

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, GRANTING THE RENEWAL OF A NON-EXCLUSIVE FRANCHISE AGREEMENT WITH COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC FOR THE USE OF CITY RIGHTS-OF-WAY TO OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM IN THE CITY OF OLYMPIA

WHEREAS, by Ordinance No. 4610, the City of Olympia (City) granted a franchise to Comcast of Washington IV, Inc. (formally TCI Cablevision of Washington, Inc.) to operate and maintain a cable communication system in the City; and

WHEREAS, in 2009, by Ordinance No. 6625, the Olympia City Council approved the grant of a non-exclusive Franchise Agreement to Comcast of Washington IV, Inc. (Comcast) for its construction and operation of a cable television system within the City; and

WHEREAS, the Comcast entity which holds the current franchise in the City is the successor interest to Comcast of Washington IV, Inc., known as Comcast Cable Communications Management, LLC; and

WHEREAS, in 2018, Thurston County and the cities of Olympia, Tumwater, and Lacey engaged a consultant to negotiate a comprehensive franchise agreement covering all four jurisdictions; and

WHEREAS, the term of the original Cable Franchise Agreement was for ten (10) years, expiring on May 23, 2019; and

WHEREAS, the City and Comcast have previously agreed to continue operating under the existing franchise on a month-to-month basis until a new franchise is adopted or until the current agreement is otherwise terminated; and

WHEREAS, on February 5, 2019, by Ordinance No. 7185, and on December 17, 2019, by Ordinance No. 7228, Comcast and the City agreed to extend the Franchise Agreement, as the parties were in negotiations and preparing a new franchise agreement; and

WHEREAS, Comcast is agreeable to continuing providing such services in the City, and has made application to the City for a cable franchise renewal; and

WHEREAS, the City has reviewed Comcast's performance under the prior franchise and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Comcast, and has determined that Comcast's plans for constructing, operating and maintaining its cable system are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the City Council held a public hearing on the proposed new franchise agreement on January 12, 2021, and the public has had adequate notice and opportunity to comment on Comcast's proposal to provide cable service within the City; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of cable service, and reliability of cable systems in its jurisdiction, the availability of local programming (including Educational and Governmental Access programming) and quality customer service; and

WHEREAS, diversity in cable service programming is an important policy goal and the Comcast cable system should offer a wide range of programming services; and

WHEREAS, the City is authorized by applicable law to grant one or more non-exclusive franchises to construct, operate and maintain cable systems within the boundaries of the City; and

WHEREAS, the Olympia City Council desires to grant to Comcast and Comcast desires to accept the terms and conditions herein set forth for the use of City owned rights-of-way, of City owned easements, and of rights-of-way

and access easements dedicated and accepted for public use by the City in installing and operating a cable system in the City in accordance with applicable law and the provisions of the Cable Franchise Agreement by and between the City of Olympia, Washington and Comcast Cable Communications Management, LLC, submitted to the Olympia City Council; and

WHEREAS, after due evaluation, the Olympia City Council finds and determines that it is in the best interest of the City and its residents to grant a cable franchise renewal to Comcast for a term of ten (10) years as provided in the Cable Franchise Agreement between the City of Olympia and Comcast attached hereto as Exhibit A;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OLYMPIA, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Approval. The City Council of the City of Olympia, Washington hereby approves the Cable Franchise Agreement by and between the City of Olympia, Washington and Comcast Cable Communications Management, LLC as submitted to the Olympia City Council, in the form attached hereto as Exhibit A.

Section 2. Signature Authority. The City Manager is directed and authorized to execute on behalf of the City of Olympia the Cable Franchise Agreement with Comcast Cable Communications Management, LLC, attached hereto as Exhibit A, together with any other documents reasonable and necessary in connection with said Cable Franchise Agreement, and to make any minor modifications as may be required and are consistent with the intent of the Cable Franchise Agreement, or to correct any scrivener's errors.

Section 3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 4. Safety. The City Council finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 6. Effective Date. This Ordinance shall be effective five (5) days after publication following adoption, as required by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber

CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

**COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND
CITY OF OLYMPIA, WASHINGTON**

**CABLE FRANCHISE AGREEMENT
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**COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND
CITY OF OLYMPIA, WASHINGTON
CABLE FRANCHISE AGREEMENT**

SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein when indicated with the text of the Franchise by being capitalized. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined or those defined but not capitalized within the text shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) 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 control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 “Cable 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.

1.13 “Cable System” means a facility, consisting of a set of closed transmissions 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 a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) 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; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 “City Council” means the Olympia City Council, or its successor, the governing body of the City of Olympia, Washington.

1.16 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.17 “Designated Access Provider” means the entity or entities designated now or in the future by Grantor to manage or co-manage Access Channels and facilities. Grantor may be a Designated Access Provider.

1.18 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.19 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.20 “Emergency” means a public safety emergency creating an immediate danger to property, life, health or safety of any individual in or under any right-of-way or a service interruption to a large number of Subscribers caused by an unforeseen or unanticipated failure.

1.21 “FCC” means the Federal Communications Commission.

1.22 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.23 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between Grantor and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.24 “Franchise Area” means the area within the jurisdictional boundaries of Grantor, including any areas annexed by Grantor during the term of this Franchise.

1.25 “Franchise Fee” means that fee payable to Grantor described in subsection 3.1.

1.26 “Grantee” means Comcast Cable Communications Management, LLC or its lawful successor, transferee or assignee.

1.27 “Grantor” means the City of Olympia, Washington, a municipal corporation of the State of Washington.

1.28 “Gross Revenues” means and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and EffecTV or their successors associated with sales of advertising on the Cable System within the Franchise Area allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual Bad Debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law. The allocations shall be done for each bundled package separately and updated and revised within sixty (60) days of each time an element within the package has its rate card changed including when an element is substituted for another element within the bundled package. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. Grantor reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.28 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee shall notify Grantor of any changes in allocation methodologies in its next quarterly franchise fee reports delivered to Grantor.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.29 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.30 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.31 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.32 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.33 “Right-of-Way” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements. Right-of-Way does not include any private property, or any other public property owned, in whole or in part, leased, or otherwise occupied by Grantor, including but not limited to parks, trails, and open space.

1.34 “State” means the State of Washington.

1.35 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.36 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.37 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.38 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) Grantor hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct and rebuild a Cable System and to provide Cable Service subject to the terms and conditions set forth in this Franchise and Applicable Law.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Grantor ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, and generally applicable ordinances and regulations enacted by the City Council pursuant thereto, portions of which may be codified in the Municipal Code. To the

extent there is any conflict between this Franchise and any provision of the Grantor's Code as it exists on the Effective Date of this Franchise, the terms of this Franchise shall control. Subject to the Grantor's right to exercise its police power under Section 2.5, the Grantor may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent Grantor from imposing additional conditions for use of the Rights-of-Way, as allowed by Applicable Law should Grantee provide service other than Cable Service, nor shall this Franchise be interpreted to either prevent or authorize Grantee from making any other lawful uses of the Cable System as permitted by Applicable Law related to Grantee's non-Cable Service operations.

(E) Grantee agrees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions and obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Franchise Area that may be required by the ordinances and laws of the Grantor;

(2) Any permit, agreement, or authorization required by the Grantor for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of Grantor or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which Grantor has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

2.2 Use of Rights-of-Way

(A) Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Franchise Area.

(B) Grantee must follow Grantor established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to Grantor's role in protecting public health, safety and welfare, Grantor may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Grantor's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by Grantor, or which is installed without prior Grantor approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect on February 10, 2021 (the "Effective Date"), and shall terminate on February 10, 2031 unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or licenses granted by the Grantor to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of Grantor to use the same for any purpose it lawfully deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems, as Grantor deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by Grantor or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. Grantor shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of Grantor's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that Grantor reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Rights-of-Way in order to provide Cable Services within the Franchise Area. If Grantor grants such an

additional franchise or other similar lawful authorization to utilize the Rights-of-Way for Cable Services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then Grantor agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; complementary services; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to Grantor regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to Grantor, with a written explanation of why the proposed amendments are necessary and consistent. Notwithstanding any modification of this Franchise pursuant to the provisions of this subsection 2.6, should any entity, whose authorization to provide Cable Services or similar video programming service resulted in a triggering of the amendments under this Section, cease to provide such services within the City, the City may provide ninety (90) days' written notice to Grantee of such fact, and the City and Grantee shall enter into good faith negotiations to determine which of the original terms, conditions and obligations of this Franchise shall be reinstated and fully effective.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then Grantor shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if Grantor and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that Grantor grants to another provider of Cable Services (with the understanding that Grantee will use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, Grantor shall immediately commence

proceedings to replace this Franchise with the franchise issued to the other multi-channel video programming provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, Grantor shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar video programming service available for purchase by Subscribers or customers under its franchise agreement with Grantor.

(F) Notwithstanding any provision to the contrary, at any time that a wireline facilities-based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City that permits a new entrant to utilize the Rights of Way granted by Grantor, then:

(1) Grantee may negotiate with Grantor to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice and Grantee shall be deemed to have timely invoked the renewal process under 47 USC 546; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

For the purposes of this section, a "wireline facilities-based entity" means an entity, including the Grantor, that owns, controls or manages a significant portion of the wireline facilities located in the Grantor's Rights-of-Way, over which the video programming services are delivered.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State, and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts Grantor's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every

provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use Grantor's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to Grantor, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to Grantor shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by the Grantee was due or such shorter period if required by Applicable Law.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to Grantor, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within ninety (90) days after the end of each year, furnish to Grantor a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, Grantor, including Grantor's Auditor or his/her authorized representative, shall have the right to conduct an independent

audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to subsection 1.28, as part of the Franchise Fee audit/review Grantor shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for Grantor subscribers during the audit period. To the extent that Grantor does not believe that the relevant data supplied is sufficient for Grantor to complete its audit/review, Grantor may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow Grantor to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit/review, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period, with such amount to increase upon the annual anniversary of the Effective Date, by an amount equal to the most recent semi-annual Seattle-Tacoma-Bellevue CPI-U as published by the US Department of Labor, Bureau of Labor Statistics. The Grantor's right to audit/review and Grantee's obligation to retain records necessary to complete any audit under this subsection shall expire consistent with the applicable statute of limitations period under State law; provided, however, that this would not apply to a time period covered under a pending audit.

3.7 Late Payments

In the event any quarterly Franchise Fee payment is not received within forty-five (45) days from the date the payment was due to the Grantor, Grantee shall pay interest on the amount due in the amount of one percent (1%) per month (twelve percent (12%) per annum) on any unpaid balance of the Franchise Fee due, until all payments due are paid in full. Any unpaid fee or interest due under this Franchise that remains unpaid shall constitute a debt to the Grantor, collectible in accordance with the Grantor Code.

3.8 Underpayments and Overpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest as applicable for late payments under Section 3.7 of this Franchise, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Grantor. If an overpayment is discovered, Grantee may take an offset against future Franchise Fee payments, with no interest or other cost to the Grantor.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate Grantor through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall comply with any other Applicable Law related to the right to occupy the Grantor's Rights-of-Way and compensation therefor.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to Grantor hereunder, provided that the Grantor adopts such increase at a public hearing and Grantee has received at least ninety (90) days prior written notice from Grantor of such amendment, so long as all cable operators in the Franchise Area are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

(A) The PEG Capital Contribution pursuant to Section 9.6, as well as any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations) shall not be offset against Franchise Fees. Furthermore, the Grantor and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Grantor likewise reserves all rights it has under Applicable Law. Should Grantee elect to offset the items set forth herein, or other Franchise commitments such as complimentary Cable Service, against Franchise Fees in accordance with Applicable Law, including any Orders resulting from the FCC's 621 proceeding, MB Docket No. 05-311, Grantee shall provide the Grantor with advance written notice. Such notice shall document the proposed offset or service charges so that the Grantor can make an informed decision as to its course of action. Upon receipt of such notice Grantor shall have up to one hundred twenty (120) days to either (1) maintain the commitment with the understanding that the value shall be offset from Franchise Fees; (2) relieve Grantee from the commitment obligation under the Franchise; or (3) pay for the services rendered pursuant to the commitment in accordance with Grantee's regular and nondiscriminatory term and conditions.

(B) Grantee's notice pursuant to Section 3.11(A) shall, at a minimum, address the following: (1) identify the specific cash or non-cash consideration or obligations that must be offset from Grantee's Franchise Fee obligations; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent with Applicable Law; (4) provide all information and documentation reasonably necessary to address how and why specific offsets are to be calculated and (5) if applicable provide all information and documentation reasonably necessary to document how Franchise Fee offsets may be passed through to Subscribers in accordance with 47 U.S.C. 542(e). Nothing in this Section 3.11(B) shall be construed to extend the one hundred twenty (120) day time period for Grantor to make its election under Section 3.11(A); provided however, that any disagreements or disputes

over whether sufficient information has been provided pursuant to this Paragraph (B) may be addressed under Sections 13.1 or 13.2 of this Franchise.

(C) Upon receipt of Grantee's written notice as provided in Section 3.11 (B), the Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications and agree to what offsets, if any, are to be made to the Franchise Fee obligations. Such negotiation will proceed and conclude within a one hundred twenty (120) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Grantor shall amend this Franchise to include those modifications.

(D) If the parties are unable to reach agreement on any Franchise Fee offset issue within one hundred twenty (120) days or such other time as the parties may mutually agree, each party reserves all rights it may have under Applicable Law to address such offset issues.

(E) The Grantor acknowledges that Grantee currently provides one outlet of Basic Service and Digital Starter Service and associated equipment to certain Grantor owned and occupied or leased and occupied buildings, schools, fire stations and public libraries located in areas where Grantee provides Cable Service. For purposes of this Franchise, "school" means all State-accredited K-12 public and private schools. Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Grantee's commitment to provide this service is voluntary, and may be terminated by Grantee, at its sole discretion.

(1) Grantee's termination of complimentary services provided shall be pursuant to the provisions of Section 3.11(A)-(D) above. Grantor may make a separate election for each account or line of service identified in the notice (for example, Grantee may choose to accept certain services or accounts as offsets to Franchise Fees, and discontinue other services or accounts), so long as all elections are made within one hundred twenty (120) days. Grantee shall also provide written notice to each entity that is currently receiving complimentary services with copies of those notice(s) sent to the Grantor.

(2) Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Grantor likewise reserves all rights it has under Applicable Law.

(F) The parties understand and agree that offsets may be required and agreed to as a result of the FCC's Order in what is commonly known as the 621 Proceeding, MB Docket No. 05-311, and that this Order is on appeal. Should there be a final Order in the appeal of the 621 Proceeding, which would permit any cash or non-cash consideration or obligations to be required by this Franchise without being offset from Franchise Fees, or would change the scope of the Grantor's regulatory authority over the use of the rights-of-way by the Grantee, the parties shall, within one hundred twenty (120) days of written notice from the Grantor, amend this Franchise to reinstate such consideration or obligations without offset from Franchise Fees, and to address the full scope of the Grantor's regulatory authority.

3.12 Tax Liability

Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by Grantor. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of Grantor upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which Grantor deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to Grantor by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) Grantor shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law.

(B) Nothing in this Franchise shall limit nor expand Grantor 's right of eminent domain under State law.

4.2 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or, where consistent with any requirements of Federal law, geographic location within the Franchise Area. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.3 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of Grantor, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

4.4 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.5 Reserved Authority

Both Grantee and Grantor reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.6 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for Grantor to invoke any relevant remedy in accordance with Section 13.1 of this Franchise.

4.7 Franchise Amendment Procedure

Except as otherwise provided in Section 2.6, Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of

receipt of notice, Grantor and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.8 Performance Evaluations

(A) Special evaluation sessions may be held at any time upon request by Grantor during the term of this Franchise.

(B) All evaluation sessions shall be open to the public.

(C) Topics that may be discussed at any evaluation session may include those issues surrounding the terms, conditions and obligations of the Franchise, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein and further provided that this subsection need not be followed before other legal or equitable remedies within this Franchise.

4.9 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the customer service standards described in Section 6.1 or any Grantor customer service standards, as the same may be adopted and amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of Grantor without regard to the neighborhood or income level of the Subscriber.

4.10 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to Grantor. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or

unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the Franchise Area and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by Grantor to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide Grantor with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its officers, officials, boards, commissions, agents, employees and volunteers, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with Grantor while conducting its defense of Grantor. Grantee shall not be obligated to indemnify Grantor to the extent of Grantor's negligence or willful misconduct. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the Grantor, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

(B) Indemnification for Relocation. Grantee shall indemnify Grantor for any damages, claims, documented additional costs or reasonable expenses assessed against, or payable by, Grantor arising out of, or resulting from, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with a relocation required by Grantor. Grantee shall always be provided a minimum of thirty (30) days-notice to perform such relocation, except in the case of an emergency and therefore the obligation to indemnify would not apply.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold Grantor harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of Grantor in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, Grantor shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. Grantor may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that Grantor may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for Grantor's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting Grantor without Grantor's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between Grantor and the counsel selected by Grantee to represent Grantor, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by Grantor in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and Grantor desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Grantor shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Grantor's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by Grantor's Attorney or his/her assistants or any employees of Grantor or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided Grantor by Grantee.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by the current ISO CG 00 01 or its equivalent and include severability of interests with respect to each additional insured. Such insurance shall cover liability arising from premises, operations,

independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Grantor shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect this Franchise Agreement using the current ISO endorsement CG 20 12 05 09.

(2) Commercial Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles, with a minimum combined single limit for bodily injury and property damage of five million dollars (\$5,000,000.00) per accident. The policy shall contain a severability of interests provision with respect to each additional insured.

(3) Excess or Umbrella Liability insurance shall be written with limits of not less than five million dollars (\$5,000,000) per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits. Such insurance shall name Grantor, its officers, officials and employees as additional insureds.

(B) The insurance shall provide for notice of cancellation in accordance with policy provisions. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide notice of such cancellation or material alteration within two (2) business days of its receipt of such notice. Grantee shall additionally provide evidence of a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

(C) The Grantee shall cause each of its subcontractors to provide insurance coverage reasonably appropriate to the scope of each such subcontractor's work.

(D) Failure on the part of the Grantee to maintain the insurance as required shall constitute a material breach of this Agreement.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to Grantor.

(A) Endorsements.

(1) All commercial general, automobile, and umbrella excess liability policies required herein shall contain, or shall be endorsed so that:

(a) Grantor, its officers, officials, boards, commissions, and employees are to be covered as, and have the rights of, additional insureds with respect to liability for which the Grantee is responsible herein;

(b) Grantee's insurance coverage shall be primary insurance with respect to each additional insured. Any insurance or self-insurance maintained by the additional insured shall be in excess of the Grantee's insurance and shall not contribute to it with respect to liability for which the Grantee is responsible hereunder; and

(c) Grantee's insurance shall provide for severability of interest with respect to each additional insured.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A: VII."

(C) Verification of Coverage. The Grantee shall furnish Grantor with certificates of insurance, evidencing the required endorsements, including but not limited to blanket additional insured status. The certificates are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Adequacy of Limits and Coverage. It is agreed that these insurance requirements shall not in any way act to reduce or otherwise alter the liability of Grantee herein. No representation is made that the minimum insurance requirements of this Franchise are sufficient to cover the obligations of Grantee hereunder.

5.4 Letter of Credit

(A) If there is a claim by Grantor of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then Grantor may require and Grantee shall establish and provide within thirty (30) days from receiving notice from Grantor, to Grantor as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to Grantor in the amount of fifty thousand dollars (\$50,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained fifty thousand dollars (\$50,000) until the allegations of the uncured breach have been resolved.

(C) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by Grantor for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay Grantor sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by Grantor to correct Franchise violations not corrected by Grantee;

(3) Monetary damages assessed against Grantee as provided for in this Franchise.

(D) Grantor shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within ten (10) business days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(E) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds Grantor erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with customer service standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619, and any local standards adopted in accordance with applicable law. Grantee acknowledges Grantor's ability to enact customer service standards that exceed those enacted by the FCC and Grantor acknowledges Grantee's right to recover the costs associated with complying with such standards. The Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or the requirements of any applicable customer service standards.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or Applicable Law. Upon request, Grantee will provide to Grantor a sample of the Subscriber contract or service agreement then in use.

6.4 Identification of Local Franchise Authority on Subscriber Bills

Within ninety (90) days after written request from Grantor, Grantee shall place Grantor's phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records relevant to the provision of Cable Services in the Franchise Area and related to any terms, conditions or obligations contained in this Franchise open and accessible to Grantor. Grantor, including Grantor's Auditor or his/her authorized representative, shall have access to, and the right to inspect, books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate. Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to Grantor, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that Grantor inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to Grantor upon written request as set forth above, and if Grantor determines that an examination of such records is necessary or appropriate for the performance of any of Grantor's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality and Proprietary Information

Grantor agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information and shall provide a brief written explanation as to why such information is confidential under State or federal law. If Grantor receives a request under the Act to inspect or copy the information so identified by Grantee and Grantor determines that release of the information is required by the Act, Grantor will use its best efforts to promptly provide Grantee with notice of the request in accordance with RCW 42.56.540, and a copy of any written request by the party demanding access to such information, in order to have a reasonable time (of no less than 10 business days) within which Grantee may seek an injunction to prohibit the Grantor's disclosure of the requested record. If the Grantee fails to timely obtain a court order enjoining disclosure, the Grantor will release the requested information on the date specified. Grantee shall join the Person requesting the documents to such an action. Grantee shall defend, indemnify and hold the Grantor harmless from any claim or judgment and Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

The Grantor has, and by this section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Act, however the Grantor may assert such exemption if the Grantor itself believes in good faith that an exemption applies to the requested records. The Grantor shall not be liable to the Grantee for releasing records not clearly identified

by the Grantee as confidential or proprietary. The Grantor shall not be liable to the Grantee for any records that the Grantor releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to Grantor upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by Grantor's authorized representative(s) or agent(s) during the course of technical inspections as reasonably conducted by Grantor. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the Franchise Area;

(3) Number of current subscribers by Tier;

(4) Total homes passed for the previous twelve (12) months;

(5) A list of current Cable Services, rates and Channel line-ups; and

(6) Grantee shall, at Grantee's expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the Franchise Area for a period of at least three (3) years, and individual Subscriber complaints from the Grantor for a period of at least one (1) year, and make such information available to Grantor at Grantee's office upon reasonable request.

(B) Subject to subsection 7.2, all information furnished to Grantor is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within ninety (90) days of Grantor's written request, Grantee shall submit to Grantor a written report for the prior calendar year, in a form acceptable to Grantor, which shall include, but not necessarily be limited to, the following information for Grantor:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A statement of planned construction, if any, for the next year; and,

(C) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request from Grantor, Grantee shall submit to Grantor copies of all pleadings, applications, notifications, public communications and public documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints.

(B) Within thirty (30) days of a written request, Grantee shall provide Grantor a quarterly summary, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;
- (3) A summary of customer complaints referred by Grantor to Grantee; and,

7.7 False Statements

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Franchise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;

- (B) Washington news, weather & information;
- (C) Sports;
- (D) General entertainment;
- (E) Children's programming;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, and information; and,
- (J) Public, Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of Grantor.

8.3 Obscenity

Grantee shall not transmit or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service. For the purposes of this subsection, "uninterrupted" does not include outages of the Cable System for maintenance or testing or an event covered under Section 4.11.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) Grantor may authorize Designated Access Providers to control, operate, and manage the use of any and all Access Facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. The Grantor or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise, the FCC, federal and State law. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

(B) Grantee shall cooperate with Grantor and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access Channels.

9.2 Channel Capacity and Use

(A) Grantee shall make available to Grantor up to five (5) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within one hundred eighty (180) days after a written request for such use is submitted to Grantor, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to the Channels provided to Grantor. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to

require the return of the Channel or portion thereof. Grantor shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within one-hundred eighty (180) days after receipt by Grantee of such written notice.

(C) Standard Definition (“SD”) Digital Access Channels.

(1) Grantee shall provide the existing three (3) Activated Downstream Channel for PEG Access use in a standard definition (“SD”) digital format. Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point at the designated point of origination for the SD Access Channels. At such time as the HD Access Channels described in subsection (C) below are activated, the Designated Access Provider will provide only an HD Access Channel Signal in an HD format. At that time, Grantee will broadcast the HD signal on the HD Access Channels and also down-convert the HD signal for additional broadcast on the SD Access Channels. Grantee shall transport and distribute the SD Access Channels signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility and functionality, and not unreasonably discriminate as to the application of any applicable FCC Rules & Regulations.

(2) With respect to signal quality, Grantee shall not be required to carry SD Access Channels in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute all SD Access Channel signals without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this subsection 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point, which for the purposes of this subsection 9.2 (C)(3), shall mean up to but not including the modulator where the Grantor signal is converted into a format to be transmitted over a fiber connection to Grantee. The Grantor or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

(4) SD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those Tiers of Cable Service, upon which SD Channels are made available. Grantee is not required to provide free SD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(D) High Definition (“HD”) Digital Access Channels.

(1) After the return lines have been upgraded in accordance with Section 9.11 and within one hundred twenty (120) days’ written notice, Grantee shall activate one (1)

HD Access Channels, for which the Grantor may provide Access Channel signals in HD format to the demarcation point at the designated point of origination for the Access Channel. After the first anniversary of the first HD Channel activation, and with at least one hundred twenty (120) days written notice to Grantee, Grantor may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for PEG Access use in HD”) digital format.

- (a) The Grantor shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for any newly activated HD Access Channel; and,
- (b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel. For the purposes of this subsection, character-generated programming (i.e., community bulletin boards) shall not satisfy, in whole or in part, this programming requirement.

(2) Grantor shall be responsible for providing HD Access Channel signals in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channels. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signals on its Cable System and shall not discriminate against the HD Access Channels with respect to accessibility, functionality, and to the application of any applicable FCC Rules & Regulations. With respect to signal quality, Grantee shall not be required to carry the HD Access Channels in a higher quality format than that of the HD Access Channel signals delivered to Grantee, but Grantee shall distribute the HD Access Channel signals without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by Grantor, Grantee shall verify signal delivery to Subscribers with the Grantor, consistent with the requirements of this subsection 9.2(D).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those Tiers of Cable Service, upon which the HD Channels are made available. Grantee is not required to provide free HD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(5) Grantor or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) The Designated Access Provider shall be responsible for providing the Access Channel signals in an HD format to the demarcation point at the designated point of origination for each Access Channel. Grantee shall provide all necessary equipment outside the demarcation point at the Designated Access Provider Channel origination point, at its Headend and throughout its distribution system to deliver the Access Channel(s) in the HD format to Subscribers.

(E) Grantee shall simultaneously carry the two (2) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event Grantor believes that Grantee fails to meet this standard, Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the served by the same Headend as Grantor for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide Grantor a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days' notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed. Grantee, at Grantee's expense, will place the Grantor's notice of the Access Channel changes on or with its regular monthly billing, upon the Grantor's request. Such request shall be for one notice per occurrence of Access Channel changes, whether one or more channels are affected. Grantor shall be responsible for the costs of printing its notice which must conform to Grantee's reasonable mailing requirements and providing them to the Grantee. Grantee shall be provided an opportunity to review and approve all Access bill insertions.

9.5 Support for Access Costs

(A) As of the Effective Date of this Franchise Agreement, Grantee is providing thirty cents (\$0.30) per month per Residential Subscriber (the "PEG Contribution") to be used solely for

capital costs related to Public, Educational and Governmental Access, or as may be permitted by Applicable Law. Upon ninety (90) days written notice from the Grantor, the PEG Contribution may be increased to up to fifty cents (\$0.50) per month per Residential Subscriber. Any written request by Grantor to increase the PEG Contribution from its then current level shall be effective ninety (90) days after the date of such written request. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Grantor shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access.

(B) During the term of this Franchise, Grantee may inquire of Grantor about the PEG Contribution being collected at that time. Upon Grantee's request, Grantor shall meet with Grantee to discuss issues related to the PEG Contribution in good faith and the parties may mutually agree to adjust the PEG fee accordingly.

9.6 Access Support Not Franchise Fees

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to Grantor. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

9.7 Access Channels on Basic Service or Lowest Priced HD Service Tier

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

9.8 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If Grantor implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then Grantor shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.9 Technical Quality

Grantee shall maintain all Upstream and Downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. In no event shall the technical quality of any Access channels be lower than the quality of other commercial SD or HD channels carried on the Cable System. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from Grantor's facilities for the Access Channels provided under this Franchise Agreement. Grantee shall also provide, if requested in advance by Grantor, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on Grantor's side of the demarcation point. Grantee shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment. Grantor shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantor staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantor's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff.

9.10 Access Cooperation

Grantor may designate any other jurisdiction to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as Grantor in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by Grantor.

9.11 Return Lines/Access Origination

(A) Grantee shall maintain the return lines from the existing Access origination sites to the Headend in order to enable the distribution of Access programming to Subscribers on the Access Channels. To the extent that any return line upgrades are required in order to facilitate delivery of Access Programming in HD, such upgrades shall be completed within one (1) year of a written request from Grantor; provided however, that Grantee may recover the costs of such upgrades from Subscribers in the Franchise Area in accordance with Applicable Law and that in so doing the PEG Contribution does not exceed fifty (\$.50) cents in total. If such costs result in exceeding fifty (\$.50) cents then the Grantor shall reduce the existing PEG Contribution amount so as to allow for the recoupment of all upgrade costs without exceeding the cap of fifty (\$.50) cents over a period of three (3) years. Grantee shall continuously maintain these return lines throughout the term of the Franchise, unless any of these locations are no longer used in the future to originate Access programming or are not upgraded as part of the HD conversion. The existing return line facilities are noted as "exterior" to reflect a return line on the physical property but not extending into the building, or "interior" where the return line connection extends into the building itself. The cost to convert facilities from exterior to interior shall be paid by the Grantor:

Olympia City Hall - 601 4th Avenue East, Olympia, WA (interior)

The Washington Center for the Performing Arts, 512 Washington St SE,
Olympia, WA (exterior)

The Evergreen State College, Community Center Bldg. 113. 4300 Indian Pipe
Loop NW Olympia, WA (interior)

Lakefair Queen's Coronation, south side of 5th Ave. SW & Sylvester Street SW,
Olympia WA (exterior)

(B) Within eighteen (18) months of written request by the Grantor, Grantee shall construct and maintain additional return lines to other locations within the Franchise Area; provided however, that all Grantee's construction costs shall be paid by the Grantor or its Designated Access Provider(s).

9.12 Promotion of PEG Access Schedule

The Grantee shall include appropriate designation of the PEG channels on channel cards and other channel listings provided to Subscribers in a manner comparable to commercial channels on the Cable System.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to Applicable Law, generally applicable Municipal Code, Right-of-Way Construction Standards, and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of Grantor, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts which Grantee needs to occupy within the Franchise Area.

10.3 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices consistent with applicable permit requirements.

10.4 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from Grantor. As part of the permitting process, Grantor may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Grantor permits received by Grantee.

10.5 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.6 Compliance with Applicable Codes

(A) Grantor Construction Codes. Grantee shall comply with all applicable industry, State and Grantor construction codes and standards.

(B) Safety Codes. Grantee shall comply with all federal, State and Grantor safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards. All installations of equipment shall be permanent in nature, and final equipment placement shall not interfere with the travel and use of public places by the public.

10.7 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, Grantor's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements Grantor may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.8 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights. Further, any street cuts made and repaired shall be performed in accordance with all Grantor construction codes.

10.9 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) The provisions of Section 5.1 shall apply to any claims against the Grantor arising out of a release of hazardous substances caused by Grantee's Cable System.

10.10 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to Grantor and to the notification association established in Ch. 19.122 RCW, as such may be amended from time to time.

Within forty-eight (48) hours after any Grantor bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.11 Notice to Private Property Owners

Except in the case of an emergency involving public safety or service interruption to a large number of Subscribers, Grantee shall give at least three (3) days advance notice to private property

owners or legal tenants of work on or adjacent to private property prior to entering upon private premises. Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law.

10.12 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations or rules of Grantor or applicable State or federal law, or Grantor project Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with Grantor's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of undergrounding an extension of the Cable System or for placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. Grantor will reasonably determine the most appropriate option between undergrounding and erecting new poles considering site specific details and availability of space in the Right-of-Way. If poles are used, all poles of Grantee shall be located as designated by the proper Grantor authorities. Grantor will determine if such poles and related facilities may be placed based on reasonable availability of space within the right of way.

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of Grantor or any other Person.

(F) Grantee and Grantor recognize that situations may occur in the future where Grantor may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. Grantee agrees to cooperate with Grantor in any construction by the Grantee that involves trenching or boring, provided that Grantor has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring and Grantor enters into a contract with Grantee consistent with RCW

80.36.150, this Franchise and applicable provisions of Grantor's Code. Grantee shall allow Grantor to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided there is reasonable space available and Grantor shares in the cost of the trenching and boring on the same terms and conditions as the Grantee or otherwise in accordance with Applicable Law. Grantor shall be responsible for maintaining its respective cable, conduit, vaults and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

(G) Where Grantor codes provide holders of building or development permits for planned developments within the Franchise Area to notify utilities and other similar service providers of availability of open trenches, it is the intent of Grantor that such requirements shall include operators of cable systems in the list of entities required to be provided notice by the permit holder. In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new land use development, not associated with a Grantor designated capital improvement project, this Franchise shall in no way limit the Grantee's right to recoup all time and material costs associated with the underground conversion of the Cable System from the Person responsible for the project.

10.13 Prewiring

Any ordinance or resolution of Grantor which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

10.14 Repair and Restoration of Property

(A) The Grantee shall protect public and private property from damage, when performing work as it pertains to using the Right of Way. If damage is caused by Grantee, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, Grantor may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay Grantor.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

10.15 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any Grantor Right-of-Way, or upon the addition to Grantor of any area in which Grantee owns or operates any such facility, Grantee shall, at Grantor's request, submit to Grantor a statement describing all such facilities located in the Right of Way, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

10.16 Discontinuing Use/Abandonment of Cable System Facilities

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest at no cost to Grantor. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

10.17 Movement of Cable System Facilities for Grantor Purposes

Grantor shall have the right to require Grantee to, at Grantor's request, relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of Grantor for public purposes, in the event of an emergency; or when the public health, safety, or welfare requires such change. For example, without limitation, this movement of Grantee's facilities may be needed by public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by Grantor for public purposes. Such work shall be performed at Grantee's expense. Except when a shorter time is necessitated due to an emergency, Grantee shall, within sixty (60) days' written notice by Grantor, or such longer period as Grantor may specify, complete all work to temporarily or permanently relocate, remove, replace, modify, or disconnect any of its facilities and equipment located in the Rights-of-Way or on any other property of Grantor. In the event of any capital improvement project exceeding five hundred thousand dollars (\$500,000) in expenditures by Grantor, which requires the removal, replacement, modification, or disconnection of Grantee's facilities or equipment, Grantor shall provide at least one-hundred twenty (120) days' written notice to Grantee. Following notice by Grantor, if all users of the Right-of-Way relocate aerial

facilities underground as part of an undergrounding project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities, if it desires to continue to occupy that particular Right of Way. If Grantor requires Grantee to relocate its facilities located within the Rights-of-Way, Grantor will work collaboratively with Grantee to identify available alternate locations within the Rights-of-Way for Grantee to relocate its facilities at Grantee's cost.

If Grantee fails to complete this work within the time prescribed above and to Grantor's satisfaction, Grantor may cause such work to be done and bill the cost of the work to Grantee. In such event, Grantor shall not be liable for any damage to any portion of Grantee's Cable System. Within forty-five (45) days of receipt of an itemized list of those costs, Grantee shall pay Grantor. In any event, if Grantee fails to timely relocate, remove, replace, modify or disconnect Grantee's facilities and equipment, and that delay results in any damage claim against Grantor, Grantee shall be responsible to Grantor for documented costs of construction delays attributable to Grantee's failure to timely act. Grantee reserves the right to challenge any determination by Grantor of Grantee's responsibility for the delay and/or costs for construction delays related to an alleged failure to act in accordance with this subsection 10.17.

10.18 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another franchise holder, Grantee shall, after at least sixty (60) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

10.19 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance. The cost of such temporary change may be charged by the Grantee to the permit holder, and Grantee may require the estimated payment in advance. Such payment is an exchange between the Grantee and the permittee, and the Grantor will not be the administrator of these transactions.

10.20 Reservation of Grantor Use of Right-of-Way

Nothing in this Franchise shall prevent Grantor or public utilities owned, maintained or operated by public entities other than Grantor from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.21 Tree Trimming

Trees shall be maintained per ANSI A300, Standard Practices for Trees, Shrubs and other Woody Plant Maintenance. Upon obtaining a written permit from Grantor, if such a permit is required, Grantee may prune or cause to be pruned, using proper pruning practices in accordance with such permit, any tree in the Rights-of-Way that interferes with the Cable System. The adjacent property owner shall be notified by the Grantee of the tree removal or trimming. All tree trimming shall be done at Grantee's sole cost and expense.

10.22 Stop Work

(A) On notice from Grantor that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by Grantor, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by Grantor.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

Grantee shall be liable for all costs incurred by Grantor and associated with Grantee's violation and Grantor's issuance of the stop work order. Grantee reserves the right to challenge any Grantor determination of Grantee's obligations under this Section.

10.23 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with Grantor's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Prior to the Effective Date of this Franchise, the parties acknowledge that Grantee undertook a voluntary upgrade of its Cable System to a hybrid fiber coaxial (HFC) fiber-to-the-node system architecture, with Fiber Optic cable deployed from its Headend to nodes and tying into a coaxial system serving Subscribers. The Cable System is now and shall throughout the term of this Franchise, deliver high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process.

(D) Grantee and the City shall meet, at the City's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to Grantor no later than thirty (30) days following receipt of a request.

11.3 Emergency Alert Capability

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, Grantor shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested in accordance with Applicable Law.

11.4 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including but not limited to the FCC) technical standards, as they may be amended from time to time. Grantor shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.5 Cable System Performance Testing

(A) Grantee shall maintain written records of all results of its Cable System tests performed by or for Grantee. Copies of such test results will be provided to Grantor upon reasonable request.

(B) Grantee shall perform any tests required by the FCC.

11.6 Additional Tests

Where there exists other evidence which in the judgment of Grantor casts doubt upon the reliability or technical quality of Cable Service, Grantor shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with Grantor in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY

(A) In General. Except as otherwise provided herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. The seven (7) day requirement may be extended if underground construction permitting would preclude such connection within that time period. Except as otherwise provided herein, Grantee shall provide such service:

- (1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor;

(3) At non-discriminatory monthly rates for Residential Subscribers consistent with Section 4.2 above.

(B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise and all applicable laws.

(C) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of twenty five (25) residences per mile of aerial feet of trunk or distribution cable or sixty (60) residences per mile of underground trench feet of trunk or distribution cable. If the residential density is less than twenty five (25) residences per 5,280 aerial cable-bearing strand feet of trunk or distribution cable, or sixty (60) residences per mile of underground trench feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals twenty five (25) or sixty (60), as applicable. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Franchise Violations

(A) If Grantor reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to Grantor, contesting Grantor's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify Grantor that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify Grantor in writing and in detail as to the exact steps that will be taken and the

projected completion date. In such case, Grantor may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or Grantor orders a meeting in accordance with subsection (A)(3), Grantor shall set a meeting to investigate said issues or the existence of the alleged default. Grantor shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, Grantor determines that a default exists, Grantor shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as Grantor shall determine. In the event Grantee does not cure within such time to Grantor's reasonable satisfaction, Grantor may:

- (1) Withdraw an amount from the letter of credit as monetary damages;
- (2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,
- (3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of Grantor, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of Grantor to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of Grantor to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.3 Assessment of Monetary Damages

(A) Subject to the terms of this Franchise, Grantor may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, (ii) up to two hundred fifty dollars (\$250.00) per day for violations of PEG obligations, payment obligations or any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for

defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, Grantor shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and-in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by Grantor in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by Grantor by reason of the breach of this Franchise.

13.4 Revocation

(A) Grantor may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding Grantor and Grantee;

(2) Grantee abandons the Cable System, or terminates the Cable System's operations;

(3) Grantee fails to restore service to the Cable System after three consecutive days of an outage or interruption in service; except in the case of an emergency or during a Force Majeure occurrence, or when approval of such outage or interruption is obtained from the Grantor, it being the intent that there shall be continuous operation of the Cable System); or

(4) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon Grantor or Subscribers; or

(5) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(6) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, Grantor shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with Grantor to assume and be bound by all of the terms and provisions of this Franchise.

(D) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If Grantor determines that the Franchise is to be revoked, Grantor shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by Grantor's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

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

13.5 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, Grantor may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months,

unless a sale of the Cable System can be closed sooner or Grantee demonstrates to Grantor's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities from Grantor at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to Grantor's satisfaction, after written notice to Grantee, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or Grantor may recover the costs through the letter of credit provided by Grantee.

(D) Grantor may seek legal and equitable relief to enforce the provisions of this Franchise.

13.6 Purchase of Cable System

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, Grantor shall have the option to purchase the Cable System.

(B) Grantor may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from Grantor within which to accept or reject the offer.

(C) In any case where Grantor elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of Grantor's audit of a current profit and loss statement of Grantee. Grantor shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but

with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which Grantor would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

13.7 Receivership and Foreclosure

(A) At the option of Grantor, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with Grantor to assume and be bound by all of the terms and conditions of this Franchise.

13.8 No Monetary Recourse Against Grantor

Grantee shall not have any monetary recourse against Grantor or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of Grantor under this Franchise are in addition to, and shall not be read to limit, any immunities Grantor may enjoy under federal, State or local law.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to Grantor, or until the Franchise is revoked and a new franchisee is selected by Grantor; or obtain an injunction requiring the Grantee to continue operations. If Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse Grantor or its designee for all reasonable costs, expenses and damages incurred.

13.10 What Constitutes Abandonment

Grantor shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for three (3) consecutive days, unless there is a situation constituting Force Majeure or Grantor authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) Grantor and Grantee agree that any proceedings undertaken by Grantor that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and Grantor are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as

provided in the Franchise, and the Grantee and Grantor shall continue to comply with all obligations and duties under the Franchise.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of Grantor, which consent shall be by the City Council, acting by ordinance/resolution.

(B) The Grantee shall promptly notify Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to Grantor for its approval of a sale or transfer and furnish all information required by law and Grantor.

(D) In seeking Grantor's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that Grantor may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) Grantor shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. Grantor and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and Grantor agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by Grantor, Grantee shall file with Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist Grantor in so inquiring. Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by Grantor and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of Grantor; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by Grantor or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast of Cable Communications Management, LLC
Attention: Franchising
900 132nd Street SW
Everett WA 98204

With a copy To:

Comcast Cable
Attention: Franchising
410 Valley Ave. NW, Suite 9
Puyallup WA 98371

Grantor's address shall be:

City Clerk
City of Olympia
601 4th Ave. E.
Olympia WA 98501

With a copy to:

City Attorney
City of Olympia
601 4th Ave. E.
Olympia WA 98501

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse Grantor for all costs incurred in publishing this Franchise, if such publication is required.

16.5 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of Grantor at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of Grantor hereafter to enforce the same. Nor shall the waiver by Grantor of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

16.9 Entire Agreement

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

16.10 Jurisdiction

Venue for any dispute related to enforcement or interpretation of this Franchise shall be in an appropriate state court of competent jurisdiction in Thurston County, Washington, or in the United States District Court for the Western District of Washington at Tacoma.

IN WITNESS WHEREOF, this Franchise is signed in the name of City of Olympia, Washington this _____ day of _____ 2021.

CITY OF OLYMPIA, WASHINGTON:

Steven J. Burney, City Manager

ATTEST:

APPROVED AS TO FORM:

Sean Krier, City Clerk

Mark Barber, City Attorney

