials, employees, or agents. MDM and Comcast waive any immunity under industrial insurance, Title 51 RCW, they may have to claims brought against it by the City in connection with this Agreement. The indemnification obligation set forth herein shall survive the expiration or earlier termination of this Agreement.



Losses in cable funds as a result of outside theft or robbery shall be the responsibility of MDM and Comcast.

#### INSURANCE

##### A. GENERAL

Prior to providing any service under this Agreement, the Contractor shall obtain and file with the City, acceptable evidence of a policy or policies of insurance as enumerated below. A copy of the current franchise required policy, with an addendum insuring the Central Neighborhood Service Center at 2301 S. Jackson, shall suffice.

Failure of the Contractor to fully comply with the insurance requirements of the Agreement will be considered a material breach of contract and, at the option of the City, will be cause for such action as may be available to the City under other provisions of the Agreement or otherwise in law, including immediate termination of the Agreement.

The cost of furnishing insurance shall be included in the contract price bid by the Contractor for the various services listed in the Bid Form.

##### B. REQUIRED COVERAGES

The insurance shall contain the following types of coverage and minimum dollar limits:

1. Commercial General Liability: A policy of Commercial General Liability insurance, written on an industry standard occurrence form (ISO form CG 00 01) or equivalent, including all the usual coverage known as:
  - a. Premises/Operations Liability
  - b. Products/Completed Operations
  - c. Personal/Advertising Injury
  - d. Contractual Liability
  - e. Independent Contractors Liability

Such policy shall provide the following minimum coverage for Bodily Injury and Property Damage:

##### Bodily Injury and Property Damage

- |    |              |   |
|----|--------------|---|
| a. | \$ 2,000,000 | General Aggregate                         |
| b. | \$ 2,000,000 | Products & Completed Operations Aggregate |
| c. | \$ 1,000,000 | Personal & Advertising Injury             |
| d. | \$ 1,000,000 | Each Occurrence                           |
| e. | \$ 100,000   | Fire Damage Legal                         |



2. Commercial Automobile Liability: A policy of Commercial Automobile Liability written on an insurance industry standard form (ISO form CA 00 01) or equivalent, including coverage for owned, non-owned, leased or hired vehicles.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage  
\$ 1,000,000 per accident

C. DEDUCTIBLES AND SELF INSURED RETENTIONS

If the Contractor's insurance contains a deductible or self-insured retention amount the Contractor shall:

1. Disclose such amount.
2. Be responsible for payment of any claim equal to or less than the deductible or self-insured retention amount.

The City reserves the right to reject insurance policies with a deductible or self-insured retention amount in excess of \$25,000 for which adequate financial strength of the Contractor cannot be demonstrated to the satisfaction of the City.

D. CONDITIONS

The insurance policy or policies, endorsements thereto, and subsequent renewals shall:

1. Be subject to approval by the City as to company, form and coverage. The insurance company shall be:
  - a. Rated A- VII or higher in the A.M. Best's Key Rating Guide.
  - b. Licensed to do business in the State of Washington or be filed as surplus lines by a Washington broker.
2. Be primary as respects the City. Any other insurance maintained by the City shall be excess and not contributing insurance with the Contractor's insurance.
3. Be maintained in full force and effect throughout the term of the Agreement.



4. Protect the City of Seattle within the policy limits from any and all losses, claims, actions, damages, and expenses arising out or resulting from the Contractor's performance or lack of performance under this Agreement.
5. Name the City of Seattle as an additional insured pursuant to the requirements of the Agreement and include the Central Neighborhood Service Center, 2301 S. Jackson, Suite 208, as an insured location.
6. Include a provision (whether by endorsement or otherwise) indicating that, except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, the insurance shall apply:
  - a. As if each party insured thereunder (whether as a named insured, additional named insured, or additional insured) were the only party insured by such policy.
  - b. Separately to each insured against whom a claim is made or a suit is brought.

E. EVIDENCE OF INSURANCE

In many cases, evidence of insurance may be demonstrated by submitting a copy (photocopy or facsimile acceptable) of the declarations pages of the policy and the additional insured endorsement. The declarations pages shall clearly show the policy effective dates, limits and schedule of forms and endorsements. Any reference to premiums may be blacked out. However, at the option of the City, the Contractor may be required to submit a copy of the insurance policy, all referenced endorsements, or both. Certificates of Insurance (ACORD forms) will not be accepted as evidence of insurance.

Evidence of insurance for each policy shall:

1. Be submitted to the City with the signed Agreement.
2. Comply with all of the requirements for insurance required by the Agreement.
3. Comply with one of the following requirements regards naming The City of Seattle as an additional insured:
  - a. Insurance Services Office (ISO) Standard Endorsement: An additional insured endorsement issued on an ISO form (i.e. CG 20 10 11/85 or CG 20 26) shall name "The City of Seattle, its officers, elected officials, employees, agents, and volunteers as additional insureds. The endorsement shall
  - (1) Be signed by an authorized representative of the insurance company.



- (2) Include the policy number and name of the insured on the endorsement.
- b. Non-ISO Endorsements: For Non-ISO endorsements any of the following options are acceptable:
  - (1) A blanket clause (in the policy or endorsement) adding, without undue restriction of coverage, as additional insured anyone for whom the Contractor is required to provide insurance under a contract or permit.
  - (2) An additional insured endorsement on a non-ISO endorsement form containing the following provision:

"The City of Seattle, its officers, elected officials, employees, agents, volunteers are an additional insured for all coverage provided by this policy and shall be fully and completely protected to the extent provided in said policy for any and every injury, death, damage and loss of any sort sustained by any person, organization or corporation in connection with any activity performed by the Contractor by virtue of the provisions of the Agreement between The City of Seattle and Millennium Digital Media Systems, LLC and Comcast."

"In accordance with RCW 48.18.290, the coverage provided by this policy to The City of Seattle shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to The City of Seattle."
  - (3) Any other additional insured endorsement form or clause approved by the City.

#### NOTICES

The Department of Information Technology shall retain regulatory authority under this contract. Accordingly, MDM and Comcast shall notify in writing the Department of Information Technology of any changes either proposes to this contract as per Terms above. Notwithstanding the foregoing, the Department of Neighborhoods may speak on behalf of the Department of Information Technology. Any notices pursuant to this Agreement shall be validly given or served if in writing and sent by registered or certified mail postage prepaid, to the following addresses:



If to MDM: Millennium Digital Media  
3633 136<sup>th</sup> Place SE, Suite 107  
Bellevue, WA 98006  
Attn: Mike O'Herron

If to Comcast: 22025 30<sup>th</sup> Drive SE  
Bothell, WA 98021-4444  
Attn: Executive Director, Government Affairs

With a copy to: Comcast Cable Communications, Inc.  
1500 Market Street  
Philadelphia, PA 19102  
Attn: General Counsel

If to the City: City of Seattle  
Dept. of Information Technology  
Key Tower  
700 Fifth Avenue, Suite 2700  
P.O. Box 94709  
Seattle, WA 98124-4709  
Attn: Office of Cable Communications

City of Seattle  
Department of Neighborhoods  
700 3d Avenue Suite 400  
Seattle, WA 98104  
Attn: Customer Service Division Director

#### MISCELLANEOUS

It is expressly understood that the parties are acting as independent contractors and nothing in this Agreement is intended or shall be construed to create a joint venture, partnership or other similar business arrangement or relationship. Under no circumstances shall any of the employees of one party be deemed employees of any other for any purpose. The City assumes full responsibility for the acts of City employees staffing the Pay Station and shall be responsible for the maintenance of Workers Compensation insurance and for payment of all unemployment, social security, and other payroll taxes for such personnel.

Notwithstanding anything in this Agreement to the contrary, the parties hereto understand and acknowledge that the interests and obligations of MDM and Comcast are to be treated as separate and distinct, and there shall be no joinder of said parties or joint and several liability accruing to them for failure to carry out their respective, individual obligations under this Agreement, and such failure by one party shall not constitute a



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breach of this Agreement by a non-breaching party or an obligation under the Comcast Franchise or the MDM Franchises, as may be applicable.

This Agreement constitutes the entire Agreement between the parties with respect to the subject matter and supersedes any previous discussions regarding the subject matter, whether written or oral and may only be modified in writing signed by all appropriate parties.

All parties hereby acknowledge that they participated equally in the negotiation and drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than another.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the month, day and year first written above.

**City:**

City of Seattle – Department of Neighborhoods

By: \_\_\_\_\_

Yvonne Sanchez

Its: Director

**Comcast:**

Comcast of Washington IV, Inc.

By: \_\_\_\_\_

Len Rozek

Its: Senior Vice President

Comcast of Washington I, Inc.

By: \_\_\_\_\_

Len Rozek

Its: Senior Vice President

**MDM:**

Millennium Digital Media Systems, LLC

By: \_\_\_\_\_

Michael D. O'Herron

Its: President, Northwest Region

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STATE OF WASHINGTON - KING COUNTY

--SS.

173934  
CITY OF SEATTLE, CLERKS OFFICE

No. ORDINANCE TITLE ONLY

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT(121497)-121499 TITLES

was published on

6/28/2004



Affidavit of Publication

*Michael D. Dand*

Subscribed and sworn to before me on

6/28/2004

*Jennifer A. Patten*

Notary public for the State of Washington,  
residing in Seattle

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State of Washington, King County

**City of Seattle**

**TITLE-ONLY PUBLICATION**

The full text of the following ordinances passed by the City Council on June 7, 2004, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://legis.seattle.wa.us>. For further information, contact the Seattle City Clerk at 654-8344.

**ORDINANCE NO. 121499**

AN ORDINANCE relating to audited claims approved in January 2004; amending Ordinance 121291 to correct the amounts of claims approved and correcting some warrant numbers.

**ORDINANCE NO. 121498**

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

**ORDINANCE NO. 121497**

AN ORDINANCE related to Cable Communications; authorizing an agreement to continue a cable subscriber service center at the City's Department of Neighborhoods facility at 23rd Avenue S. and S. Jackson Street; increasing an appropriation in the 2004 Department of Neighborhoods budget; and creating new positions in the department, all by a three-fourths vote of the City Council.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, June 28, 2004.

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