DATE: January 15, 2019

TO: Housing Authority

FROM: Rhonda Hodge
Interim Housing Director

SUBJECT: Cable Services Agreement for Public Housing Tenants.

CONTACT: Rhonda Hodge, Interim Housing Director
rhonda.hodge@oxnard.org, 385-7889

RECOMMENDATION:

That the Housing Commission approve and authorize the City Manager to execute an agreement with Time Warner Cable Enterprises LLC dba Charter Communications in the monthly amount of $4,552 for the provision of basic cable services to approximately 569 public housing units.

BACKGROUND

The Oxnard Housing Authority has provided basic cable service to public housing residents through various franchise service providers since the initial introduction of cable TV services to the Oxnard area by Jones Intercable, Inc., in 1982.

Jones Intercable was bought out by Time-Warner Cable Pacific West LLC who then contracted with the Housing Authority to provide cable service to the Housing residents for the period effective from July 11, 2008 to July 11, 2013. In May 2013, the Housing Authority sought and received authorization from the U.S. Department of Housing and Urban Development Los Angeles Field Office to extend the five-year maximum contract term for another five years, in order to continue service after failing to find a comparable replacement vendor for cable TV services. This extension term expired July 11, 2018.

Prior to the expiration of the extension term, the Housing Authority issued a Request for Proposal for Cable TV Services; the only response received was from Time Warner Cable, who is undergoing a merger with Charter Communications, but will retain the name Time Warner
Cable Enterprises LLC in its dealings with the Oxnard Housing Authority. Currently, Time Warner is providing cable services on a month-to-month basis.

The contract term with Time Warner Cable Enterprises LLC will be for 62 months of service to 569 public housing units at the rate of $8.00 per unit. The rates under this agreement are subject to an annual increase of up to four percent, (4%), each year.

The number of units will decrease with the final demolition of “The Courts”, leaving the Authority with a final unit count of 520 and the monthly charge will decrease accordingly.

Further, Time-Warner Cable is offering a one-time payment of $28,450.00 (equal to $50.00 per door) to the Housing Authority; this represents an “exclusivity marketing” rebate for obtaining services from Time Warner.

The signing date of January 15, 2019 will allow the Vendor 60 days to begin the notification to residents of changes, rollout and installation of set boxes in the housing units, while the official contract billing start date of March 30, 2019 will begin the 62-month term of service.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the four strategic plans adopted by City Council on May 17, 2016.

FINANCIAL IMPACT

There is no impact to the General Fund nor direct impact on the Housing Authority budget since the cable service charges are passed through the Authority to the residents.

Prepared by Deborah Jones, Housing Contract Administrator.

ATTACHMENTS:

Nonexclusive Installation and Service Agreement

Confidential Door Fee Addendum

Confidential MDU Courtesy Service Agreement

Bulk Video Service Addendum (Multi Family with Senior Housing)
This Addendum between:

Owner: Housing Authority of the City of Oxnard

and

Operator: Time Warner Cable Enterprises LLC

This Door Fee Addendum (“Addendum”) is executed simultaneously with and shall operate to modify the Nonexclusive Installation and Service Agreement (the “Agreement”) with an Effective Date of January 15, 2019 between Owner and Operator. Except as specifically modified herein, all other terms and conditions of the Agreement shall remain unamended and in full force and effect. All capitalized terms shall have the same meaning as set forth in the Agreement.

Fees:

ONE-TIME FLAT FEE PAYMENT: In consideration of the exclusive Equipment use and exclusive marketing rights granted by Owner to Operator under the Agreement, Operator shall pay to Owner a one-time payment in the amount of $28,450.00 (“Exclusivity Payment”) after Service activation. Operator shall make the Exclusivity Payment to the Owner within ninety (90) days following full execution of the Agreement and Service activation by both parties. In the event that Owner breaches this Addendum or the Agreement and fails to cure any such breach pursuant to the terms of the Agreement, or any of Operator’s exclusive rights under the Agreement are no longer valid or enforceable as a matter of law (because of subsequent legislation, litigation, administrative action, or otherwise), then Owner shall refund to Operator an amount (“Reimbursement Payment”) calculated as follows:

\[
\text{Reimbursement Payment} = \text{Exclusivity Payment} \times \frac{\text{# of months remaining in term of the Agreement}}{\text{total # of months in term of the Agreement}}
\]

In the event that Owner breaches this Addendum or the Agreement and fails to cure any such breach pursuant to the terms of the Agreement, or any of Operator’s exclusive rights under the Agreement are no longer valid or enforceable as a matter of law (because of subsequent legislation, litigation, administrative action, or otherwise), then Owner shall refund to Operator an amount (“Reimbursement Payment”) calculated as follows:

\[
\text{Reimbursement Payment} = \text{THE TOTAL AMOUNT OF Exclusivity Payments} \times \frac{\text{# of months remaining in term of the Agreement}}{\text{total # of months in term of the Agreement}}
\]

Owner must provide a W-9 Form within thirty (30) days of execution of this Addendum or be in automatic default and Operator is under no obligation to make the Exclusivity Payments.

The parties will hold the terms and conditions of this Addendum in confidence, and will not reveal the same to any person or entity except (i) with the written consent of the other party; (ii) to the extent necessary to comply with the valid order of a court of competent jurisdiction (in which case the party making the disclosure shall notify the other party and shall seek confidential treatment of such information); (iii) as
CONFIDENTIAL

part of either party’s standard reporting or review procedures to members, parent or affiliate corporations, auditors, financial and lending institutions, attorneys; (iv) to the limited extent necessary to disclose the terms of the agreement to a prospective purchaser of the interests and rights under this Addendum who has a bona fide interest in acquiring such rights and obligations through assumption hereof and is subject to the terms of a nondisclosure and confidentiality agreement with terms at least as restrictive as those set forth herein, or (v) as necessary to enforce its rights pursuant to this Addendum. All parties shall be directed to abide by the confidentiality provisions of this Addendum. Any unauthorized disclosure of the terms of this section by Owner shall render null and void the terms of this Addendum but not the Agreement, and Owner shall pay to Operator the Reimbursement Payment. This Addendum shall not be recorded.

The parties hereto, intending to be legally bound, have executed this Door Fee Addendum on the same date as the Agreement.

OPERATOR
Time Warner Cable Enterprises LLC

By: Charter Communications, Inc., its Manager

Printed Name: Monty Gaden
Title: VP West Reg. Spectrum Community Solutions
Date: ____________________________

OWNER
Housing Authority of the City of Oxnard

By: ________________________________
Printed Name: Alexander Nguyen
Title: City Manager
Date: ____________________________

Approved as to form

By: ________________________________
Stephen M. Fischer
Housing General Counsel
Date: ____________________________
CONFIDENTIAL

MDU Courtesy Service Addendum

This Addendum between:

**Owner:** Housing Authority of the City of Oxnard

**and**

**Operator:** Time Warner Cable Enterprises LLC

This MDU Courtesy Service Addendum (this “Addendum”) is executed simultaneously with and shall operate to modify the Nonexclusive Installation and Service Agreement (the “Agreement”) with an Effective Date of January 15, 2019 between Owner and Operator. Except as specifically modified herein, all other terms and conditions of the Agreement shall remain unamended and in full force and effect. All capitalized terms shall have the same meaning as set forth in the Agreement.

For and in consideration of the mutual promises, covenants and agreements set forth below and in the Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Operator hereby grants to Owner the option to receive Courtesy Service (defined below) for the term of the Agreement.

**MDU Courtesy Service:**

Operator shall provide [2,0] account(s) consisting of “Spectrum TV™ Select” (Digital) offered within Operator’s applicable Service Area, excluding premium channels, pay per view, and optional tiers of service to the specific address at the Premises listed below (“Courtesy Service”). As part of the Courtesy Service, Operator will provide, if applicable, one (1) set top box (“STB”) or other CPE per account without additional charge selected by Operator in its sole discretion.

Operator shall provide [2,0] account(s) consisting of Internet access service with the base speed offered within Operator’s applicable Service Area to the specific address at the Premises listed below (“Courtesy Service”). As part of the Courtesy Service, Operator will provide one (1) modem without additional charge per account selected by Operator in its sole discretion.

Courtesy Services shall include one (1) Standard Installation (as defined hereinafter) to one (1) outlet per account at a location in the Premises designated by Owner in writing. Such Courtesy Services shall not include any other services, equipment or CPE not specifically mentioned herein and shall not include charges attributable to non-standard installation costs. Standard installation shall mean installation of cable facilities and plant located up to one hundred and fifty (150) feet from the Operator’s activated feeder cable.

Following the execution of the Agreement and this Addendum, Owner must request in writing the activation of the Courtesy Service for the specific address at the Premises at least thirty (30) days
prior to such activation date. Operator will not grant any refunds or credits on any Courtesy Service.

Operator reserves the right, from time to time in its sole discretion to adopt and implement new, additional, modified or enhanced technology, features, CPE, modems, services or capabilities for the Courtesy Service at any time during the term of this Addendum.

Owner will be responsible for any equipment charges beyond the equipment provided as part of the Courtesy Service to each account, self-installation costs or damages and any lost equipment or damaged equipment charges. All other equipment charges (for example, high definition, digital video recorders, etc.) incurred by Owner shall be at retail rate per unit per month.

Address for Courtesy Service:
401 South C Street Oxnard, CA. 93030, Common areas
801 South C Street Oxnard, CA. 93030

Owner must provide a W-9 Form within thirty (30) days of execution of this Addendum or be in automatic default and Operator is under no obligation to provide the Courtesy Service.

Any outages in Courtesy Service shall not be considered a default unless such outage continues for a period of sixty (60) consecutive days and Operator fails to commence and pursue diligent efforts to correct the outage causing problem within such period of time and excluding all instances where such outage is caused by Owner, its agents, employees, contractors licensees, or invitees or any Force Majeure event as defined in the Agreement.

In the event that the reason for Courtesy Service ceases to exist, Operator ceases to receive or avail itself of such consideration as provided in the Agreement, or that the corporate policy of Operator changes such that Courtesy Services are no longer permitted as a form of consideration, Owner agrees that Operator may revoke such Courtesy Service without recourse. From that point in time, Operator shall have the right to bill Owner’s account, and Owner will be responsible for paying the then-current standard prices for all Services being received. Notwithstanding anything to the contrary stated herein, Owner agrees that any rights to receive the Courtesy Services under this Addendum are subject to compliance with Operator’s standard terms and conditions of service, including without limitation the obligation to remain current in payment for all Services subscribed to that are not provided to Owner through this Addendum. Failure to comply with Operator’s standard terms and conditions of service will result in termination of this Addendum.

Owner agrees to comply with the terms of Operator’s Acceptable Use Policy-Commercial Customers (“AUP”), as may be modified from time to time found at www.spectrum.com/policies/residential-terms.html (or the applicable successor URL) and that AUP is incorporated by reference into this Addendum.

Owner understands that its rights under this Addendum are not assignable and shall become void should the address change as contained herein.
The parties will hold the terms and conditions of this Addendum in confidence, and will not reveal the same to any person or entity except (i) with the written consent of the other party; (ii) to the extent necessary to comply with the valid order of a court of competent jurisdiction (in which case the party making the disclosure shall notify the other party and shall seek confidential treatment of such information); (iii) as part of either party’s standard reporting or review procedures to members, parent or affiliate corporations, auditors, financial and lending institutions, attorneys; (iv) to the limited extent necessary to disclose the terms of the agreement to a prospective purchaser of the interests and rights under this Addendum who has a bona fide interest in acquiring such rights and obligations through assumption hereof and is subject to the terms of a nondisclosure and confidentiality agreement with terms at least as restrictive as those set forth herein, or (v) as necessary to enforce its rights pursuant to this Addendum. If any unauthorized disclosure is made by Owner and/or agent or representative thereof, the Operator shall have the option of pursuing any legal remedies available to it at law or in equity and/or terminating this Addendum and/or the Agreement. All parties shall be directed to abide by the confidentiality provisions of this Addendum. This Addendum shall not be recorded.

The parties hereto, intending to be legally bound, have executed this Addendum on the same date as the Agreement.

**OPERATOR**  
Time Warner Cable Enterprises LLC  
By: Charter Communications, Inc., its Manager

By: ____________________________  
Printed Name: Monty Gaden  
Title: VP West Reg. Spectrum Community Solutions  
Date: ____________________________

**OWNER**  
Housing Authority of the City of Oxnard  
By: ____________________________  
Printed Name: Alexander Nguyen  
Title: City Manager  
Date: ____________________________

Approved as to form

By: ____________________________  
Stephen M. Fischer  
Housing General Counsel  
Date: ____________________________
BULK VIDEO SERVICE ADDENDUM
[Multi Family with Senior Housing]

The Nonexclusive Installation and Service Agreement (the “Agreement”) with an Effective Date of January 15, 2019, by and between (“Owner”) and Time Warner Cable Enterprises LLC (“Operator”) made with respect to the 569 units known as Housing Authority of the City of Oxnard, located at 435 South D Street, in Oxnard, CA (the “Premises”), is hereby amended by this Bulk Video Service Addendum (“Addendum”) to include the following and is otherwise confirmed in all respects, provided that the event of any conflict between the terms of the Agreement and those of this Addendum, the terms of this Addendum shall control. Unless otherwise specified herein, all capitalized terms shall have the same meaning as set forth in the Agreement.

1. **Bulk Video Service.** Operator and Owner agree to activate and provide the following service(s) to one (1) existing outlet in each residential unit of the Premises as specified herein excluding any CPE not specifically stated herein (the “Bulk Video Service”). Operator may change the CPE selection stated herein in its sole discretion:

   - “Spectrum TV™ Select”

   *Operator’s current channel line-up is set forth in Exhibit A, attached hereto.

   Listed Premium Service(s): N/A

2. **No Resale.** Owner shall not resell the Bulk Video Service or CPE in whole or in part or impose any incremental fee for the Bulk Video Service or CPE.

3. **Bulk Video Service Monthly Fee.** Operator shall bill and Owner shall pay monthly in advance for the Bulk Video Service (“Bulk Billing Fee”) based on the following calculation:

   \[
   \text{Bulk Billing Fee} = \$8.00 \text{ per unit rate} \times 569 \text{ units at the Premises}^* \\
   \text{Total Monthly Bulk Billing Fee} = \$4,552.00
   \]

   *Total number of units at the Premises whether occupied or not: currently 569 units.

The Bulk Billing Fee excludes all applicable sales taxes, franchise fees, FCC regulatory fees, government license fees, copyright fees, any public educational and government (“PEG”) access fees, retransmission consent fees or costs, surcharges or rate increases imposed by programmers, any taxes, fees or assessments of general applicability imposed or assessed by any governmental entity or other fees which Operator may lawfully pass through to subscribers.

As part of this Addendum, Owner will provide a list of accurate addresses for each unit served as attached in Exhibit B.

Operator shall have the right to increase the Bulk Billing Fee by up to four percent (4%) each year beginning in January of the calendar year immediately after the execution of this Addendum unless this Addendum is executed by the parties in November or December, in which case Operator shall
not exercise such increase right until January of the following calendar year. Such increases may be cumulative if not taken in the previous year(s).

Operator, at its sole discretion, shall also have the right to increase or decrease the total number of units billed each year to match the actual number of units, common areas or other sites being served or to be served at the Premises. Nothing herein shall require Operator to expend funds to increase or decrease the number of units served but the parties may agree to expend funds for such purpose upon mutually acceptable terms and conditions. Upon request and in the event an annual increase in the total number of units or sites served will exceed twenty percent (20%), Operator shall provide documentation to Owner of the basis for such increase. Such increases may be cumulative if not taken in the previous year(s).

Subject to Section 5, Owner acknowledges that (i) it shall be responsible for paying Operator’s standard equipment rental fees attributable to any CPE necessary for the reception and distribution of Services to the units on the Premises and (ii) it shall not take any action that would alter, modify or otherwise change the underlying signals comprising such Services.

Owner’s failure to pay the Bulk Billing Fee or CPE rental fees, if any, in full by the balance due date of the month shall be a material breach of this Addendum, and Operator shall, in addition to any other remedies available to it, have the right at its sole option to (i) suspend the Bulk Video Services and/or any other services Operator may be providing to the Premises upon thirty (30) days’ prior written notice and/or (ii) terminate this Addendum upon thirty (30) days prior written notice, in which event Owner shall be liable for immediate payment of its remaining Bulk Billing Fees and CPE rental fees through the expiration of the term hereof as if this Addendum had not been terminated. In addition, and without limitation, Operator shall be entitled to solicit and offer to the residents of the Premises (“Residents” or “Students”) any of its Services (including without limitation those comprising the Bulk Video Services) on an individual subscription basis for the remainder of the Agreement Term without interference or objection from Owner, in which event Owner hereby ratifies and confirms all of Operator’s rights under the Agreement.

Late fees will be charged to Owner in accordance with Operator’s then current policies. Owner accepts sole responsibility for Bulk Billing Fees and any other fees due hereunder for the term of this Addendum and any renewal or extension thereof.

4. Additional Services; Marketing to Residents. Each Resident or Student shall have the option of purchasing from Operator additional services not included in the Bulk Video Services at his/her expense or as otherwise specified in Section 5. The Residents or Students shall be billed directly for any additional services so ordered and shall be responsible for additional equipment as specified in Section 5.

5. CPE. Operator will provide one (1) Set Top Box (“STB”) per outlet with an existing television at no charge. Residents may at their option rent additional set top boxes (“STBs”) at the normal monthly rental rates from Operator. Each Resident will be responsible for the return to Operator of all equipment provided in connection with services purchased from Operator in addition to the Bulk Video Services. Owner will use reasonable care to ensure return to Operator of all STBs left and or abandoned by Residents in units at the time of moving out of the Premises.
Owner will be responsible for the return to Operator of all STB/DTAs used or provided in connection with the Bulk Video Services purchased by Owner.

6. **Additional Outlets Authorized.** Owner hereby authorizes Residents to order (at their sole expense) and Operator to install, additional outlets in the individual dwelling units of the Premises. If Owner prohibits the installation of additional outlets, Owner accepts responsibility to notify Residents of this policy as part of their lease and property rules and regulations.

7. **Bulk Term.** This Addendum will remain in force for an initial term of 62 Months commencing on January 15, 2019 and terminating on May 30, 2024 (“Initial Term”). At the end of the Initial Term, or any successive term, this Addendum shall automatically renew for successive terms of one (1) year each unless either party gives written notice of its intent not to renew to the other party at least ninety (90) days before the expiration of the then-current term. In the event Owner terminates this Addendum as provided herein, Owner shall provide Operator at the time of termination a then-current Resident roster, including addresses that Operator can use to support its efforts to convert Residents to individually billed subscribers. In addition, if requested by Operator, Owner shall send or otherwise distribute to all Residents an Operator-supplied letter that informs each Resident of his/her new service options resulting from Owner’s termination of this Addendum.

8. **Termination.** If the Bulk Video Service arrangement set forth in this Addendum is terminated for any reason whatsoever, Operator may offer and provide any of the services comprising the Bulk Video Service to Residents on an individual subscription basis under the Agreement. The termination or expiration of this Addendum, for whatever reason, shall have no effect on the term of the Agreement or any terms and conditions thereof.

9. **Effectiveness.** This Addendum shall not be considered an offer and shall not be binding upon Operator until it is duly signed by both parties where indicated below.

10. **Confidentiality.** The parties will hold the terms and conditions of this Addendum in confidence, and will not reveal the same to any person or entity except (i) with the written consent of the other party; (ii) to the extent necessary to comply with the valid order of a court of competent jurisdiction (in which case the party making the disclosure shall notify the other party and shall seek confidential treatment of such information); (iii) as part of either party’s standard reporting or review procedures to members, parent or affiliate corporations, auditors, financial and lending institutions, attorneys; (iv) to the limited extent necessary to disclose the terms of the agreement to a prospective purchaser of the interests and rights under this Addendum who has a bona fide interest in acquiring such rights and obligations through assumption hereof and is subject to the terms of a nondisclosure and confidentiality agreement with terms at least as restrictive as those set forth herein, or (v) in order to enforce its rights pursuant to this Agreement. All parties shall be directed to abide by the confidentiality provisions of this Addendum. If any unauthorized disclosure is made by Owner and/or any agent or representative thereof, the Operator shall have the option of pursuing any legal remedies available to it at law or in equity and/or terminating this Addendum and/or the Agreement.

[Signature Page Follows]
IN WITNESS WHEREOF, the parties hereby agree to the terms and conditions contained herein on the date indicated below.

OPERATOR
Time Warner Cable Enterprises LLC
By: Charter Communications, Inc., its Manager

By: ______________________________

Printed Name: Monty Gaden

Title: VP West Reg. Spectrum Community Solutions
Date: _____________________________

OWNER
Housing Authority of the City of Oxnard

By: ______________________________

Printed Name: Alexander Nguyen

Title: City Manager
Date: _____________________________

Approved as to form

By: ______________________________

Stephen M. Fischer
Housing General Counsel
Date: _____________________________
Exhibit A

Bulk Video Service
www.spectrum.com
Exhibit B

Address List of Units served under this Addendum