



WHERE HISTORY & PROGRESS MEET

FINANCE COMMITTEE

THURSDAY, MARCH 14, 2019¹
6:00 P.M. – COMMITTEE ROOM A

AGENDA

1. Call to Order, Roll Call, and Establishment of a Quorum
2. Approval of Minutes
 - A. Finance Committee Meeting of December 13, 2018
3. Public Participation / Presentations
4. Selection of Committee Vice-Chairman
5. Items for Consent
 - A. Ordinance No. 19-O-0009 – Project Carryover Budget Amendment
 - B. Resolution No. 19-R-0014 – Cable Franchise Agreement with Comcast of Illinois/Ohio/Oregon, LLC
 - C. Resolution No. 19-R-0016 – Host Community Benefit Agreement with Lakeshore Recycling Systems
 - D. Direction to Staff – Pursue a Line of Credit with MB Financial Bank
6. Items for Discussion
 - A. Water and Sewer Rates
7. Unfinished Business
8. New Business
9. Reports from Staff
10. Executive Session (if needed)
11. Adjournment

¹ Rescheduled from March 28, 2019

Draft

MINUTES

FINANCE COMMITTEE December 13, 2018 6:00 P.M.

1. Call to Order, Roll Call, and Establishment of a Quorum.

The meeting was called to order at 6:00 P.M. Roll call found Aldermen Dimas, Chassee, Sheahan, Stout, Ferguson, Swiatek and Ligino-Kubinski present.

Staff in attendance: City Administrator Michael Guttman, Administrative Services Department Director Linda Martin, Community Development Department Director Tom Dabareiner, Public Works Department Director Rob Flatter, Police Chief Mike Uplegger.

2. Approval of Minutes.

A. Finance Committee Meeting of August 15, 2018.

Alderman Ligino-Kubinski moved and Alderman Stout seconded a motion to approve. The minutes were approved as presented by voice vote.

3. Public Participation / Presentations. None.

4. Items for Consent.

A. Ordinance No. 18-O-0061 - An Ordinance Amending the Annual Budget for the City of West Chicago, DuPage County, IL for the Fiscal Year Commencing January 1, 2018 and ending December 31, 2018 Passed and Adopted by Ordinance No. 17-O-0046 – Fourth Quarter Amendment.

Alderman Stout moved and Alderman Chassee seconded a motion to approve Consent Item (A.) Voting Aye: Aldermen Stout, Chassee, Sheahan, Ferguson, Dimas, Swiatek and Ligino-Kubinski. Voting Nay: 0. Motion carried.

B. Ordinance No. 18-O-0062 - An Ordinance Adopting the Annual Budget for the City of West Chicago, DuPage County, Illinois for Fiscal Year Commencing January 1, 2019 and ending December 31, 2019.

City Administrator Michael Guttman gave a brief overview of information contained in the proposed budget document. He stated that one of the fiscal year 2018 budget goals was to work towards bridging the deficit, and the City did succeed in moving in that direction. He stated that in fact, the revenue decisions that the Finance Committee and City Council made have turned out

well for the City. Although the City's entire deficit has not been erased, the City is in a better place than expected.

Summer building permits were a large part of raising revenue. Home rule sales tax and natural gas use tax were both raised slightly, and revenues have been moved between two funds, i.e., electric use tax revenue was moved from the Capital Projects Fund to the General Fund.

Mr. Guttman then stated that Committees have made purchasing decisions over the course of the year for certain fiscal year 2019 expenditures, such as body cameras for police officers and the costs associated with the construction of the new facility for DUCOMM.

Mr. Guttman stated that currently, there are salaries allocated in the TIF Fund in order to have money for City property purchases within the General Fund, and the City is now reimbursing itself. He further stated that some Facilities Management personnel salaries have been shifted from the TIF Fund to the General Fund to take care of the City's rental properties. This will continue in future years so if the City re-TIFs, it will receive the full benefit of 23 years when there is redevelopment in the downtown area to provide the appropriate incentives.

In closing, Mr. Guttman stated that water and sewer rates have not increased since 2008. He is not proposing an increase as part of this year's budget, but suggested discussions begin and decisions be made regarding this issue in fiscal year 2019.

Chairman Dimas thanked staff for their work on the 2019 budget. She further stated that it was important to recognize the amount of time and work that goes into preparing the annual budget.

Alderman Swiatek moved and Alderman Chassee seconded a motion to approve Consent Item (B.) Voting Aye: Aldermen Swiatek, Chassee, Sheahan, Ferguson, Dimas, Stout and Ligino-Kubinski. Voting Nay: 0. Motion carried.

5. Items for Discussion. None.

6. Unfinished Business. None.

7. New Business.

City Administrator Guttman stated that the Committee will begin discussions in 2019 regarding water/sewer rates and financing a new City Hall. The next meeting agenda will include a vote to select a Finance Committee Vice-Chairman.

8. Reports from Staff. None.

9. Executive Session (if needed). None.

10. Adjournment.

Alderman Stout moved and Alderman Chassee seconded a motion to adjourn. The motion was approved by voice vote and the meeting adjourned at 6:10 P.M.

Respectfully submitted,

Arlene Fisher

CITY OF WEST CHICAGO

FINANCE COMMITTEE AGENDA ITEM SUMMARY

ITEM TITLE:

Ordinance No. 19-O-0009 – Project Carryover Budget Amendment

AGENDA ITEM NUMBER: 5. A.

FILE NUMBER: _____

COMMITTEE AGENDA DATE: 3/14/19

COUNCIL AGENDA DATE: 3/18/18

STAFF REVIEW:

SIGNATURE _____

APPROVED BY CITY ADMINISTRATOR:

SIGNATURE _____

ITEM SUMMARY:

The attached Budget Amendment accounts for projects that the City Council approved but were not completed during the 2018 fiscal year (listed in Exhibit A).

ACTIONS PROPOSED:

Staff recommends adoption of Ordinance No. 19-O-0009.

COMMITTEE RECOMMENDATION:

ORDINANCE NO. 19-O-0009

**AN ORDINANCE AMENDING THE ANNUAL BUDGET FOR
THE CITY OF WEST CHICAGO, DUPAGE COUNTY, ILLINOIS
FOR THE FISCAL YEAR COMMENCING JANUARY 1, 2018
AND ENDING DECEMBER 31, 2019 PASSED AND
ADOPTED BY ORDINANCE NO. 18-O-0062**

WHEREAS, the City of West Chicago has heretofore adopted the annual budget procedure providing for in 65 ILCS 5/8-2-9.1 through 5/8-2-9.10; and,

WHEREAS, the City of West Chicago has passed Ordinance No. 18-O-0062 passing and adopting the “2018 Proposed Budget” (ANNUAL BUDGET); and,

WHEREAS, said Ordinance No. 18-O-0062 was filed with the County Clerk of DuPage County as required by law; and,

WHEREAS, the City of West Chicago desires to revise the ANNUAL BUDGET to account for projects that the City Council approved but were not completed during the 2017 fiscal year; and,

WHEREAS, 65 ILCS 5/8-2-9.6 provides in part that by a vote of two-thirds of the corporate authorities then holding office, the annual budget of a municipality may be revised by deleting, adding to, changing or creating sub-classes within object classes and object classes themselves, provided no revision increasing the budget shall be made in the event funds are not available to effectuate the purpose of the revision.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of West Chicago, DuPage County, Illinois, in regular session assembled as follows:

SECTION 1. That the ANNUAL BUDGET of the City of West Chicago is hereby amended as detailed in “Exhibit A” and as summarized below:

<u>Fund</u>	<u>Original Amount</u>	<u>Amended Amount</u>
General Fund (01)		
Expenditures	\$20,461,000	\$20,669,700
Capital Equipment Replacement Fund (04)		
Expenditures	\$1,618,300	\$1,671,300
Sewer Fund (05)		
Expenditures	\$8,784,500	\$9,663,300
Water Fund (06)		
Expenditures	\$7,207,200	\$7,555,000
Capital Projects Fund (08)		
Expenditures	\$8,212,700	\$8,743,700

SECTION 2. That the City Clerk is authorized and directed to file a certified copy of this Ordinance with the County Clerk of DuPage County.

SECTION 3. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

SECTION 4. That this Ordinance shall be in full force and effect from and after its passage by two-thirds of the corporate authorities and approval and publication in pamphlet form as provided by law.

PASSED this 18th day of March 2019.

Alderman J. Beifuss _____
Alderman J. Sheahan _____
Alderman A. Hallett _____
Alderman M. Birch-Ferguson _____
Alderman C. Swiatek _____
Alderman R. Stout _____
Alderman N. Ligino-Kubinski _____

Alderman L. Chassee _____
Alderman H. Brown _____
Alderman M. Ferguson _____
Alderman S. Dimas _____
Alderman M. Garling _____
Alderman J. Short _____
Alderman B. Gagliardi _____

APPROVED as to form: _____
City Attorney

APPROVED this 18th day of March 2019.

Mayor Ruben Pineda

ATTEST:

City Clerk Nancy M. Smith

PUBLISHED: _____

Ordinance No. 19-O-0009
Project Carryover Budget Amendment
Exhibit A

		original	amended
FOIA and Social Media Archiving Software			
01-02-10-4125	4,400	6,300	10,700
Uniforms Purchaed and Not Yet Delivered			
01-09-21-4615	500	2,700	3,200
01-09-24-4615	3,000	8,300	11,300
01-09-25-4615	800	1,900	2,700
06-34-47-4615	2,600	9,700	12,300
06-34-48-4615	1,200	4,600	5,800
2018 Sherman Street Area Resurfacing Project			
01-09-26-4807	200,000	727,000	927,000
Equipment to be Purchased for 2018 Ford Police Utility Interceptors (4) & End Loader Bucket Purchased and Not Delivered Until 2019			
04-34-39-4804	53,000	1,618,300	1,671,300
2018 Generator Maintenance Program - Inspection & Maintenance Services Not Completed in 2018			
05-34-43-4402	16,200	140,000	156,200
06-34-47-4420	11,900	50,000	61,900
2018 Sanitary Sewer Evaluation Study (Engineering Services) & 2018 Sanitary Sewer Rehabilitation Program (Construction)			
05-34-43-4410	372,100	875,000	1,247,100
Sanitary Lift Station #1 (Construction) & Lift Station #5 (Engr. Design Services) Replacement Projects			
05-34-43-4806	490,500	2,419,000	2,909,500
Booster Station #4 Rehabilitation Project & 2018 Roadway & Watermain Rehabilitation Project			
06-34-47-4806	189,500	1,353,000	1,542,500
2018 Generator Maintenance Program & Water Treatment Plant Generator Engine - Emergency Repair			
06-34-48-4401	142,600	10,000	152,600
2018 Roadway & Watermain Rehabilitation Project & Powis Road LAFO Project			
08-34-53-4807	531,000	1,136,200	1,667,200
<u>Expenditures</u>			
General Fund	208,700	20,461,000	20,669,700
Capital Equipment Replacement Fund	53,000	1,618,300	1,671,300
Sewer Fund	878,800	8,784,500	9,663,300
Water Fund	347,800	7,207,200	7,555,000
Capital Projects Fund	531,000	8,212,700	8,743,700
Downtown TIF Fund		1,087,200	1,087,200
Public Benefit Fund		-	-
Oliver Square TIF Fund		-	-
Roosevelt/Fabyan TIF Fund		-	-
Commuter Parking Fund		194,700	194,700
	2,019,300	47,565,600	49,584,900

CITY OF WEST CHICAGO

-R-

FINANCE COMMITTEE AGENDA ITEM SUMMARY

ITEM TITLE:

Resolution No. 09-R-0014 – Franchise Agreement with Comcast of Illinois/Ohio/Oregon, LLC

AGENDA ITEM NUMBER: 5. B.

FILE NUMBER: _____

COMMITTEE AGENDA DATE: 3/14/19

COUNCIL AGENDA DATE: 3/18/19

STAFF REVIEW:

SIGNATURE _____

APPROVED BY CITY ADMINISTRATOR:

SIGNATURE _____

ITEM SUMMARY:

The City's current Franchise Agreement with Comcast expires on March 25, 2019, after a 15-year term. Attached is a renewal Franchise Agreement that uses the model agreement negotiated between Comcast and the Metropolitan Mayors Caucus and other Regional Councils of Government, with certain minor revisions requested by staff (after looking at five other municipalities' Agreements with Comcast) and the City Attorney. These changes to the model agreement deal with the PEG Access Channel and PEG Capital Fee, number of complaints to trigger an inspections related to the technical standards, indemnification, and the maintenance of confidential information. This renewal Franchise Agreement will cover the period from March 26, 2019 through December 31, 2028.

STAFF RECOMMENDATION:

Staff recommends approval of Resolution No. 09-R-0014.

COMMITTEE RECOMMENDATION:

RESOLUTION NO. 09-R-0014

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A NON-EXCLUSIVE CABLE TELEVISION FRANCHISE AGREEMENT WITH COMCAST OF ILLINOIS/OHIO/OREGON, LLC

BE IT RESOLVED by the City Council of the City of West Chicago, in regular session assembled, that Mayor is hereby authorized to execute a non-exclusive cable television franchise agreement with Comcast of Illinois/Ohio/Oregon, LLC. in substantially the form attached hereto and incorporated herein as Exhibit "A".

APPROVED this 18th day of March, 2019

AYES: _____

NAYES: _____

ABSTAIN: _____

ABSENT: _____

Mayor Ruben Pineda

ATTEST:

City Clerk Nancy M. Smith

**CABLE TELEVISION FRANCHISE AGREEMENT
BY AND BETWEEN
The
CITY OF WEST CHICAGO, ILLINOIS
And
COMCAST OF ILLINOIS/OHIO/OREGON, LLC**

This Draft Renewal Franchise Agreement is the result of discussions between the Metropolitan Mayors Caucus and Comcast, and is being submitted for discussion purposes under the informal process pursuant to 47 USC 546 (h).

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of West Chicago, Illinois (hereinafter, the “City”) and Comcast of Illinois/Ohio/Oregon, LLC (hereinafter, “Grantee”) this ____ day of _____, 2019 (the “Effective Date”), both together collectively known as the “Parties”.

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This Agreement is entered into by and between the Parties under the authority of the Cable Act, the Illinois Constitution of 1970, including the City’s home rule powers, and the Illinois Municipal Code, as amended from time to time, and shall be governed by the Cable Act and the Illinois Municipal Code, as amended from time to time; provided that any provisions of the Illinois Municipal Code that are inconsistent with the Cable Act shall be deemed to be preempted and superseded.

SECTION 1: Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

“Cable Operator” means any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

"Cable Service" or "Service" means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.

"Cable System" or "System," has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, 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 Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) 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, as amended, except that such a 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 the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

"Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

"City" means the City of West Chicago, Illinois or the lawful successor, transferee, designee, or assignee thereof.

"Customer" or "Subscriber" means a Person who lawfully receives and pays for Cable Service with the Grantee's express permission.

"FCC" means the Federal Communications Commission or successor governmental entity thereto.

"Franchise" means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Cable System.

"Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

"Franchise Area" means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

"Grantee" shall mean Comcast of Illinois/Ohio/Oregon, LLC.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly Basic Cable Service, cable programming service regardless of Service Tier, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources from Cable Service delivered over the Cable System as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the City’s permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, third party advertising sales commissions and agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the “Pasadena Decision,” *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues*, CSR 5282-R, *Memorandum Opinion and Order*, 16 FCC Rcd. 18192 (2001), and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Cable System as of the Effective Date of this Franchise Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public, Educational and Governmental (PEG) Access Channel” shall mean a video Channel designated for non-commercial use by the public, the City, and/or educational institutions such as public or private schools, but not “home schools,” community colleges, and universities.

“Public, Educational and Government (PEG) Access Programming” shall mean non-commercial programming produced by any City residents or organizations, schools and government entities and the use of designated facilities, equipment and/or Channels of the Cable System in accordance with 47 U.S.C. 531 and this Agreement.

“Public Way” shall mean, pursuant and in addition to the City’s Right of Way Ordinance (Chapter 15 Article III of the West Chicago Code of Ordinances), the surface of, and the space above and below, any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City. Public Way shall not include any real or personal City property that is not specifically described in this definition and shall not include City buildings, fixtures, and other structures and improvements, regardless of whether they are situated in the Public Way.

“Standard Installation” means those installations to Subscribers that are located up to one hundred twenty-five (125) feet from the existing distribution system (Cable System).

“Video Programming” or “Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2: Grant of Authority

2.1. Pursuant to Section 621(a) of the Cable Act, 47 U.S.C. § 541 (a), and 65 ILCS 5/11-42-11(a) of the Illinois Municipal Code, the Illinois Constitution, and Resolution No. _____ approving and authorizing the execution of this Agreement, the City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall end on December 31, 2028, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. From and after the Effective Date of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to be the sole and exclusive Franchise Agreement between the Parties pertaining to the Grantee’s Franchise for the provision of Cable Service.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, and any applicable State law which may exist at the time of renewal and which is not superseded by the Cable Act.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description; (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City; or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.6 Competitive Equity.

2.6.1. In the event the City grants an additional Franchise to use and occupy any Public Way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application.

SECTION 3: Construction and Maintenance of the Cable System

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Chapter 15 Article III, entitled "Construction of Utility Facilities in the Rights-of-Way" of the West Chicago Code of Ordinances, as may be amended from time to time.

3.2. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.3. Undergrounding and Beautification Projects.

3.3.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Public Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the City shall not be considered to be public or private funds.

3.3.2. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

SECTION 4: Service Obligations

4.1. Initial Service Obligations. As of the Effective Date of this Agreement, Grantee's Cable System has been designed to provide, and is capable of providing, Cable Service to residential Customers throughout the Initial Franchise Service Area. The Grantee shall continue to make Cable Service available in the Initial Service Area throughout the term of this Agreement and Grantee shall extend its Cable System and provide service consistent with the provisions of this Franchise Agreement.

4.2. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per linear Cable System network mile as measured from the existing Cable System's technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the Grantee's distribution cable (e.g., a Standard Installation).

4.2.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Programming. The Grantee agrees to provide cable programming services in the following broad categories:

Children	General Entertainment	Family Oriented
Ethnic/Minority	Sports	Weather
Educational	Arts, Culture and Performing Arts	News & Information

Pursuant and subject to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of the Grantee.

4.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City based on a reasonable number of Subscriber complaints.

4.5. Annexations and New/Planned Developments. In cases of annexation the City shall provide the Grantee written notice of such annexation. In cases of new construction, planned developments or property development where undergrounding or extension of the Cable System is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise Agreement.

4.6. Service to School Buildings and Governmental Facilities.

4.6.1. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary Basic Cable Service and a free Standard Installation at one outlet to all eligible buildings as defined in said state statute. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.6.2. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds a Standard Installation.

4.7. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. Should the City become qualified and authorized to activate the EAS, the Grantee shall provide instructions on the access and use of the EAS by the City to the City on an annual basis. To the extent allowable by law, the City agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the City, its employees or agents in using such system.

4.8. Customer Service Obligations. The City and Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*, and enforcement provisions are included in Appendix E Article I of the West Chicago Code of Ordinances. Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*

SECTION 5: Oversight and Regulation by City

5.1. Franchise Fees. The Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the City shall be credited upon discovery

of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this Section.

5.1.1. The Parties acknowledge that, at present, the Cable Act limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that a change in the Cable Act would allow the City to increase the Franchise Fee above five percent (5%), the City shall hold a public hearing and determine if the City should collect the additional amount. Following the determination, the City shall notify the Grantee of its intent to collect the increased Franchise Fee and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the City) to effectuate any changes necessary to begin the collection of such increased Franchise Fee or notify the Grantee of its intent to not collect the increased fee. In the event that the City increases said Franchise Fee, the Grantee shall notify its Subscribers of the City's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

5.1.2. In the event a change in state or federal law requires the City to reduce the franchise fee percentage that may be collected, the Parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; or ii) the lowest franchise fee percentage paid by any other Cable Operator granted a Cable Franchise by the City pursuant to the Cable Act, and Section 11-42-11 of the Illinois Municipal Code; provided that: (a) such amendment is in compliance with the change in state or federal law; (b) the City approves the amendment by ordinance; and (c) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.3. Taxes Not Included. The Grantee acknowledges and agrees that the term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).

5.2. Franchise Fees Subject to Audit. The City and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards.

5.2.1 In accordance with 65 ILCS 5/11-42-11.05 (k), the City shall provide on an annual basis, a complete list of addresses within the corporate limits of the City. If an address is not included in the list or if no list is provided, the Grantee shall be held harmless for any franchise fee underpayments (including penalty and interest) from situsing errors.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, with the exception of the information directly related to an audit of Franchise Fees as set forth in Section 5.2. or PEG Capital Support as set forth in Section 8.7. All information that the Grantee desires the City to keep confidential shall be so expressly designated by the Grantee. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents

of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" shall generally include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the City has in its possession and receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City's opposition to disclosure of any information Grantee designates as proprietary or confidential, which indemnification obligation shall include payment of the City's costs, including reasonable attorney fees. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Transfer of Cable System or Franchise or Control of Grantee

6.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, as provided for in Section 617 of the Cable Act, 47 U.S.C. §537 and 47 C.F.R. §76.502, as may be amended.

6.2. No transfer of control of the Grantee, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

6.3. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

6.4. The Grantee, and any proposed transferee under this Section 6, shall submit a written application to the City containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, specifically including a completed Form 394 or its successor, and in compliance with the processes established for transfers under FCC rules and regulations, including Section 617 of the Cable Act, 47 U.S.C. §537 and 47 C.F.R. §76.502. As a condition to granting of any consent, the City may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

6.5. Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the business of the Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of a one hundred twenty (120) day period, shall be treated as a transfer of control

pursuant to 47 U.S.C. §537 and require the City's consent thereto in the manner described in Section 6 above.

SECTION 7: Insurance and Indemnity

7.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain such insurance and provide the City certificates of insurance in accordance with Chapter 15, Section 16 of the West Chicago Code of Ordinances.

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "Indemnification Events"), arising in the course of the Grantee constructing and operating its Cable System within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events which may occur leading up to the execution of this Agreement and during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

SECTION 8: Public, Educational and Governmental (PEG) Access

8.1. PEG Capacity. Grantee shall provide capacity for the City's noncommercial Public, Educational and Government ("PEG") Access Programming through Grantee's Cable System consistent with the requirements set forth herein. The City's PEG Programming shall be provided consistent with Section 611 of the Cable Act (47 U.S.C. §531), as amended from time to time. PEG Programming shall always be carried on the service tier offered by Grantee that is the minimum required to obtain Cable Service.

As of the Effective Date of this Agreement, the City utilizes one (1) PEG Channel, which is located on Channel 17 of the Grantee's Cable System. The Grantee shall use reasonable efforts to maintain Channel 17 as a PEG Access Channel. In the event the Grantee plans to change the numeric channel position of this PEG Access Channel from Channel 17, the Grantee shall provide the City one hundred eight (180) days' notice of such change. Grantee shall also provide notice to all cable subscribers of the change in channel position by providing notice of

such change with the cable bills prior to the effective date of the change. In addition, for a period of at least thirty (30) days prior to the change in channel position, the City shall retain the right to provide notice of the new PEG Access Channel location on Channel 17 broadcasts. Such notice may be accomplished by providing a banded notice at the bottom of the broadcast screen.

The City may request, and Grantee shall provide, a second PEG Access Channel within one hundred eighty (180) days' advance written notice by the City and with sufficient proof that the current Channel is inadequate for all programming offered. "Sufficient proof" shall include a verified program schedule of all original, non-repeat, first-run, non-character generated, locally produced programs that are carried on the existing Channel for the prior six-month period during the hours of noon to midnight. In the event that eighty percent (80%) of the programming on the existing Channel meets the criteria of being original, non-repeat, first-run, non-character generated, locally produced programming, Grantee shall provide a second Channel. Any cost for the activation of the additional Channel shall be paid for by the City.

8.2. Rules and Procedures for Use of the PEG Access Channel. The City shall be responsible for establishing, and thereafter enforcing, rules for the non-commercial use of the PEG Access Channel and to promote the use and viewership of the Channel.

8.3. Allocation and Use of the PEG Access Channel. The Grantee does not relinquish its ownership of a Channel by designating it for PEG use. The PEG Access Channel is, and shall be, operated by the City or its designee. The City shall adopt rules and procedures under which Grantee may use the PEG Access Channel for the provision of Video Programming if the PEG Access Channel is not being used for its designated purpose(s) pursuant to Section 611(d) of the Cable Act, 47 U.S.C. § 531.

8.4. Editorial Control. Grantee shall not exercise any editorial control over any use of the PEG Access Channel, except as permitted by 47 U.S.C. §531(e).

8.5. Origination Point. At such time that the City determines that it wants to establish capacity to allow its residents who subscribe to Grantee's Cable Service to receive PEG Access Programming originated from the City or any other City Designated location(s) (other than those having a signal point of origination at the time of the execution of this Agreement); or at such time that the City determines that it wants to change or upgrade a location from which PEG Access Programming is originated; the City will give the Grantee written notice detailing the point of origination and the capability sought by the City. The Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time, not exceeding sixty (60) days. After an agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within one hundred twenty (120) days or such other period of time as mutually agreed to by the Parties.

8.6. PEG Signal Quality. Provided PEG signal feeds are delivered by the City to the designated signal input point without material degradation, the PEG Channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.

8.7. PEG Capital Support. At its sole discretion, the City may designate PEG access capital projects to be funded by the City. The City shall send written notice of its desire for Grantee to collect as an external charge a PEG capital fee of up to thirty-five cents (\$0.35) per customer per month charge to be passed on to each Subscriber pursuant to Section 622(g)(2)(C) of the Cable Act (47 U.S.C. § 542(g)(2)(C)) (a "PEG Capital Fee"). The Grantee shall collect the PEG Capital Fee over a period of twelve (12) months, unless some other period is mutually agreed upon in writing, and shall make the PEG Capital Fee payments to the City from such PEG Capital Fee at the same time and in the same manner as Franchise Fee payments.

The written notice shall include the applicable pages from the City's Annual Budget describing the intended utilization of the PEG Capital Fee for PEG Access Channel facilities and/or equipment, which may be amended from time to time as the City deems necessary with notice to the Grantee when said amendments pertain to the PEG Capital Fee. The Grantee shall have the opportunity within thirty (30) days of the Grantee's receipt of the notice to review and make recommendations upon the City's plan prior to agreeing to collect and pay to the City the requested amount. The capital payments shall be expended for capital costs associated with PEG access. Consistent with the description of the intended utilization of the PEG Capital Fee, the City shall be permitted to hold all or a portion of the PEG Capital Fee from year to year as a designated fund to permit the City to make large capital expenditures, if necessary, provided that any remaining funds at the end of the term of this Agreement shall be used by the City for PEG Capital obligations during the subsequent Franchise renewal. Moreover, if the City chooses to borrow revenue from itself or a financial institution for large PEG capital purchases or capital expenditures, the City shall be permitted to make periodic repayments using the PEG Capital Fee. Said PEG Capital Fee shall be imposed within one hundred twenty days (120) of the City's written request.

8.7.1. For any payments owed by Grantee in accordance with this Section 8.5 which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the City shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this section.

8.7.2. Grantee and City agree that the capital obligations set forth in this Section are not "Franchise Fees" within the meaning of 47 U.S.C. § 542.

8.8. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or under-utilized PEG Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation from the City upon no less than sixty (60) days' notice. Except as otherwise provided herein, the programming of the PEG Access Channel with text messaging or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period

of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on a PEG Access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

SECTION 9: Enforcement of Franchise

9.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with a material term of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by 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 the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City may:

9.3.1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or

9.3.2. in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the City shall determine whether the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the City shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court

with jurisdiction within thirty (30) days after receipt of the City's decision.

9.4. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the City's ability pursuant to Section 4.8 of this Franchise Agreement to enforce the requirements and standards, and the penalties for noncompliance with such standards, consistent with the Illinois Cable and Video Customer Protection Law enacted by the City as Appendix E Article I of the West Chicago Code of Ordinances; and, pursuant to Section 3.1 of this Franchise Agreement and Chapter 15, Article III of the West Chicago Code of Ordinances, to enforce the Grantee's compliance with the City's requirements regarding "Construction of Utility Facilities in the Rights-Of-Way." Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the City to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the City.

SECTION 10: Miscellaneous Provisions

10.1. Force Majeure. The 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, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Noncompliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

10.2. Notice. Any notification that requires a response or action from a Party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both Parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other Party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City of West Chicago
475 Main Street
West Chicago, Illinois 60185
ATTN: City Administrator

To the Grantee:

Comcast
1500 McConnor Parkway
Schaumburg, Illinois 60173
ATTN: Director of Government Affairs

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business

amongst the Parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above. Either Party may change its address and addressee for notice by notice to the other Party under this Section.

10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. Except for ordinances adopted pursuant to Sections 2.4 and 2.5 of this Agreement, all ordinances or parts of ordinances related to the provision of Cable Service that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The City may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Franchise Agreement has been materially altered by the change and of the election to begin negotiations to amend the Franchise Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

10.6. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, DuPage County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

10.7. Modification. Except as provided in Sections 5.1.1 and 5.1.2, no provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

10.8. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

10.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

10.10. Validity of Franchise Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Franchise Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

10.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Franchise Agreement. The individual signing this Franchise Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Franchise Agreement in the name of the Grantee.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the date set forth below:

For the City of West Chicago, Illinois:

For Comcast of Illinois/Ohio/Oregon, LLC:

By: _____

By: _____

Name: Ruben Pineda

Name: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

**CITY OF WEST CHICAGO
CITY COUNCIL MEMORANDUM**

TO: Honorable Mayor and Members of Council

FROM: Michael Guttman, City Administrator

SUBJ: Draft Host Agreement - Lakeshore Recycling Systems

DATE: March 5, 2019

As communicated in the September 2018 Monthly Report, Lakeshore Recycling Systems submitted a draft Host Agreement for a Waste and Recycling Transfer Facility at its location at 1655 Powis Road where presently the company does clean construction and demolition debris recycling. Staff and legal counsel reviewed the document, and provided substantial feedback. In December, the parties met to discuss the comments, and in mid-January, LRS provided an updated red-lined document. The attached document is now ready for Finance Committee review.

Negotiating a Host Agreement is the first step in the siting process. If terms cannot be reached, then the company may not undertake the very expensive siting process. If a negotiated Host Agreement is acceptable to both parties, then the company typically will move forward with the siting process, which will require the proposed facility to meet nine statutory criteria. These criteria, an explanation of the process and the role of the City Council is explained in more detail in the attached memorandum prepared by Dennis Walsh, an attorney with Klein, Thorpe & Jenkins who has extensive experience in this very specific line of work. This letter is subject to attorney-client privilege and will not and should not be made available to the public.

Existing DuKane Transfer Station

Before turning to the draft terms of the Host Agreement with Lakeshore Recycling Systems, I first want to detail the terms of our existing Host Agreement with Groot Industries, which was accomplished via a Pre-annexation Agreement in 1997 (the facility was initially owned by Browning Ferris Industries, which Groot purchased in 2000. Initially, siting approval was granted for 1,500 tons of municipal solid waste, landscape waste and recyclables per day. In October 2001, the City Council unanimously approved an amendment to that Pre-annexation Agreement that increased the maximum average annual daily weight to 2,500 tons of municipal solid waste, landscape waste and recyclables, with no more than 3,000 tons on any single day. In July 2003, the City Council unanimously approved a second amendment that increased the average annual daily limit to 3,000 tons and eliminated the daily maximum. In 2018, this facility processed an average of 893 tons per day, well below its permitted maximum.

The City is currently receiving a Host Fee of \$2.10 per ton, which is adjusted annually by the CPI each March 1st (DuPage County gets 25% of this amount. The City also gets \$0.10 per ton more since Groot has the City's residential waste and recycling contract. The Fire District also receives \$0.10 per ton. Groot writes one check to the City and then the City Council approves the amounts paid to DuPage County and the Fire District quarterly via the Corporate Disbursement Report. The annual amounts collected beginning in 2010 are as follows:

	Revenue	Expenditure	Amount to City
2018	\$573,115	\$156,046	\$417,069
2017	\$626,144	\$170,744	\$455,400
2016	\$713,942	\$194,946	\$518,996
2015	\$662,242	\$180,908	\$481,334
2014	\$601,795	\$165,186	\$436,609
2013	\$556,858	\$152,433	\$404,425
2012	\$547,314	\$150,031	\$397,283
2011	\$565,290	\$155,274	\$410,016
2010	\$578,251	\$159,067	\$419,184

Proposed Waste and Recycling Transfer Facility Host Agreement Benefits

Lakeshore Recycling Systems (LRS) is proposing to a Transfer Facility with sufficient capacity to receive and transfer to landfills an annual average of 1,500 tons of municipal waste and hydro excavation (wet dirt that needs to be solidified) waste per day. Recently, LRS has been awarded the residential hauling contracts in Lisle, Wheaton, St. Charles, Geneva and Elburn. After the first few months of operation, it is estimated that approximately 750 tons/day would be averaged being processed at the Facility.

The host fee is proposed to be \$2.45 per ton, with an additional \$0.40 per ton if the City switches to LRS for its residential hauling contract. This amount would increase annually each January 1st based upon the CPI. The revenues the City would receive from the facility would be between an estimated \$529,000 - \$615,000 depending on whether or not LRS is awarded the City's residential hauling contract after December 31, 2018..

All City legal expenses associated with the Host Agreement will be reimbursed, up to \$15,000. All City expenses associated with the pre-filing review will be reimbursed, up to \$35,000. All City expenses including legal and consulting fees associated with the siting hearing and process will be reimbursed 100%.

The City annually incurs costs associated with the removal of refuse, wood chips, stumps, logs, clean construction demolition debris, cement and asphalt, which ranges from \$45,500 - \$55,000 annually. The Host Agreement has a provision that would allow City staff to dump 2,500 tons of these items per year at no charge (with a cap on refuse of 800 tons, which is about what we dispose of annually). In addition, the Agreement contains language that will allow residents to drop off electronics at no charge every day of the week, unlike just Saturdays, which is in our contact with Groot.¹

¹ Residents will be charged \$35.00 for large e-waste such as CRT monitors and big screen televisions, which is LRS' cost; this will be waived should LRS get the City's residential hauling contract.

LRS agreed to give preference to suitably skilled applicants residing in the City before hiring applicants residing in other communities for work at the Transfer Facility, and for all work performed at the Transfer Facility, it will require its contractors to give preference to hiring new employees from suitably skilled applicants residing in the City before hiring applicants residing elsewhere. LRS further agreed that it will give preference to firms and businesses located in the City which provide a competitive price or bid (where bidding is required) and which are capable of performing the required work before contracting with or otherwise retaining firms and businesses headquartered elsewhere.

Finally, the Agreement requires LRS to not use City streets (restricted to North Avenue, Kress Road and Roosevelt Road) for incoming and outgoing trucks at the transfer station, unless they are serving West Chicago customers.

Other Agreement Host Fee Amounts

Staff checked two other recent Host Agreements to determine the host fee amounts in 2019; the amounts shown are the ones that include an extra amount (as WC receives at the DuKane Transfer Facility) because the operator of the transfer facility also has that community's residential hauling contract:

Round Lake Park	0-600 tons	\$1.95/ton
	600-1,000 tons	\$2.10/ton
Plano	1-499 tons	\$2.38/ton
	500-999 tons	\$2.43/ton
	1,000+ tons	\$2.49/ton
Batavia	0-400 tons	\$2.57/ton
	400+ tons	\$2.71/ton
Elgin	all tonnage	\$2.11/ton

Using the estimated 750/tons per day average, it results in the following annual amounts collected by the host municipalities using their respective formulae:

LRS - w City contract	\$615,600
Batavia	\$569,232
LRS - w/o City contract	\$529,200
West Chicago - Groot	\$486,000
Plano	\$456,526
Elgin	\$455,760
Round Lake Park	\$427,680

Please let me know if you have any questions.

RESOLUTION NO. 09-R-0016

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A HOST
COMMUNITY BENEFIT AGREEMENT BETWEEN THE CITY OF WEST
CHICAGO AND LAKESHORE RECYCLING SYSTEMS, LLC FOR A SOLID
WASTE TRANSFER FACILITY**

BE IT RESOLVED by the City Council of the City of West Chicago, in
regular session assembled, that Mayor is hereby authorized to execute a Host
Community Benefit Agreement between the City of West Chicago and Lakeshore
Recycling Systems, LLC for a Solid Waste Transfer Facility in substantially the form
attached hereto and incorporated herein as Exhibit "A".

APPROVED this 1st day of April, 2019

AYES: _____

NAYES: _____

ABSTAIN: _____

ABSENT: _____

Mayor Ruben Pineda

ATTEST:

City Clerk Nancy M. Smith

**HOST COMMUNITY BENEFIT AGREEMENT BETWEEN
THE CITY OF WEST CHICAGO, DUPAGE COUNTY, ILLINOIS,
AND LAKESHORE RECYCLING SYSTEMS, LLC
FOR A SOLID WASTE TRANSFER FACILITY**

This HOST BENEFIT COMMUNITY AGREEMENT ("Agreement") is made as of the _____ day of _____, 2019, between the CITY OF WEST CHICAGO, DuPage County, Illinois ("City") and LAKESHORE RECYCLING SYSTEMS, LLC ("Company").

RECITALS

WHEREAS, the Company currently operates a solid waste management facility, which receives, sorts/ separates, recycles and transfers Construction or Demolition Debris (hereinafter referred to as the C&D Recycling Facility) on the premises legally described in Exhibit A attached hereto and consisting of approximately 27.81 acres (hereinafter referred to as the "Subject Property"); and

WHEREAS, the Company plans to file with the City a request for site location approval for the construction and operation of a new Transfer Facility with sufficient capacity to receive and transfer to landfills an annual average of 1,500 tons per day of non-hazardous Municipal Waste and Hydro Excavation Waste (as those terms are defined below) with ancillary truck parking and storage and maintenance facility combined ("Transfer Facility"); and

WHEREAS, the Company desires to construct the Transfer Facility on the Subject Property and operate the Transfer Facility in conjunction with the C&D Recycling Facility; and

WHEREAS, the City is authorized by State of Illinois law, pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) to, among other things, receive, hold hearings, and decide an application for the site location of a pollution control facility proposed to be located in the City of West Chicago; and

WHEREAS, the City Council of the City of West Chicago ("City Council") adopted Pollution Control Facility Site Approval Procedures consistent with Section 39.2 of the Illinois Environmental Protection Act, for the purpose of preparing a comprehensive approach to the site location review process of a solid waste pollution control facility in the City of West Chicago; and

WHEREAS, Section 39.2 of the Illinois Environmental Protection Act acknowledges a local government's power to negotiate and enter into a host community benefit agreement with an applicant for site location of a pollution control facility; and

WHEREAS, the Company desires to provide certain environmental protection and compensation to the City with respect to the Transfer Facility, if the Transfer Facility obtains all required approvals and commences operation; and

WHEREAS, the City is desirous of obtaining such environmental protections and compensation, provided that the City shall have no obligation to grant site location approval of the Transfer Facility unless and until, through the local site location review process, it finds that the Transfer Facility meets or exceeds all criteria required by 415 ILCS 5/39.2. Regardless of whether site location approval is granted, this Agreement survives the local site location review process; and

WHEREAS, the City has not consented to, concurred in or objected to the proposed plans of the Company to develop the Transfer Facility, and nothing in this Agreement shall be deemed by the Company, the City, other public agencies, or the public to indicate that the City has heretofore adopted any position on the potential development of the Transfer Facility; and

WHEREAS, if the City grants site location approval of the Transfer Facility, and if thereafter the Illinois Environmental Protection Agency issues permits for the development and operation of the Transfer Facility, the Company is willing to pay a host community benefit fee, as hereinafter set forth, to the City to assist the City in meeting the costs associated with the Transfer Facility and for other general revenue needs of the City as the City may deem appropriate.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the City and the Company agree as follows:

ARTICLE 1

DEFINITIONS AND TERM OF AGREEMENT

Section 1.1 Definitions

"Act" as used in these definitions and this Agreement, shall mean the Illinois Environmental Protection Act, as amended from time to time (415 ILCS 5/1, et seq.).

"Construction or Demolition Debris" whether or not capitalized, means "clean construction or demolition debris" as defined by Section 5/3.160(b) of the Act (415 ILCS 5/3.160(b)), or "general construction or demolition debris," as defined by Section 5/3.160(a) of the Act (415 ILCS 5/3.160(a)).

"Food Scrap" whether or not capitalized and used in any of its grammatical forms, means "food scrap" as defined in Section 5/3.197 of the Act (415 ILCS 5/3.197).

"Hydro Excavation Wastes" means solid/liquid waste such as hydro/vacuum excavation muds, underground excavation material, drilling muds, and other similar materials.

"IAC" as used in these definitions and this Agreement, shall mean the Illinois Administrative Code.

"IEPA" means the Illinois Environmental Protection Agency.

"IPCB" means the Illinois Pollution Control Board.

"Landscape Waste" whether or not capitalized and in any of its grammatical forms, means "landscape waste" as defined by Section 5/3.270 of the Act.

"Municipal Waste" whether or not capitalized and used in any of its grammatical forms, means "municipal solid waste", as defined by Section 5/3.290 of the Act (415 ILCS 5/3.290), except that such waste does not include Construction or Demolition Debris, Recyclables, Unacceptable Waste, or Landscape Waste.

"Recyclables" whether or not capitalized and used in any of its grammatical forms, means any material, which would otherwise be disposed of or discarded, which is separated from Municipal Waste or Construction or Demolition Debris at the source of generation so as to render it useable in a process, or alone, such that it can be returned to the economic mainstream in the form of raw materials or products. Examples of recyclables are newspaper, glass bottles, high density, polyethylene containers, aluminum food and beverage containers, chipboard, and corrugated containers. Recyclables do not include any materials removed or separated from, or containing Unacceptable Wastes.

"Regular Business Hours" of the Transfer Facility shall mean 4:00 a.m. to 12:00 a.m. on weekdays and 4:00 a.m. to 12:00 p.m. on Saturdays, with no operation on Sundays or the six major Federal holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas), provided that on the Saturday following any Federal holiday Regular Business Hours may be extended by the Company to 12:00 a.m. The Regular Business Hours for accepting Municipal and Hydro Excavation Waste may be extended but only upon the prior approval of the City, such approval being in writing.

"Solid Waste" whether or not capitalized, means Municipal Waste, Landscape Waste, Food Scrap, , and Construction or Demolition Debris, including those materials in these classifications that have received a Beneficial Use Determination (BUD) designation by the IEPA, as those terms are defined in this Section.

"Transfer Facility" whether or not capitalized, means, "Transfer Station" as defined by 5/3.83 of the Act (415 ILCS 5/3.83), including the property on which the Transfer Station is located, and specifically references the Transfer Facility the Company desires to construct and operate located on approximately 27.81 acres at 1655 Powis Road, Illinois, permanent parcel #01-32-101-004 and #01-32-200-001, at the property described on Exhibit A.

"Unacceptable Waste" whether or not capitalized and used in any of its grammatical forms, means (a) "hazardous waste" as defined by Section 5/3.15 of the Act (415 ILCS 5/3.15) or by 35 IAC 721.03; (b) "industrial process waste" as defined by Section 5/3.235 of the Act (415 ILCS 5/3.235), except allowable special waste and such industrial process waste which poses no present or potential threat to human health or the environment and which has no inherent properties which makes its disposal in a landfill difficult to manage by normal means, and which has been specifically approved by the IEPA; (c) "pollution control waste" as defined by Section 5/3.335 of the Act (415 ILCS 5/3.335); (d) "sludge" as defined by Section 5/3.465 of the Act (415 ILCS 5/3.465); (e) "potentially infectious medical waste" as defined by Section 5/3.360 of the Act; (f)

"special waste" as defined by Section 5/3.475 of the Act; (g) "polychlorinated byphenyls" as defined in the Toxic Substances Control Act, 15 U.S.C. Section 2601-2692, or regulations promulgated thereunder; (h) source, special or byproduct nuclear materials, radioactive waste, high-level or low-level radioactive waste, or transuranic waste as defined in the Atomic Energy Act, 42 U.S.C. Sections 2014, et seq., or regulations promulgated thereunder; or (i) "asbestos" as defined in 40 CFR 763.83, except that Unacceptable Waste does not include Hydro Excavation Waste.

Section 1.2 Term

This Agreement commences on the date executed and continues in force and effect until the Transfer Facility ceases to operate and is no longer permitted by the IEPA to accept Municipal Waste and/or Hydro Excavation Waste. In addition, the City may terminate this Agreement if the Company is in default of this Agreement as provided in Section 4.2. The terms of this Agreement that are specifically extended beyond termination (i.e., as provided in Sections 2.1, 2.2, 2.3, 4.1, 4.6, 4.7, 4.8, 4.9, and 5.2), survive this term provision. The Company, in turn, may, at its sole discretion, terminate this Agreement if it determines that it is no longer economically desirable to operate the Transfer Facility and it rescinds its IEPA permit to operate. The Company agrees that, should this Agreement be terminated, the Company will immediately remove all Municipal Waste and/or Hydro Excavation Waste from the Transfer Facility and stop its operations and receipt and acceptance of Municipal Waste and/or Hydro Excavation Waste.

ARTICLE 2 ENVIRONMENTAL PROTECTIONS

Section 2.1 Compliance with Laws

The Company shall comply at all times, in connection with the development and operation of the Transfer Facility, with: all laws, ordinances, and final and non-appealable conditions of this site location (should it be approved by the City); conditions and requirements of any permit that is issued for development or operation of the Transfer Facility; modified or amended rules and regulations and ordinances of any Federal, State or local governmental agency or authority relating to the development, operation, monitoring, remediation, or closure of the Transfer Facility; and, this Agreement. In addition, should the Company obtain approval from the City, pursuant to Section 39.2 of the Act, but contest on appeal, one or more conditions, if any, placed on such approval, the Company agrees that, with respect to such contested condition(s), it will not commence permitting, development, construction or operation of the Transfer Facility, until a final decision has been entered by the IPCB . With respect to the closing of the Transfer Facility, the Company agrees to comply with any government ordinance, rule, law or directive as to post-closure requirements and pay the entire costs associated therewith. This Section 2.1 survives the termination of this Agreement.

Section 2.2 Waste Acceptability

The Company shall only allow Solid Waste and/or Hydro Excavation Waste to be intentionally accepted at, transported to, stored at, or otherwise present at the Transfer Facility. All

Municipal Waste and/or Hydro Excavation Waste, except when being transported to or from the Transfer Facility, must be kept inside (i.e., within a fully enclosed area of) the Transfer Facility. Unacceptable Waste accepted at, transported to, stored at, or otherwise present at, on, or in the Transfer Facility shall be properly removed within 24 hours. Willful violation of this prohibition of Unacceptable Waste is a material breach of this Agreement and enforceable by injunction, or any other legal theory, and the enforceability of this provision survives the termination of this Agreement.

The Company agrees that it shall not receive at the Transfer Facility more than 1,500 tons of Municipal Waste and/or Hydro Excavation Waste per day (calculated on a rolling twelve (12) month average, based on 5.5 days per week), except with the prior written approval of the City. The parties may at any time by mutual agreement modify this provision, and such modification shall not be considered an event which triggers the requirement of local siting approval.

Section 2.3 Defense and Indemnification and Insurance

The Company covenants and agrees at Company's sole cost and expense to defend, indemnify and hold harmless the City, individual members of the City Council, and any and all employees, agents, officers, or representatives of the City (collectively "City Affiliates"), from and against all claims, suits, actions, administrative enforcement proceedings, losses, damages of all kinds, costs, expenses, fines and penalties, attorneys' fees and expenses of litigation, of any nature whatsoever, relating in any way directly or indirectly to the Transfer Facility where the same are caused by the Company's negligence, willful misconduct or breach of this Agreement. This includes, but is not limited to, any condition or occurrence, or any release, discharge or emission at, onto, above, under, through or from the Transfer Facility; or the Company's execution, performance, or non-performance of this Agreement or of any conditions placed on siting (should the facility be approved or the operations of the Company conducted at the Transfer Facility). This includes, but is not limited to, any claims of injury to any person (including, but not limited to death) or property for violation of or non-compliance with any law, ordinance, rule or regulation (including without limitation any environmental, health, antitrust, civil rights, employment or trade law, or statutory or common law obligation or liability). The Company shall with the advice and consent of the City (which consent shall not be unreasonably withheld, conditioned or delayed) assume the defense of all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Agreement. In the event of a written offer to settle such matter on monetary terms only, and the Company wishes to accept and pay the same, but the City does not agree to such settlement, the Company shall pay the amount to the City and the City shall assume the further defense of the matter, and Company shall have no further liability for defense or indemnification, provided however, that the foregoing shall not apply to any non-monetary terms of an offer, such as where consent to an injunction is stated as a term in the offer to settle. In the event that the City or any of the City Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Agreement, the Company shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the reasonable costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by the Company pursuant to the indemnification provisions herein. City shall have the right to reject said choice in the event of actual conflict of interest or if the attorney has a family relationship to any City employee, officer,

or official, and in any event, the City shall have the right to participate at its own expense in any proceeding, claim, suit or action. Company shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under this Agreement and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Agreement. In the event that such payment is not made, the City or any City Affiliate, at their sole discretion, may proceed to file suit against the Company to compel such payment. The City Affiliates shall give reasonable notice of the service of any suit upon them to the Company, and shall give reasonable notice of any claim, action, administrative proceeding, loss or other damages. In the event of a claim or suit against Company arising out of the sole negligence, willful misconduct or breach of this Agreement by the City or any City Affiliate, City shall be obligated to defend and indemnify Company on the terms set forth in this section.. The City shall be responsible on the same terms as the Company's responsibility is based for indemnification of any injury or damage to the extent the same results from the sole negligence, willful misconduct or breach of this Agreement by the City or any City Affiliate. In addition, nothing in this Agreement shall be construed as a waiver of any common law or statutory immunity the City may have to such liability. This Section 2.3 survives termination of this Agreement.

Nothing in this Section shall be construed as a waiver of any rights either party may have with regard to contesting its alleged obligation for defense and indemnification by way of Declaratory Judgment or otherwise.

Further, any defense and indemnity provided herein is independent of and shall not be limited by reason of the enumeration of any insurance coverage which the Company has obtained. In that regard, Company shall purchase and maintain the following types of insurance with the following aggregate coverage limits: (a) General Liability - \$5,000,000; (b) Automobile Liability - \$5,000,000; and (c) Workers Compensation - \$3,000,000. Such insurance shall include the City of West Chicago as an additional insured, except for workers' compensation insurance, on a non-contributory primary basis and, if such coverage is commercially available, shall include "Occurrence" basis wording or provide for other substantially similar coverage that protects the City against the equivalent risks issued by a company or companies qualified to do business in the State of Illinois . A Certificate of Liability Insurance in substantially the form of the sample Certificate of Liability Insurance attached as Exhibit C shall be filed with the City, and this Certificate of Liability Insurance and the insurance policies required by this Section shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice (ten (10) days in the case of nonpayment of premium) has been given to the City. Company assures the City that a valid Certificate of Insurance will be in the City's possession at all times.

ARTICLE 3

HOST FEES

Section 3.1 Purpose

In consideration of the additional fees and costs to be incurred by the City, should the West Chicago City Council approve the Transfer Facility site location and should the Company build the Transfer Facility and begin accepting Municipal Waste and/or Hydro Excavation Waste, the Company agrees to pay the City the following fees.

Section 3.2 Quantity Based Fees

The Company shall pay to the City a base fee as provided below for each ton of Municipal Waste and/or Hydro Excavation Waste, except landscape waste and recyclables, received at the Transfer Facility (whether received in the same or separate vehicles) from the first date Municipal Waste and/or Hydro Excavation Waste is received through the termination of this Agreement. In the event the Transfer Facility accepts Food Scraps either in dedicated truckloads or commingled with Landscape Waste, the Company agrees to pay the per ton fee provided for in this section on the Food Scraps accepted at the Transfer Facility. The parties agree to work together to track and implement the mechanisms needed to assure the City payment on Food Scraps. The parties agree that the initial concept for implementing such a program may but need not necessarily be as the following language which is included herein for illustrative purposes only: "in order to determine the amount of Food Scrap accepted at the Transfer Facility that has been commingled with Landscape Waste from residential sources, the Company shall annually weigh and track the amount of Food Scrap it receives during the months of January, February and March when Food Scrap is not commingled with Landscape Waste. The Company shall determine a monthly average based on these three months and shall pay the City the per-ton fee on Food Scraps for those three months and for the remaining nine months of the calendar year based on the monthly average computed for that calendar year. If the Company receives Food Scraps from non-residential sources, for example grocery stores, restaurants and food processing firms, the Company shall pay the City the per ton fee on those Food Scraps based on the actual weights received. The Company shall provide the City with the data and calculations used to compute the monthly average by April 10 of each year and the City shall either accept or reject the monthly average proposed by the Company by April 20 of each year." Beginning on January 1, 2021, the annual increase provision in Section 3.3 will be used to determine the per-ton fee.

Per Ton Fee

The Company shall pay the City a Host Benefit Fee equal to two dollars and forty-five cents (\$2.45) per ton of Municipal Waste and/or Hydro Excavation Waste received at the Transfer Facility. Per-ton fees shall be payable only if, as and when waste is received and accepted at the Transfer Facility.

If the Company is awarded the City contract for curbside and/or alley collection and disposal of refuse, recyclable, and yard waste from all present and future single-family residences and multiple family dwellings of four (4) or less residential dwelling units in the City, the Company shall pay the City a separate Collection Fee of \$0.40 for each ton of Municipal Waste received at the Transfer Facility. The Collection shall be paid from the first date Municipal Waste is received at the Transfer Facility pursuant to the City contract through the termination of the City contract.

Section 3.3: Annual Increase

Beginning as of January 1, 2021, and as of each January 1 thereafter, the per-ton fees described in Section 3.2 above will be adjusted from the per-ton fees of the previous year by the percentage change during the previous year in the Revised Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor – Statistics for the Chicago-Gary-Kenosha area, provided, however, that at no time shall the increase be less than 0% or greater than 4%. If the Consumer Price Index for All Urban Consumers shall cease to be published in the time frame described above, the City and Company shall designate a comparable time frame or index, which shall then be used for determining the annual rate of adjustment.

Section 3.4 Identification and Weight of Receipts

The Company shall weigh all receipts of Solid Waste and/or Hydro Excavation Waste on a certified scale, which is inspected at least once each calendar year by the Company, and a copy of said inspection shall be provided to the City upon request. In addition, the Company shall identify for the City, in writing, a listing of all receipts categorized by date, type of Solid Waste and/or Hydro Excavation Waste and other material in each receipt (if not Solid Waste and/or Hydro Excavation Waste), and weight of Solid Waste and/or Hydro Excavation Waste (or other material if not Solid Waste and/or Hydro Excavation Waste) in each receipt, so that the City can determine by its review of these records the number of incoming vehicles, the type of vehicle and identification of the hauling entity or person (in the case of an individual rather than business hauler), the load weight and total weight of each vehicle, and the type of waste or material contained on each vehicle received at the Transfer Facility each calendar day.

Further, the Company shall keep records of outgoing Solid Waste and/or Hydro Excavation Waste, such that the City can determine by its review of these records the number of outbound vehicles, the type of vehicle, the destination of each vehicle, and the type of waste contained on each vehicle leaving the Transfer Facility each calendar day. In addition, should the City request records concerning the load weight and total weight of each outbound vehicle, the Company agrees to provide that information, from weights measured at the Transfer Facility or at the destination of the vehicles leaving the Transfer Facility, from the time the Company receives the City's request on moving forward basis for any time period(s) designated by the City.

Section 3.5: Auditing

The Company shall keep complete and accurate books and records relating to the determination of the fees described in Article 3, in an auditable form, including those records described in Section 3.4. No more than once per year, the Company shall permit the City and its designated representatives access to such books and records (paper and electronic version) for inspection and copying. In the event that such inspection reveals any underpayment(s) of the fees described in Sections 3.2 and 3.3, the Company shall promptly pay the City the amount(s) of such underpayment(s), and if such underpayment is in excess of \$1,500.00, shall reimburse the City for its reasonable costs and expenses of such inspection and, if necessary, collection, including any professional and technical fees (including attorneys' fees) in connection therewith. If any inspection reveals an underpayment in excess of \$1,500, the City may inspect again within six months. In the event that such inspection reveals any overpayment(s) of the subject fees, the

Company may credit the amount of such overpayment(s) against the payments of the subject fees in subsequent quarters. The City shall give the Company at least seven (7) days notice before incurring such costs and expenses but nothing in this Agreement or this Section shall limit the City's right and ability to review, inspect, copy and audit the Company's books and records as set forth in this Section.

Section 3.6: Payment Schedule for Fees

The fees described in this Article shall be paid on a quarterly basis. The quarterly payments shall be calculated on a calendar-year basis; that is, they shall be calculated for the three-month periods ending on the last day of March, June, September and December of each year during the term of this Agreement and any extension thereof. The payment shall be made not later than forty-five (45) days after the last day of the preceding quarter and shall be limited to the Solid Waste transferred during the quarter to which it applies. Past due payments of the fees shall be subject to a late charge of one-and-one-half percent (1½ %) per month or fraction of a month for which the payment is late. Payment of such interest shall not otherwise excuse or cure any default by the Company under this Agreement.

Section 3.7: Inspection and Enforcement

If the Company is charged by the City with having violated any City enforceable law, ordinance, rule or regulation, or any of the Company's permit or site location approval conditions, the Company will be given a corrective notice along with a deadline to comply. If the Company fails to come into compliance and correct the violation, the City will proceed to issue a citation that requires the Company to appear at an Administration Adjudication hearing or the City will proceed through the court process. If the Company is found by a court or through the Administration Adjudication process to be guilty of such violation, or if the Company admits guilt or pleads no contest to such violation, the Company shall reimburse the City for all reasonable fees and costs associated with the City's investigation and prosecution of such violation, including, but not limited to, attorneys' fees. Additionally, Company agrees to pay upon a finding or admission of guilt or a plea of no contest to the City \$500.00 per day as liquidated damages, for each day after notice of such violation was received until the violation is cured, for the Company's violation of the provisions of this Agreement which require compliance with any City enforceable law, ordinance, rule or regulation, or any of the Company's permit or site location approval conditions or requirements, or siting conditions (such as conditions concerning tarping or untarping of vehicles, pick-up or clean-up of litter, noise control, odor control, vector control, dust control, or random load inspections),. The \$500.00 liquidated damages provision shall increase annually, pursuant to the manner and method set forth in Section 3.3 of this Agreement.

ARTICLE 4 MISCELLANEOUS

Section 4.1: Assignment

The Company shall not assign or attempt to sublet this Agreement or any interest in this Agreement or any right or privilege appurtenant to this Agreement without first obtaining the City's written consent, which consent shall not be unreasonably withheld, conditioned or delayed: provided, however, that the Company may assign or transfer its interest in this Agreement to an affiliate of the Company without consent in the event that the affiliate is more than 50% owned by the Company. In addition, no transfer of any ownership or other interest in the Transfer Facility may be made without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The right to seek assignment or approval may occur only if all payments to the City by the Company have been made and if the Company is not otherwise in default in connection with obligations under this Agreement. If the Company requests the City's consent to an assignment of this Agreement or approval of a transfer of ownership or other interest in the Transfer Facility, the Company shall submit written notice containing at least the following information, plus any information required by the City's ordinance pertaining to such assignment request, should such an ordinance be in existence at the time of the request:

- (a) The name of the proposed assignee;
- (b) The terms of the proposed assignment except that Company is not required to disclose consideration, price or payment terms
- (c) The nature of business of the proposed assignee and the proposed use by the assignee; and
- (d) Information relating to the financial responsibility and general reputation in the solid waste field of the proposed assignee that City may require.

In the event of the City's agreement to assignment, the proposed assignee shall agree to the following:

- (e) To assume all obligations and duties of the Company under this Agreement and any conditions placed on the site location approval by the City;
- (f) To be bound as an original party to this Agreement; and
- (g) To make any and all payments due under this Agreement and/or assignment to City directly at its offices, as such payments become due; and

Subject to the provisions of this Agreement limiting the right to assign this Agreement shall be binding on and inure to the benefit of the parties and their heirs and successors. Furthermore, in the event of an approved assignment or transfer, the Company shall remain primarily responsible for all obligations and liabilities of this Agreement which accrue prior to the execution of any approved assignment or transfer. Transfer of a fifty-percent (50%) or greater interest in the Company to another owner or owners shall be deemed an unpermitted transfer under this Section, unless made with the approval of the City. The City may require an additional written commitment from the assignee or transferee to assume and comply with the duties and obligations of this

Agreement. The City shall not unreasonably withhold, condition or delay approval of a proposed assignment or transfer. This Section 4.1 survives termination of this Agreement.

Section 4.2: Default

The occurrence of any one or more of the following constitutes a “default” by the Company under this Agreement. Should the Company be in default of this Agreement, the City may, at its sole discretion, terminate this Agreement.

- (a) The failure by the Company to pay any fee due and payable under this Agreement; if the Company does not cure such failures within thirty (30) days after notice thereof from the City to the Company;
- (b) The failure by the Company to observe or perform in any material respect pursuant to Section 2.1 of this Agreement or any other provision of this Agreement, if the Company does not cure such failure within thirty (30) days after notice thereof from the City to the Company. In the event such failures cannot reasonably be cured within thirty (30) days, the Company must, before the thirtieth day: notify the City that it cannot complete its cure, present the City with a plan and timeline (which meets with the reasonable approval of the City) for completing the cure and implementing a plan to prevent the same or a similar failure from occurring again, and diligently continue to cure such failures during the initial thirty (30) day cure time period and any additional period beyond the thirty (30) days approved by the City. However, to the extent the Company’s default under this Agreement concerns its failure to comply with Section 2.2 (Waste Acceptability), the more restrictive provision (this or Section 2.2) shall control in determining whether the Company is in default of this Agreement;
- (c) The Company admits in writing its inability to pay its debts as they mature and makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Company or a major part of its property;
- (d) A trustee or receiver is appointed for the Company or for a major part of its property, and it is not discharged within ninety (90) days after such appointment; or
- (e) Bankruptcy, reorganization arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy law, or similar law, for the relief of debtors are instituted by or against the Company and, if instituted against the Company, are allowed against it or are not dismissed within 180 days after such institution.

Section 4.3: Notice

Any notice to be given hereunder by either party to the other shall be in writing and be sent by personal delivery, by overnight delivery service or by registered or certified mail, postage

prepaid, return receipt requested, and shall be deemed communicated when delivered or three (3) business days from the date of mailing, whichever is earlier. Notices shall be addressed as set forth below, but each party may change its address by written notice to the other in accordance with this Section:

To the City, notice shall be sent to both the City and the City's Attorney at the following addresses:

TO THE CITY AT:

Attention: Michael Guttman, City Administrator
Address: West Chicago City Hall
475 Main Street
West Chicago, Illinois 60185

WITH COPY TO THE CITY'S ATTORNEYS AT:

Attention: Dennis G. Walsh, Esq.
Address: Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive - Suite 1660
Chicago, Illinois 60606-2903

To the Company, notice shall be sent to the Company at the following addresses:

TO THE COMPANY AT:

Attention: Alan Handley
Address: Lakeshore Recycling Systems, LLC
6135 Oakton Street
Morton Grove, Illinois 60053

Section 4.4: Agreement Controls

This Agreement constitutes the entire understanding of the parties hereto relating to the subject matter contained herein, except that it does not, in any way, constitute the City's agreement or obligate the City to approve the Company's site location application. If such application is filed with the City and if such application is approved by the City, this Agreement is to be read as an additional obligation and not as superseding the Company's obligation to comply with any conditions of the City's site location approval and any laws, ordinances, rules or regulations applicable to the site or Transfer Facility.

Section 4.5: Captions

Captions of the Articles, Sections and paragraphs of this Agreement are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 4.6: Enforcement of Siting Conditions

The Company agrees that, should the Transfer Facility receive site location approval pursuant to Section 39.2 of the Act from the City of West Chicago, that any final and non-appealable conditions imposed on the Transfer Facility or Company as part of such approval are enforceable by the City against the Company, in the same manner in which the City's ordinances or this Agreement are enforceable, or pursuant to a City ordinance, should one be in effect at the time of the enforcement. Section 4.6 survives the termination of this Agreement.

Section 4.7: Governing Law and Forum for Litigation

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any litigation filed by the Company or the City against the other party and involving this Agreement shall be filed in the Circuit Court of DuPage County, Illinois. Section 4.7 survives the termination of this Agreement.

Section 4.8: Severability

The provisions of this Agreement shall be deemed to be severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. Section 4.8 survives the termination of this Agreement.

Section 4.9: Binding Effect

This Agreement shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns. However, nothing in this Section should be construed to allow the Company to assign its interest in this Agreement unless done pursuant to Section 4.1 of this Agreement. Section 4.9 survives the termination of this Agreement.

Section 4.10: Force Majeure

Neither party hereto shall be deemed to be in default or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, or war or labor strikes or interruptions, which are beyond the control of such non-performing party.

Section 4.11: No Third-Party Beneficiaries

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties and their respective successors and assigns, nor shall any provision give any third persons any right or rights of action against any party to this Agreement.

Section 4.12: Legal and Related Expenses

The Company shall pay the City within 45 days after receiving the appropriate documentation, the reasonable and necessary costs incurred by the City in the pre-filing review process, including, but not limited to, staff review time, engineering and other consultant fees and expenses and attorneys' fees and expenses. The Company shall reimburse the City, within 45 days after receiving the appropriate documentation, for such pre-filing review costs. The City agrees that the pre-filing review costs to be reimbursed by the Company will not exceed \$35,000 without prior written agreement from the Company.

The Company agrees to reimburse the City, within 45 days after receiving the appropriate documentation, for the reasonable and necessary fees and costs (including, but not limited to consulting and attorneys' fees and costs and City staff costs) incurred in connection with the drafting and negotiation of this Agreement. The City agrees that the host agreement drafting and negotiation costs to be reimbursed by the Company will not exceed \$15,000 without prior written agreement from the Company.

Section 4.13: Records

In addition to those records described in Sections 3.4 and 3.5, above, the Company shall provide to the City, upon the City's request, free of charge and in a timely manner, copies of all of the following documents in any manner connected with the Transfer Facility:

1. Documents submitted or received by the Company, its representatives, agents, attorneys, employees, or consultants to or from any State or Federal government, or any regulatory or administrative agency, including:

- (a) those documents and/or records that are to be submitted by the Company and/or its agents, representatives or consultants to any state and/or federal environmental regulatory/compliance agency including but not limited to documents and/or records which involve changes to the construction or operation of the Transfer Facility;
- (b) correspondence and/or other communications of any type, kind or sort with any state and/or federal environmental regulatory/ compliance agency;
- (c) those documents not otherwise subject to attorney client privilege or work product privilege, and/or records filed with or received from any state or federal regulatory agency relevant to investigations, inquiries, charges, complaints, citations or notices of violations made and/or issued by any such governmental authority with respect to the Company's conduct and/or activity on or related to the Transfer Facility. Draft settlement decrees and orders, shall not be subject to disclosure to the City.

All such documents and/or records described herein shall be provided to the City prior to, if reasonably possible, or otherwise contemporaneously with their anticipated submittal by the Company and/or its agents and consultants to any state and/or local federal regulatory agency, and the City shall have a reasonable opportunity to review such anticipated submittals and make comments and/or suggested changes and modifications to the same, which the Company is neither required to respond to or accept. The Company shall provide the City with any documents and/or records received by the Company from any state, local and/or federal regulatory agency within ten (10) days of receipt thereof.

2. . Subject to the limitation in Section 4.13 (1)(c), documents not otherwise subject to attorney client privilege of work product privilege submitted or received by the Company, its representatives, agents, employees, or consultants to or from any citizen pertaining to the development or operations of the Transfer Facility, particularly comments or complaints concerning such development or operations and including but not limited to the inbound or outbound vehicles to the Transfer Facility.

3. The Company shall maintain on a daily basis books and records pertaining to the weight and volume of Solid Waste at the Transfer Facility and the daily traffic count of vehicles utilizing the Transfer Facility (setting forth the truck number of each vehicle, the weight of waste each vehicle contains, the classification of waste and its origin). The City, its authorized agents and representatives shall be permitted to inspect such books and records which the Company shall maintain. The City shall also be permitted to inspect any and all books, records, data, documents and reports maintained by the Company concerning compliance with any and all applicable federal, state and local laws, statutes, regulations, rules and/or ordinances relating to the operation of the Transfer Facility and the waste handling/disposal activities described herein.

The Company shall maintain a true and accurate copy of any and all books, records, data, information, documents and reports noted herein at the Transfer Facility.

Section 4.14: Access

The Company shall allow any agent duly authorized by the City:

- (a) Except in case of emergency, all entries under this 4.14 shall be upon at least one day notice, and all City representatives entering shall be escorted at all times by designated Company personnel. Entries pursuant to 4.14(f) shall be only upon probable cause, as set forth in written notice of the proposed entry, to believe that a material term of this Agreement has been or is being violated; provided, however, nothing in this section or this Agreement shall limit in any way the City's rights under any of its codes and/or ordinances, including but not limited to any rights of inspection.
- (b) To enter the Transfer Facility at reasonable times. For purposes of this Section, "reasonable times" means any time during Regular Business Hours and any time not during Regular Business Hours when persons are at the Transfer Facility and/or operations are being conducted and/or the City wants to assure that any siting conditions, local ordinances or contractual provisions between the Company and City are not being violated during non-operational hours (e.g., if there is a siting condition or law or regulation prohibiting overnight storage of waste and the Transfer Facility stops operating at 6:00 p.m., the Company must provide access for the City to enter the Transfer Facility at any time after 6:00 p.m., if the City desires to verify the Company's compliance with the overnight storage restriction);
- (c) To have access to and copy at reasonable times any records required to be kept under the terms and conditions of this Agreement or any local ordinance
- (d) To inspect no more than four times per year during Regular Business Hours of equipment constructed or operated under this Agreement or pursuant to a siting condition. If such inspection reveals any violation of this Host Agreement or a siting condition, the City may inspect again within two weeks;
- (e) To obtain and remove no more than once per year during Regular Business Hours samples of any discharge or emission of contaminants or suspected contaminants. As used in this Section "contaminants" is defined pursuant to Section 3.06 of the Act (415 ILCS 5/3.06). Any samples obtained shall be split samples and shared with the Company;
- (f) To enter at reasonable times and utilize any photographic, recording, testing, monitoring or other equipment for the purpose of preserving, testing, monitoring, or recording any activity, discharge, or emission authorized or prohibited by this Agreement.

Section 4.15 City's Use of Transfer Facility

Subject to the force majeure provisions of this Agreement, upon written request of the City, the Company shall arrange for disposal capacity for all of the residential waste generated within the City's boundaries which Company is permitted to receive for storage and transfer. The Company's obligation to secure disposal capacity shall extend only to residential waste which is initially abandoned or discarded within the City.

The Company agrees that its charges to the City or its contractor for storage, transfer and off-site treatment, recycling and/or disposal of Municipal Waste will be no greater than the lowest charges the Company charges any other non-affiliated, non-trans-load, non-swap solid waste customer with similar volume. If requested by the City, the Company agrees to demonstrate to the City's satisfaction that the Company has and is complying with this Section 4.15 including providing access to all documents and/or records, which may be redacted to avoid disclosure of customer identities, reflecting the amounts and types of waste accepted by the Transfer Facility as well as any and all documents, which may be redacted to avoid disclosure of customer identities, affecting charges assessed to customers and/or users of the Transfer Facility. The City acknowledges that this is proprietary information and will not disclose the same to any other person or entity except as required by law.

In addition, upon issuance of an operating permit by the IEPA for the Transfer Facility and upon the Transfer Facility beginning to accept Municipal Waste and for a period extending through the term of this Agreement for as long as the Transfer Facility continues to accept Municipal Waste, City employees may dump up to 2,500 tons per year of the following items: Municipal Waste (maximum of 800 tons); wood chips, stumps and logs; Construction or Demolition Debris, and cement or asphalt materials at the Transfer Facility at no cost to the City.

Contractor shall annually provide up to a total of twenty (20) 1-1/2 cubic yard dumpsters or up to sixty (60) 90 gallon carts (or a combination of dumpsters and carts up to the total proportionate amounts) for one-time pick up each at special events and/or City use, at no cost where ease and frequency of collection is deemed to be in the best interest of the City.

Section 4.16 Preference for City Residents and Firms

The Company agrees that it shall give preference to suitably skilled applicants residing in the City before hiring applicants residing in other communities for work at the Transfer Facility, to the extent that such preference does not violate any state or federal employment, civil rights or similar laws, or union contracts, but the ultimate decision will be left with the Company. Further, the Company agrees that, for all work performed at the Transfer Facility, it shall require its contractors to give preference to hiring new employees from suitably skilled applicants residing in the City before hiring applicants residing elsewhere. The Company further agrees that it shall give preference to firms and businesses located in the City which provide a competitive price or bid

(where bidding is required) and which are capable of performing the required work before contracting with or otherwise retaining firms and businesses headquartered elsewhere.

The Company, at the written request of the City, will notify the City promptly of each job opening and contract opportunity at the Transfer Facility, and shall use reasonable efforts to provide such notice not less than forty-eight (48) hours before the Company publicly announces such opening or opportunity.

The Company agrees to incorporate a courtesy drop-off area into the facility design, for the convenient use and benefit of the citizens of the City. The drop-off area will accept, at no charge to the residents of the City subject to providing proof of residency at the time of drop off, up to two discarded electrical or electronic devices per household per year commonly known as electronic waste or e-waste, excluding CRT monitors or big screen televisions. CRT monitors or big screen televisions would be accepted for a fee of \$35 per item. If the Company is awarded the City contract for curbside and/or alley collection and disposal of refuse, recyclable, and yard waste from all present and future single-family residences and multiple family dwellings of four (4) or less residential dwelling units in the City, CRT monitors and big screen televisions shall be accepted at no charge subject to the two devices per household per year limitation and subject to providing proof of residency at the time of drop off. The acceptance of the CRT monitors and big screen televisions for free shall occur from the first date Municipal Waste is received at the Transfer Facility pursuant to the City contract through the termination of the City contract.

Section 4.17 Traffic Control

All transfer trailer truck traffic entering and existing this site must utilize Powis, Kress and Roosevelt Roads and North Avenue (IL 64). Site plan and off-site road improvements are subject to final engineering approval of the Public Works Department and must meet all applicable codes and ordinances in affect at the time of permitting.

Section 4.18 Transfer Facility Control Measures

The Company shall seek to prevent any waste, litter or debris from being discarded onto public traveled roads due to the Company's operation of the Transfer Facility and shall abide by a litter control plan as approved by the City as a result of the siting process. Should the waste, litter or debris from such operation pose a problem in the reasonable opinion of the City, the City, at its option, may require the Company to sweep or otherwise clean Powis Road in the City of West Chicago, as needed. The Company shall keep the Transfer Facility and all buildings and other improvements built or utilized by the Company in good condition and repair for the term of this Agreement. In addition:

- a. All tipping of Municipal Waste at the Transfer Facility shall be on the tipping floor inside the transfer building, and, except as provided in Subsection b. below, the Company shall have the tipping floor free of waste and cleaned with a mechanical street sweeper by the end of each operating day;

- b. No Municipal Waste shall be left on the tipping floor inside the transfer building or outside the transfer building on the Transfer Facility property overnight, except:
 - i. In transfer trailers, provided that such trailers are suitably covered and staged at least 500 feet from Powis Road right-of-way;
 - ii. In the event of an emergency, the IEPA or person previously appointed by the City Council or, in the absence of such an appointment, the Mayor has given prior approval of temporary overnight storage on the tipping floor inside the transfer building; and
- c. Empty waste collection containers and empty transfer trailers may be stored outside the transfer building at least 500 feet from Powis Road right-of-way;
- d. The Company shall conduct all operations in a manner that is protective of the public health, safety, welfare, groundwater resources and the environment. The Company shall comply with all City ordinances and all applicable laws, ordinances, rules and regulations, including but not limited to IPCB regulations and the City code.
- e. At a minimum, the Company shall provide a street sweeper to remove mud, dirt and dust tracked on to hard surfaces inside and outside the Transfer Facility property including onto Powis Road within three-fourths (3/4) mile of the Transfer Facility property on an as needed basis, but not less frequently than daily except during severe weather conditions (e.g., heavy rains, winter conditions when salt has been applied to the roadway). All access drives, parking areas, storage areas and vehicle maneuvering areas of the Transfer Facility property shall be paved and swept with a street sweeper as needed, but not less frequently than daily;
- f. The Transfer Facility and any area used for the outdoor storage of any material or equipment will be fenced and visually screened from viewing from off the Transfer Facility property by means of said fence and appropriate landscaping as approved by the City.
- g. For odor control the Company agrees to the following.
 - i. conduct all Municipal Waste handling and transfer operations completely indoors.
 - ii. Municipal Waste will be delivered primarily in enclosed vehicles, and tarps will be required on all non-enclosed loads.
 - iii. Unloading, transferring, and loading operations for Municipal Waste will be performed within the building.
 - iv. Municipal Waste will be removed from the tipping floor with a frequency adequate to greatly minimize the generation of odors.
 - v. The Municipal Waste tipping floor areas will be cleaned with a pressure washer as needed.
 - vi. If malodors are detected off-site, the source of odor generation will be removed from the Site, and the off-site condition will be monitored by Transfer Facility

personnel to insure against reoccurrence. If a continuous source of odorous materials is identified, the generator will be contacted and advised that the materials must be effectively treated for odor control or the service will be discontinued and the materials no longer brought to the Transfer Facility.

Nothing in this subsection shall limit the Company's ability to implement new odor control technologies.

- h. The Company agrees to keep the truck doors to the Transfer Facility closed, except for emergencies and to allow trucks to enter and exit the facility, during Regular Business Hours.

Section 4.19 Community Relations/Complaint Resolution

As of the date of commencement of development of the Transfer Facility, and for the balance of the operating life of the Transfer Facility, the Company shall assign and designate a telephone number and representative which shall be responsible for receipt of inquiries, complaints and calls which may arise from the public relative to the operation of the Transfer Facility as outlined in this Agreement. This telephone number will be answered by a person employed or retained by the Company during Regular Business Hours. The Company shall also provide a voice mail telephone number and a website for public inquiries and complaints. All complaints shall be initially investigated by the Company within forty-eight (48) hours. All such complaints and inquiries received from the public shall be responded to and addressed promptly. The Company shall also keep a log of the date and time such complaint, inquiry or communication was received, the nature of the complaint, inquiry or communication, the name of the person initiating such contact, the date and time which response was made to such complaint, inquiry or communication, as well as the method in which any such complaint, inquiry or communication was addressed and or resolved. The Company shall supply the same information as from time to time requested by the City. In addition, the Company shall provide the City with an emergency telephone number for contacting the Transfer Facility Manager after Regular Business Hours in the event of an emergency.

Section 4.21 Site Location Decision

The City has not, by entering into this Agreement with the Company, predetermined whether it will grant or deny site location approval for the Transfer Facility or whether the Company can (or cannot) establish any of the criteria related to site location approval. The City shall review the Company's application for site location approval for the Transfer Facility on the Transfer Facility Site in accordance with the criteria set forth by Illinois law as provided for in 415 ILCS 5/39.2.

Section 4.22 Siting Application and Pre-Filing Review

The Company shall provide a siting application consistent with the terms of this Agreement and the requirements of Section 39.2 of the Act and the City of West Chicago's Siting Procedures. Prior to filing the siting application with the City the Company agrees to provide the City an

opportunity to conduct a pre-filing review of the siting application. The pre-filing review shall consist of the Company submitting a final draft of the siting application to the City for its review and comment. The Company agrees to reimburse the City for its pre-filing review costs in accordance with Section 4.12 of this Agreement.

Section 4.23 Green Building Principles

The Company shall consider utilizing green building principles in the design and operation of the Transfer Facility. These green building principles used for the design and operation of the Transfer Facility shall be documented to the City in a memorandum as part of the Pre-Filing review to be conducted pursuant to Section 4.22 of this Agreement.

City and Company acknowledge that solid waste hauling, transfer and disposal are subject to possible improvements due to ongoing technological developments. Company agrees to monitor technological developments relevant to its business, and the parties will periodically discuss the feasibility and cost effectiveness of incorporating such developments into the Transfer Facility.

Section 4.24 Fees

The Fee, as described in Article VII, Section 14-93(a)(3) of the City's Code of Ordinances must be paid by the Applicant at the time an application is filed and additional payments must be made as required by Article VII, Section 14-93(a)(3) of the City's Code of Ordinances, before the application may be considered

ARTICLE 5
AUTHORITY AND GUARANTY OF PAYMENT

Section 5.1: Authority to Enter Into Agreement

The Company hereby represents and warrants that it is a valid and existing Illinois corporation, in good standing, authorized to do business in the State of Illinois, and that individuals executing this Agreement have been duly authorized by the Company to act on its behalf and enter into this Agreement. In addition, the Company agrees to provide the City, at the time of execution of the Agreement, with a copy of the corporate resolution authorizing the execution of this Agreement.

The Company, by its signature on this Agreement, certifies that it has not been barred from contracting with a unit of local government as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3, 5/33E-4).

Section 5.2: Guaranty of Payment

As additional consideration for and assurance of performance of this Agreement, the Company and _____ tender to the City and the City accepts, the Guaranty of Performance and Payment attached to this Agreement as Exhibit B. This Guaranty of Performance and Payment survives termination of this Agreement.

Section 5.3: Covenants Run with the Land

The parties agree that the covenants, agreements and understandings contained in this Agreement, which expressly survive its termination touch and concern the Subject Property, and that such covenants, agreements and understandings shall run with the Subject Property. The Company agrees that the City may prepare, and the Company shall promptly execute duplicate originals of an instrument, in recordable form, which will constitute a memorandum of Host Community Benefit Agreement, attaching an executed copy of this Agreement as an exhibit, and record such Memorandum in the Office of the DuPage County, Illinois Recorder of Deeds.

Section 5.4: Financial Assurance

The Company shall to provide, if reasonably feasible, a minimum of six (6) months notice to the City prior to ceasing operations at the Transfer Facility. Regardless of the foregoing, the Company shall provide to City within seven (7) days notice of any final internal decision to close the facility. Not less than three (3) months prior to ceasing operations, the Company, at its sole cost, shall provide to the City financial assurance, in a form reasonably acceptable to the City, sufficient (as agreed to by the Parties) to cover the costs of properly closing the Transfer Facility, which financial assurance shall be maintained until the Transfer Facility has been closed in accordance with all applicable legal requirements. Such financial assurance shall be in the form of a letter of credit, escrow account, policy of insurance or a guaranty from a creditworthy guarantor.

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

THE CITY OF WEST CHICAGO,
DuPage County, Illinois

LAKESHORE RECYCLING SYSTEMS, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTEST:

ATTEST:

Name: _____
Title: _____

Name: _____
Title: _____

Exhibit A

LEGAL DESCRIPTION

Exhibit B

GUARANTY OF PERFORMANCE AND PAYMENT

_____, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does for itself and its successors and assigns, hereby unconditionally guaranty the full and prompt performance of each and every covenant, condition, agreement and obligation to be performed and observed by _____, including the payment by _____, of all sums due and owing to the City Of West Chicago, DuPage County, Illinois, in and by that certain Host Community Benefit Agreement entered into between _____ and the City of West Chicago on the _____ day of _____, 20____. _____ hereby waives notice of default, nonpayment, non-performance or non-observance by the City of West Chicago, and proof, notice or demand to charge _____ under this Guaranty of Performance and Payment. _____ hereby consents to each and every extension of time that the City of West Chicago may grant to _____ under the said Host Community Benefit Agreement. _____ expressly agrees that the validity of this Guaranty of Performance and Payment shall in no way be terminated, affected or impaired by reason of the assertion by the City of West Chicago against _____ of any of the rights or remedies reserved to the City of West Chicago pursuant to the provisions of the said Host Community Benefit Agreement. _____ further covenants and agrees that this Guaranty of Performance and Payment shall remain and continue in full force and effect as to any renewal, modification or extension of the said Host Community Benefit Agreement.

_____ hereby represents and warrants that it is a valid and existing corporation organized under Illinois law, in good standing. Additionally, _____ hereby represents and warrants that the individual executing this Guaranty of Performance and Payment has been duly authorized by _____ to act on its behalf and enter into this Guaranty of Performance and Payment. Further, _____ agrees to provide the City, at the time of execution of this Guaranty of Performance and Payment, with a copy of the resolution authorizing the execution of this Guaranty of Performance and Payment. Further, _____ agrees that this Guaranty of Performance and Payment shall be governed by and construed in accordance with the laws of the State of Illinois. Any litigation filed by the City or _____ against the other party and involving this Guaranty of Performance and Payment or the Host Community Benefit Agreement to which this Guaranty of Performance and Payment relates, shall be filed in the Circuit Court of DuPage County, Illinois. _____ further covenants and agrees that in any action or proceeding brought by the City of West Chicago or _____, on any matters whatsoever arising out of, under or by virtue of the terms of the said Agreement or this Guaranty of Performance and Payment, _____ shall and hereby does waive trial by jury.

_____, by its signature on this Guaranty of Performance and Payment, certifies that it has not been barred from contracting with a unit of local government as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3, 5/33E-4).

_____ agrees to pay all expenses, including reasonable attorney's fees, incurred by the City of West Chicago in enforcing this Guaranty of Performance and Payment.

By: _____
Its: _____

And

By: _____
Its: _____

Dated: _____, 20____

Certificate

The undersigned, _____, hereby certifies that he is the duly elected, qualified and acting _____ of _____, a corporation duly organized and existing under the laws of the State of Illinois (the "Corporation"); that as such officer, he is in charge of the Minute Book and other corporate records of said Corporation; that the following is a full, true and correct copy of the resolutions appearing in the records of the Corporation, and that said resolutions were adopted by a legal majority of the Board of Directors of said Corporation, at a meeting thereof duly and regularly held on _____; and the undersigned further certifies that as of the date hereof, said resolutions have not been rescinded or modified and are in full force and effect.

Resolved, that any two officers of the Company be, and hereby are, authorized upon such terms and conditions as they shall deem proper to execute and deliver for and on behalf of the Company such guaranty agreements and other instruments or written obligations of the Company as may be desired or required in connection with the Guarantees containing such terms and conditions as may be acceptable or agreeable to any two of said officers, such acceptance and agreement to be conclusively evidenced by any two of said officers' execution and delivery thereof;

Further Resolved, that the Company's execution of any guaranty agreements and other instruments or written obligations in connection with Guarantees, in the judgment of the Board of Directors, may reasonably be expected to benefit, directly or indirectly, the Company;

Further Resolved, that any two of said officers, are hereby authorized in the name of and on behalf of the Company to take such further action and to do all things that may appear in the discretion of any of them to be necessary in connection with renewals, extensions for any period, rearrangements, retirements or compromises of the indebtedness, obligations and liability of the Company or Affiliates to the Lenders arising out of Guarantees or any other indebtedness, obligations and liabilities of the Company or Affiliates owing to the Lenders;

Further Resolved, that any two of said officers are authorized and empowered to do or cause to be done all such acts or things and to sign and deliver, or cause to be signed and delivered, all such documents, instruments and certificates (including, without limitation, any and all requests, notices, and certificates required or permitted to be given or made to Lenders under the terms of any of the instruments executed on behalf of the Company in connection with the

Guarantees), in the name and on behalf of the Company as any two of said officers, in their discretion, may deem necessary, advisable or appropriate to effectuate or carry out the purposes and intent of the foregoing Resolutions and to perform the obligations of the Company under all instruments executed on behalf of the Company in connection with the Guarantees;

Further Resolved, that the execution by any of said officers, of any document authorized by the foregoing Resolutions or any document executed in the accomplishment of any action or actions so authorized, is (or shall become upon delivery) the enforceable and binding act and obligation of the Company, without the necessity of the signature or attestation of any other officer of the Company or the affixing of the corporate seal;

Further Resolved, that all acts, transactions, or agreements undertaken prior to the adoption of these Resolutions by any of said officers or representatives of the Company in its name and for its account in connection with the foregoing matters are hereby ratified, confirmed and adopted by the Company; and

Further Resolved, that the Secretary, Assistant Secretary, or other appropriate officer of the Company is hereby authorized to certify these Resolutions.

Dated at _____, Illinois, this ____ day of _____, 20__.

Name: _____
Title: _____

Exhibit C

CERTIFICATES OF LIABILITY