

**CITY OF GRANITE FALLS  
Granite Falls, Washington**

**ORDINANCE NO. 998-2020**

**AN ORDINANCE GRANTING COMCAST CABLE COMMUNICATIONS, LLC, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, REPAIR AND UPGRADE THE CABLE SYSTEM UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA FOR THE PURPOSE OF PROVIDING CABLE SERVICES, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS ORDINANCE AND APPLICABLE LAW.**

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

**WHEREAS**, diversity in Cable Service programming is an important policy goal and Grantee's Cable System offers a wide range of programming services; and

**WHEREAS**, the City is authorized by applicable law to grant one or more nonexclusive Franchises to construct, operate and maintain cable systems within the boundaries of the City; and

**WHEREAS**, in consideration of the mutual promises made herein, and other good and valuable consideration as provided herein, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF GRANITE FALLS, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

# **CABLE FRANCHISE AGREEMENT**

**Between**

**CITY OF GRANITE FALLS, WASHINGTON**

**And**

**COMCAST CABLE COMMUNICATIONS, LLC**

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## **INTRODUCTORY STATEMENT**

**CABLE TELEVISION FRANCHISE.** This Cable Television Franchise is entered into in Granite Falls, Washington, this 18th day of November, 2020, by and between the City of Granite Falls, Washington a municipal corporation, hereinafter (the "the City") and Comcast Cable Communications, LLC who is hereinafter known as ("Grantee"). The City and Grantee are sometimes referred to hereinafter collectively as the "parties."

## **SECTION 1. - DEFINITIONS**

For the purposes of this Franchise and the Exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings 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" or "Access Programming"  
includes Educational Access and Governmental Access, collectively, and means the availability for Noncommercial use by various governmental and educational agencies, institutions and organizations, in the community, including the City and its designees, of particular channels on the Cable System to receive and distribute Video Programming to Subscribers, as permitted under applicable law, including, but not limited to:
  - 1.1.1 "Educational Access"  
means Access where Schools are the primary users having editorial control over programming and services.
  - 1.1.2 "Governmental 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 Noncommercial Access purposes or otherwise made available to facilitate Access programming.
- 1.3 "Access Fees"  
means the Capital Fee paid to the City by the Grantee in accordance with Section 9 below.
- 1.4 "Activation" or "Activated"  
means the status of any capacity on or part of the Cable System wherein the use of that capacity or part thereof may be made available without further installation of Cable System equipment other than Subscriber premise equipment, whether hardware or software.
- 1.5 "Affiliated Entity" or "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 of Grantee and its successor entities.
- 1.6 "Bad Debt"  
means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee, but not collected after reasonable efforts by Grantee.

- 1.7 “Basic Service”  
means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals.
- 1.8 “Broadcast Signal”  
means a television or radio signal transmitted over the air to a wide geographic audience and received by a Cable System off-the-air by antenna, microwave, satellite dishes or any other means.
- 1.9 “Cable Act”  
means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as amended by the Telecommunications Act of 1996, and any amendments thereto.
- 1.10 “Cable Operator”  
means any Person or group of Persons, including Grantee, who provides Cable Service over the 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 the Cable System.
- 1.11 “Cable Service”  
means the one-way transmission to Subscribers of Video Programming, or other programming service and Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service.
- 1.12 “Cable System”  
means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within a community, but such term does not include
- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
  - (2) a facility that serves Subscribers without using any public right-of-way;
  - (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. Section 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. Section 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;
  - (4) an open video system that complies with Section 653 of the Cable Act; or
  - (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, the term “Cable



System” shall mean Grantee’s Cable System in the Franchise Area unless the context indicates otherwise.

- 1.13 “Capital Contribution”  
means a fee required by this franchise for public, educational, and government access facilities pursuant to 47 U.S.C 542(g)(2)(C).”
- 1.14 “Channel”  
means a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.
- 1.15 “City”  
means the City of Granite Falls, Washington, a municipal corporation, of the State of Washington.
- 1.16 “Customer Service Representative” or “CSR”  
shall mean any person employed by Grantee to assist, or provide service to, Customers, whether by answering public telephone lines, writing service or installation orders, answering Customers’ questions, receiving and processing payments, or performing other Customer service-related tasks.
- 1.17 “Designated Access Provider”  
means the entity or entities designated by the City to manage or co-manage Educational or Governmental Access Channels and facilities. The City may be a Designated Access Provider.
- 1.18 “Downstream Channel”  
means a Channel capable of carrying a transmission from the Headend to remote 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.
- 1.20 “Expanded Basic Service”  
means cable programming services not included in the Basic Service and excluding premium or pay-per-view services.
- 1.21 “FCC”  
means the Federal Communications Commission or its lawful successor.
- 1.22 “Fiber Optic”  
means a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying electric lightwave pulses.
- 1.23 “Franchise”  
means the document, in which this definition appears, that is executed between the City and Grantee, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.

- 1.24 “Franchise Area”  
means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.
- 1.25 “Franchise Fee”  
includes any tax, fee or assessment of any kind imposed by the City on Grantee or Subscribers, or both solely because of their status as such. The term Franchise Fee does not include:
- 1.25.1 Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment on both utilities and Cable Operators or their services, but not including a tax, fee, or assessment that is unduly discriminatory against Cable Operators or cable Subscribers);
- 1.25.2 Capital costs that are required by the Franchise to be incurred by Grantee for Educational or Governmental Access facilities, including the support required in Section **Error! Reference source not found.**;
- 1.25.3 Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
- 1.25.4 Any fee imposed under Title 17, United States Code.
- 1.26 “Grantee”  
means Comcast Cable Communications, LLC or its lawful successor, transferee or assignee.
- 1.27 “Gross Revenues”  
means any and all revenue derived directly or indirectly by Grantee, or by Grantee’s Affiliates from the operation of Grantee’s Cable System to provide Cable Services in the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly and other fees charged Subscribers for Cable Services including Basic Service, Expanded Basic Service, any expanded Tiers of Cable Service, other Tiers of Cable Service, optional Premium Service, pay-per-view and per-program Channels, Cable Service installation, disconnection, reconnection and change-in-service fees, fees for service calls, Leased Access Channel fees, remote control rental fees, late fees and administrative fees or other consideration received by Grantee from programmers for carriage of Cable Services on the Cable System and recognized as revenue under generally accepted accounting principles (GAAP), revenues from rentals of converters or other Cable System equipment, advertising sales revenues (including local, regional and a pro rata share of national advertising carried on the Cable System in the Franchise Area), net of commissions due to advertising agencies that arrange for the advertising buy, revenues from program guides, additional outlet fees, revenue from the sale or carriage of other Cable Services, and revenues from home shopping. Gross Revenues shall not include:
- (1) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected;

- (2) any taxes on services furnished by Grantee that are imposed directly on any Subscriber or user by the State, the City or other governmental unit and that are collected by Grantee on behalf of said governmental unit; or
- (3) the Capital Contributions as required by Section 9.7 of this Franchise.

The Franchise Fees are not a tax and are therefore included in this definition of Gross Revenues. If new Cable Service revenue streams develop from Grantee's operation of its Cable System within the City, those new revenue streams shall be included within Gross Revenues, unless the parties agree otherwise. 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. Grantee reserves the right to change the allocation methodologies set forth in this definition 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 will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of Franchise Fee payments. 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 GAAP as promulgated and defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing, the City 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.

- 1.28 "Headend" or "Hub"  
means any Facility for signal reception and dissemination on a Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and Facilities.
- 1.29 "Leased Access Channel"  
means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.
- 1.30 "Locally Scheduled Original Programming"  
means Government Access or Educational Access programming that is created by the City or their designated access provider(s) including edited coverage of live programming. Such Locally Scheduled Original Programming shall not be considered as qualifying as such after three (3) cablecasts (initial, first repeat and second repeat). Automated Video Programming filler, such as cablecasts of highways and roads, or video bulletin boards does not constitute Locally Scheduled Original Programming that qualifies herein.

- 1.31 “Noncommercial”  
means, in the context of Access Channels, those particular products and services that are not promoted or sold. This term shall not be interpreted to prohibit an Access Channel operator or programmer from soliciting and receiving contributions used to produce and transmit Video Programming on an Access Channel, or from acknowledging a contribution, in the manner of the Corporation for Public Broadcasting or some similar manner, subject to applicable law.
- 1.32 “Normal Business Hours”  
means those hours during which most similar businesses in the community are open to serve Customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some hours on Saturday.
- 1.33 “Normal Operating Conditions”  
means those service conditions that are within the control of Grantee. Those conditions that are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, severe or unusual weather conditions, and availability of materials, equipment or labor. Those conditions that are ordinarily within the control of Grantee include, but are not limited to, regular peak or seasonal demand periods and maintenance or upgrade of the Cable System.
- 1.34 “Pay Service” or “Premium Service”  
means Video Programming or other programming service choices (such as movie Channels or pay-per-view programs) offered to Subscribers on a package tier, per-Channel, per-program or per-event basis.
- 1.35 “Person”  
means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.
- 1.36 “Rights-of-Way”  
means all public streets and property granted or reserved for, or dedicated to, public use for streets, together with public property granted or reserved for, or dedicated to public use for walkways, sidewalks, bikeways, or planter areas, whether improved or unimproved, including the air rights, subsurface rights and easements related thereto but only to the extent of the City’s right, title interest. This term shall not include parks or any other property owned or utilized by the City that is not used or intended to be used for the benefit of the travelling public.
- 1.37 “School”  
means any State accredited K-12 public or private educational institution not including home schools, prisons or jails (provided that state accredited juvenile schools within prisons or jails shall be included).
- 1.38 “Service Interruption”  
means the loss of picture or sound on one or more cable Channels.

- 1.39 “State”  
means the State of Washington.
- 1.40 “Subscriber” or “Customer”  
means any Person who lawfully receives Cable Services provided by Grantee by means of the Cable System with Grantee’s express permission.
- 1.41 “Tier”  
means a category of Cable Services provided by Grantee for which a separate rate is charged.
- 1.42 “Video Programming”  
means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, or cable programming provider.

## **SECTION 2. - GRANT OF FRANCHISE**

### **2.1 Grant**

- 2.1.1 The City hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair and upgrade the Cable System for the purpose of providing Cable Services, subject to the terms and conditions set forth in this Franchise and applicable law. This Franchise shall constitute both a right and an obligation to fulfill the obligations set forth in the provisions of this Franchise.
- 2.1.2 Grantee, through this Franchise, is granted the right to operate its Cable System using the public Rights-of-Way within the Franchise Area in compliance with all lawfully enacted applicable construction codes and regulations. This Franchise is intended to convey limited rights and interests only as to those streets in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide Grantee 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. This Franchise does not deprive the City of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the City’s streets covered by this Franchise, including without limitation the right to perform work on its roadways, Right-of-Way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.
- 2.1.3 This Franchise is subject to and shall be governed by all applicable provisions now existing or hereafter amended of federal, State and local laws and regulations. This Franchise is subject to the general lawful police power of the City affecting matters of municipal concern as per Section 2.9. Nothing in this Franchise shall be deemed to waive the

requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the City. Grantee agrees to comply with the provisions of the City ordinances provided that in the event of a conflict between the provisions of ordinances and the Franchise, the express provisions of the Franchise shall govern.

- 2.1.4 Grantee agrees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of Grantee that is a Cable Operator of the Cable System in the Franchise Area, as defined herein, or directly involved in the management or operation of the Cable System in the Franchise Area, will comply with the terms and conditions of this Franchise.
- 2.1.5 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 City that may be required by the ordinances and laws of the City.
  - (2) any permit, agreement or authorization required by the City for Rights-of-Way users in connection with operations on or in Rights-of-Way or public property; or
  - (3) any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise.
- 2.1.6 This Franchise is an express authorization to provide Cable Services as allowed by applicable law. This Franchise is not a bar to the imposition of any lawful conditions on Grantee with respect to non-Cable Services, telecommunications services or information services, whether similar, different or the same as the condition specified herein. However, this Franchise shall not be read as a concession by Grantee that it needs authorization to provide non-Cable Services, telecommunications services or information services.

## 2.2 Use of Rights-of-Way

- 2.2.1 Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, through, below and along the Rights-of-Way within the Franchise Area, such wires, cables (both coaxial and Fiber Optic), conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all lawfully enacted and applicable construction codes, laws, ordinances, regulations and procedures regarding placement and installation of Cable System facilities in the Rights-of Way.
- 2.2.2 Grantee must follow the City-established requirements, as well as all the City codes, ordinances and other regulations regarding placement of

Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way. Grantee 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. To protect public health, safety and welfare, the City 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 Rights-of-Way; may deny access if Grantee is not willing to comply with the City's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, or that is installed without prior City approval of the time, place or manner of installation (including charging Grantee for all the costs associated with removal); and the City may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. Grantee shall assume its costs (in accordance with applicable law) associated with any requirement of the City in the exercise of its police powers, to relocate its Cable System facilities located in the Rights-of-Way.

## 2.3 Term

- 2.3.1 This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall remain in full force and effect for a period of ten (10) years from and after the effective date of this Ordinance, as specified in SECTION 19. - , subject to acceptance of this Franchise by Grantee pursuant to 18.16.
- 2.3.2 The grant of this Franchise shall have no effect on any ordinance in effect prior to the effective date of this Franchise to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees (for any prior years) that were due and owed under a prior franchise and the franchise ordinance.

## 2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or franchises granted by the City or its predecessors to any Person to use any property, Right-of-Way, easement, including the right of the City to use same for any purpose it lawfully deems fit, including the same or similar purposes allowed Grantee hereunder. The City 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 the City deems appropriate.

## 2.5 Grant of Other Franchises

- 2.5.1 Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises subsequent to this Franchise to provide Cable Service or wireline video service within the Franchise Area; provided, the City agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of Grantee's request, so as to ensure that the

regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: Franchise Fees; insurance; system build-out requirements; security instruments; Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization so long as the regulatory and financial burdens on each entity are materially equivalent. If any additional franchise for a system to provide Cable Services or wireline video services, is granted by the City which, in the reasonable opinion of Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by the City and Grantee. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section so long as the City does not have lawful authority to regulate such wireless broadband networks within the Franchise Area.

2.5.2 In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall provide notice of such application to the Grantee.

2.5.3 In the event that a wireline multichannel video provider distributor, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or wireline video services within the City without a Cable Service franchise or other similar lawful authorization granted by the City, then Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend this Franchise. Such petition shall: (a) indicate the presence of such wireline competitor; (b) identify the Franchise terms and conditions for which Grantee is seeking amendments; (c) provide the text of all proposed Franchise amendments to the City, (d) identify all material terms or conditions in the applicable state or federal authorization which are substantially more favorable or less burdensome to the competitive entity. The City shall not unreasonably withhold consent to Grantee's petition.

## 2.6 Familiarity with Franchise

Grantee acknowledges and warrants by acceptance of the rights, privileges and agreement 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 reasonable risks of the meaning of the provisions, terms and conditions herein. 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.

## 2.7 Effect of Acceptance

2.7.1 By accepting the Franchise, Grantee:



- (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise;
- (2) agrees that it will not oppose the City's intervening to the extent it is legally entitled to do so in any legal or regulatory proceeding affecting the Cable System;
- (3) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and
- (4) 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.

2.7.2 Within thirty (30) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Grantee by filing with the City Clerk during regular business hours, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise, together with the following, if required herein:

- (1) submission of proof of financial security;
- (2) submission of any applicable insurance certificates or other documents establishing Comcast's procurement of insurance as required under this Franchise; and
- (3) payment of the costs of publication of this Franchise Ordinance.

2.7.3 In the event that the thirtieth day falls on a Saturday, Sunday, or legal holiday during which the City is closed for business, the filing date shall fall on the last business day before such Saturday, Sunday, or legal holiday.

## 2.8 Failure to Timely File Acceptance

The failure of Grantee to timely file its written acceptance shall be deemed a rejection by Grantee of this Franchise, and this Franchise shall then be void.

## 2.9 Police Powers

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to comply with all generally applicable laws, ordinances and regulations lawfully enacted pursuant to the police powers of the City, or hereafter enacted in accordance therewith, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary.

## 2.10 Franchise Area

Grantee shall provide Cable Services, as authorized under this Franchise, within the Franchise Area in accordance with line extension and density provisions as provided herein.

2.11 Reservation of Rights

Nothing in this Franchise shall:

- (1) abrogate the right of the City to perform any public works or public improvements of any description;
- (2) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City; or
- (3) be construed as a waiver or release of the rights of the City in and to the Rights-of-Way.

**SECTION 3. - FRANCHISE FEE AND FINANCIAL CONTROLS**

3.1 Franchise Fee

As compensation for the use of the City's Rights-of-Way, Grantee shall pay as a Franchise Fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5.0%) of Grantee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding quarter. Each quarterly payment shall be due and payable no later than forty-five (45) days after the end of the preceding quarter. The quarters shall end respectively on the last day of March, June, September and December.

3.3 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Franchise Fee Reports

3.4.1 Each payment shall be accompanied by a written report to the City on a form commonly used by Grantee, verified by an officer of Grantee, containing an accurate statement in summarized form, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall include all Gross Revenues of the Cable System.

3.4.2 Grantee shall, no later than ninety (90) days after the end of each calendar year, furnish to the City an accurate statement of Grantee's Gross Revenues and the computation of the payment amount for the prior calendar year. Such reports shall include all Gross Revenues of the Cable System.

3.5 Audits

On an annual basis, upon thirty (30) days' prior written notice, the City shall have the right to conduct an independent audit of Grantee's financial records necessary to enforce compliance with this Franchise and to calculate any

amounts determined to be payable under this Franchise. Provided Grantee cooperates in making all relevant records available upon request, the City will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous five (5) years. Any additional amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to Grantee, and Grantee's agreement that the audit findings are correct, which notice shall include a copy of the audit findings. If a Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the City receives the payment. If the audit shows that Franchise Fees have been underpaid, by five percent (5%) or more in a calendar year, Grantee shall pay the cost of the audit in an amount up to \$15,000 for the audit period. If Grantee disputes all or part of the audit findings, then that matter may be referred to nonbinding arbitration by either of the parties. Each party shall bear one-half of the costs and expenses of the arbitration proceedings. The decision of the arbitrator(s) shall be subject to judicial review at the request of either party.

3.6 Financial Records

Grantee agrees to meet with a representative of the City 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 the City deems necessary for reviewing reports and records that are relevant to the enforcement of this Franchise.

3.7 Underpayments

In the event any payment is not received within forty-five (45) days from the end of the scheduled payment period, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the City receives the payment.

3.8 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits City to collection of a maximum Franchise fee of five percent (5%) of Gross Subscriber Revenues in any twelve (12) month period. In the event that at any time during the duration of this Franchise applicable federal law changes the maximum allowable Franchise Fee, to be collected in any twelve (12) month period, then this Franchise shall be amended by the parties with sixty (60) days written notice by either party to the other party. The City agrees that all Cable operators in the Franchise Area over which the City has jurisdiction will be treated in an equivalent manner.

3.9 Payment on Termination

If this Franchise terminates for any reason, Grantee shall file with the City 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 Grantee since the end of the previous fiscal year. Within forty five (45) days of the filing of the certified statement with the City, Grantee

shall pay any unpaid amounts as indicated. If Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the City may do so by utilizing the funds available in a letter of credit or other security provided by Grantee pursuant to Section 5.3 or may exercise any other remedies provided to the City in law or equity to collect on such financial obligations.

3.10 Service Packages

In addition to the requirements elsewhere in this Franchise, City acknowledges that, during the term of this Franchise, Grantee may offer to its subscribers, at a discounted rate, a bundled or combined package of services consisting of Cable Services, which are subject to the Franchise Fee referenced above, and other services that are not subject to that Franchise Fee. To the extent discounts reduce revenues includable for purposes of calculating Franchise Fees, Grantee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payment of Franchise Fees to the City. As between Cable Services and non-Cable Services, revenues shall be allocated on a pro rata basis. If a dispute arises between the parties regarding this matter, City and Grantee will meet within twenty (20) days' notice and discuss such matters in good faith in an attempt to reach a reasonable compromise thereof.

3.11 Additional Compensation

In the event that Franchise Fees are prohibited by any law or regulation, Franchisee shall pay to the City that amount, if any, which is determined by applicable law.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses by any law of the City, the State or the United States including, without limitation, sales, use, utility, property, permits and other taxes, or business license fees.

## **SECTION 4. - ADMINISTRATION AND REGULATION**

- 4.1 The City shall be vested with the power and right to administer and enforce this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right of administration, or any part thereof, to the extent permitted under federal, State and local law, to any agent in the sole discretion of the City. Nothing in this Franchise shall limit or expand the Grantor's right of eminent domain under State law.

4.2 Rates and Charges

Grantee rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws. Customer billing shall be itemized by service(s) per FCC Regulation 76.309(B)(ii)(A) and 76.1619 or as amended. Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

#### 4.3 No Rate Discrimination

4.3.1 All Grantee rates and charges shall be published (in the form of a publicly available rate card), made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law. Nothing herein shall be construed to prohibit:

- (1) the temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;
- (2) the offering of reasonable discounts to similarly situated Persons;
- (3) the offering of rate discounts for either Cable Service generally, or
- (4) the offering of bulk discounts for Multiple Dwelling Units.

4.3.2 Grantee offers to continue through a voluntary initiative a discount of 30% from its published rate card rate to Subscribers for Basic Cable Services or the Basic portion of Expanded Basic as part of their service (provided they are not already receiving a package discount) who are deemed low income by federal standards and who are either permanently disabled or 65 years of age or older, provided that such individual(s) are the legal owner or lessee/tenant of their Dwelling Unit. This subsection shall not prohibit Grantee from providing a larger discount or offering the discount to other economically or physically challenged Subscribers. If Grantee determines to discontinue such discount, Grantee shall provide the City at least ninety (90) days written notice.

#### 4.3.3

#### 4.4 Filing of Rates and Charges

Throughout the term of this Franchise, Grantee shall maintain on file with the City 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.

#### 4.5 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.

#### 4.6 Performance Evaluation

Special evaluation sessions may be held at any time upon request by the City during the term of this Franchise following Grantee's repeated failure to comply with the terms of this Franchise or no more than once in any thirty-six (36) month period. All evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.

- 4.6.1 Topics that may be discussed at any evaluation session may include but are not limited to, Cable Service rate structures; Franchise Fees; liquidated damages; free or discounted Cable Services; application of new technologies; system performance; Cable Services provided; programming offered; customer complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and Grantor's or Grantee's rules, 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.
- 4.6.2 Grantee agrees to participate in such special evaluation sessions described in this Section **Error! Reference source not found.6.**

4.7 Leased Access Channel Rates

Upon request, 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.

4.8 Late Fees

- 4.8.1 For purposes of this subsection, any assessment, charge, cost, fee or sum, however, characterized, that Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable local, State and federal laws.
- 4.8.2 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 the City without regard to the neighborhood or income level of the subscribers.

## **SECTION 5. - FINANCIAL AND INSURANCE REQUIREMENTS**

5.1 Indemnification

5.1.1 General Indemnification

Grantee, at its sole cost and expense, shall indemnify, defend and hold the City, its officers, officials, boards, commissions, authorized agents, representatives, and employees, harmless from any action or claim for injury, damage, loss, liability, settlement, proceeding, judgment, or cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to Person or property, including all damages in any way arising out of, or by reason of, any construction, excavation, erection, operation, maintenance, repair or reconstruction, or any other act done under this Franchise, by or for Grantee, its authorized agents, or by reason of any neglect or omission of Grantee its authorized agents or its employees. Grantee shall consult and cooperate with the City while conducting its defense of the City. Said indemnification obligations shall extend to any settlement made by Grantee.

5.1.2 Indemnification for Relocation

Grantee shall indemnify, defend and hold the City, its elected officials, officers, authorized agents, boards, and employees, harmless for any damages, claims, additional costs, or expenses payable by, the City related to, 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 any lawful relocation required by the City. Pursuant to Section 5.1.1, the provisions of this Section 5.1.2 shall specifically include, but are not limited to, claims for delay, damages, costs, and/or time asserted by any contractor performing public work for or on behalf of the City.

5.1.3 Additional Circumstances

Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost and expense, including court and appeal costs and attorneys' fees and expenses in any way arising out of any failure by Grantee to secure consents from the owners, authorized distributors or franchisees/licensors of programs to be delivered by the Cable System, provided however, that Grantee will not be required to indemnify the City for any claims arising out of the use of Access Channels by the City and/or its Designated Access Providers or use by the City of the Emergency Alert Cable System.

5.1.4 Procedures and Defense

If a claim or action arises, the City or any other indemnified party shall tender the defense of the claim or action to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims financially affecting the City without the City's written approval that shall not be unreasonably withheld.

5.1.5 Duty of Defense

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 Section 5.1.

5.1.6 Duty to Give Notice

The City shall give Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. The City's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the obligation and duty to defend any claims arising thereunder, and the City shall cooperate fully therein.

5.1.7 Separate Representation

If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall select other counsel without conflict of interest with the City. Grantee shall pay

expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The City's expenses shall include all out-of-pocket expenses, such as Granite Falls' fees, and shall also include the reasonable value of any services rendered by the City's attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

5.1.8 Prior Franchises

The grant of this Franchise shall have no effect on Grantee's duty under the prior franchises to indemnify or insure the City against acts and omissions occurring during the period that the prior franchises were in effect, nor shall it have any effect upon Grantee's liability to pay all Franchise Fees which were due and owed under prior franchises.

5.1.9 Waiver of Title 51 RCW Immunity

Grantee's indemnification obligations shall include indemnifying the City for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this indemnification for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Grantee's exercise of the rights set forth in this Franchise. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115; provided however, the forgoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees or other third party. The obligations of Grantee under this Section 5.1.9 have been mutually negotiated by the parties hereto

5.1.10 Concurrent Negligence

In the event that a particular activity conducted under this Franchise is subject to RCW 4.24.115, this Section 5.1.10 shall apply. Liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Grantee and the City, its officers, officials, employees, and volunteers, Grantee's liability shall be only to the extent of Grantee's negligence.

5.1.11 Inspection

Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction or maintenance projects shall not be grounds for avoidance of any of these covenants of indemnification.

5.2 Insurance Requirements

5.2.1 General Requirement each of the following policies of insurance:

- (1) Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than two million dollars (\$2,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, and one million dollars



(\$1,000,000) products/completed operations aggregate. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance to restrict coverage for liability arising from explosion, collapse or underground property damage to be more restrictive than the ISO CG 00 01 form. The Grantor shall be named by endorsement or blanket provision as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed for the Grantor using ISO Additional Insured endorsement CG 20 10 and Additional Insured-Completed Operations endorsement CG 20 37 or substitute endorsements providing equivalent coverage.

- (2) Commercial Automobile Liability Insurance with minimum combined single limits of at least two million dollars (\$2,000,000). Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
- (3) Umbrella or excess liability insurance in the amount of five million dollars (\$5,000,000) each occurrence and five million dollars (\$5,000,000) policy limit.
- (4) Workers' Compensation insurance shall be maintained during the life of this Franchise to comply with State law for all employees.
- (5) Employer's Liability with a limit of one million dollars (\$1,000,000) which shall include stop gap liability.

5.2.2 Each policy shall provide that the insurance shall not be canceled or terminated so as to be out of compliance with these requirements without forty-five (45) days' written notice first provided to the City via mail, and ten (10) days' notice for nonpayment of any premium. If the insurance is canceled or terminated so as to be out of compliance with the requirements of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required under the terms of this Section 5.2 for so long as Grantee utilizes the Rights-of-Way or upon renewal of this Franchise. This obligation is separate and apart from any construction related insurance obligation as required under a construction permit. Any failure of Grantee to comply with the claim reporting provisions of the policy(ies) or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City. However, if coverage is not afforded under these circumstances, Grantee will indemnify the City for losses the City otherwise would have been covered for as an additional insured. All insurance policies, except Workers Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its officers, officials, agents, and employees for any claims arising out of Grantee's work or service. Grantee solely shall be responsible for deductibles and/or self-insured

retention, and the City, at its option, may require Grantee to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable letter of credit.

**5.2.3 Endorsements**

All policies shall contain, or shall be endorsed so that:

- (1) the City, and the City's officers, officials, boards, commissions, agents, representatives, and employees are to be covered as, and have the rights of, additional insured's with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation, upgrade, maintenance, repair, replacement or ownership of the Cable System;
- (2) Grantee's insurance coverage shall be primary insurance with respect to the City, the City Council and the City's officers, officials, boards, commissions, agents, and employees. Any insurance or self-insurance maintained by the City, the City Council and the City's officers, officials, boards, commissions, agents, representatives, volunteers or employees shall be in excess of Grantee's insurance and shall not contribute to it, provided the occurrence arises out of Grantee's negligence; and
- (3) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

**5.2.4 Verification of Coverage**

Grantee shall furnish the City with certificates of insurance and an endorsement reflecting additional insured status upon the acceptance of this Franchise pursuant to Section 18.16. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City at the time of acceptance of this Franchise by Grantee with existing insurance coverage to be maintained by Grantee until that date. Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

**5.2.5 No Limitation of Liability**

Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**5.2.6 Subcontractors**

Grantee shall ensure that each subcontractor and sub-subcontractors of every tier obtain insurance reasonably appropriate to the scope of such party's work.

**5.2.7** Grantee's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit or otherwise alter the liability of the Grantee to the coverage provided by such insurance, or

otherwise limit the City's recourse to any remedy available at law or in equity.

### 5.3 Security

- 5.3.1 Grantee shall provide a performance bond ("Performance Bond") in the amount of thirty thousand dollars (\$30,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore the City Rights-of-Way and other property. The Performance Bond shall be in a standard industry form and shall be reviewed and approved by the City Attorney. Grantee shall pay all premiums or costs associated with maintaining the Performance Bond and any other construction or maintenance bonds required by the City and shall keep the same in full force and effect at all times. Except as expressly provided herein, Grantee shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence. The performance bond shall be with a surety with a rating no less than "A- VII" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.
- 5.3.2 If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then the City may request and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City in the amount twenty thousand dollars (\$20,000).
- 5.3.3 If a letter of credit is furnished pursuant to Section 5.3.2, the letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.
- 5.3.4 After the giving of notice by the City to Grantee and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:
- (1) Failure of Grantee to pay the City sums due under the terms of this Franchise;
  - (2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;
  - (3) Liquidated damages assessed against Grantee as provided in this Franchise.
- 5.3.5 The City shall give Grantee written notice of any withdrawal from the Performance Bond or letter of credit. Within thirty (30) days following notice that a withdrawal has occurred from the Performance Bond or letter of credit, Grantee shall restore the Performance Bond or letter of credit to the full amount required under this Franchise. Grantee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the

amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.

- 5.3.6 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 the City erroneously or wrongfully withdraws from the Performance Bond or letter of credit, as determined by either the City Council or judicial appeal, 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 as of the date of such decision.

## **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.

### **6.2 Subscriber Privacy**

Grantee shall comply with privacy rights of Subscribers in accordance with applicable law.

### **6.3 Customer Service Agreement and Manual**

- 6.3.1 Grantee shall provide to Subscribers an accurate, comprehensive service agreement (currently called the work order) and Customer installation packet (currently called the Install Package) for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

- (1) Grantee's procedure for investigation and resolution of Subscriber service complaints.
- (2) Services to be provided and rates for such services.
- (3) Billing procedures.
- (4) Service termination procedure.
- (5) A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.
- (6) A complete statement of the Subscriber's right to privacy.
- (7) Equipment policy.
- (8) The name, address and phone number of the Customer care department that is responsible for handling cable questions and complaints for Grantee.

- 6.3.2 A copy of the installation packet shall be available to each Subscriber at the time of initial installation and any reconnection or Cable Service

upgrade requiring a home visit by Grantee (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber. Within thirty (30) days following material policy changes, information regarding the changes will be provided to Subscribers.

## **SECTION 7. - REPORTS AND RECORDS**

### **7.1 Open Records**

#### **7.1.1 Books and Records**

The City shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and affiliated entities, necessary for the enforcement of the terms of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, affiliated entity or a third party. The City 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 copy of all reports and records required under this or any other Section shall be furnished to the City 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 the City 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 City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel and maintenance expenses incurred in making such examination shall be paid by Grantee. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by Grantee for a minimum period of six (6) years.

#### **7.1.2 File for Public Inspection**

Throughout the term of this Franchise, Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

### **7.2 Confidential / Proprietary Information**

Notwithstanding anything to the contrary set forth in this Section, Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. That said, Grantee does agree to provide all information reasonably required to verify compliance with the material terms of the Franchise. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. If the City

receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall promptly advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information so that Grantee can take appropriate steps to protect its interests within ten (10) days of receiving notification of the City's intended disclosure. Nothing in the Section 7.2 prohibits the City from complying with RCW 42.56, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Grantee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order requested by Grantee which prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order, Grantee shall reimburse the City for any fines or penalties imposed for failure to disclose such records.

### 7.3 Records Required

Grantee shall at all times maintain:

- (1) access to a full and complete set of plans, records and "route" maps showing the location of all Cable System equipment installed or in use in the Rights-of-Way, that are generated in Grantee's normal course of business;
- (2) a copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates that relate to the operation of the Cable System in the Franchise Area;
- (3) a list of Grantee's Cable Services, rates and Channel line-ups;
- (4) a compilation of Subscriber complaints, actions taken and resolution, and a log of service calls; and
- (5) financial records as referred to in SECTION 3. -

### 7.4 Copies of Federal and State Reports

Upon written request, Grantee shall submit to the City copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates 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 submit such documents to the City no later than thirty (30) days after receipt of the City's request. 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. With respect to all other reports, documents and notifications provided to any federal, State or local regulatory agency as a routine matter in the due course of operating Grantee's Cable System within the Franchise Area, Grantee shall make such documents available to the City upon the City's written request.

### 7.5 Complaint File

Grantee shall keep an accurate and comprehensive compilation of any and all Customer complaints received and Grantee's actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. Those

complaints, in a manner consistent with the privacy rights of Subscribers. Those files shall remain open to Grantor during normal business hours and shall be retained for a period of one year

#### 7.6 Annual Report

Grantee shall provide, upon request, an executive summary report to the City on an annual basis within ninety (90) days of the end of each year that shall include the following information:

- (1) Nature and type of Customer complaints;
- (2) Number, duration, general location and customer impact of unplanned service interruptions;
- (3) Any significant construction activities which affect the quality or otherwise enhance the service of the System;
- (4) Average response time for service calls;
- (5) New areas constructed and available for Cable Service;
- (6) Video programming changes (additions/deletions);
- (7) Phone activity report; and
- (8) A summary of the previous year's activities regarding the development of the Cable System, including, beginning and ending plant miles constructed, and any technological changes occurring in the Cable System.

#### 7.7 Inspection of Facilities and Annual Meeting

7.7.1 The City may inspect any of Grantee's facilities and equipment located in the Rights-of-Way or on other public property at any reasonable time during business hours upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee to make the necessary repairs and alterations specified therein to correct the unsafe condition by a time the City establishes. The City has the right to inspect, repair and correct the unsafe condition if Grantee fails to do so in accordance with the time prescribed by the City, and to charge Grantee therefor.

7.7.2 Throughout the term of the Franchise, Grantee shall meet with the City on an annual basis upon fifteen (15) days prior written notice from the City. Matters to be discussed include, but are not limited to customer service, Cable System performance, technical issues and other matters related to Grantee's operation of the Cable System.

#### 7.8 False Statements

Any intentional false or misleading statement or representation in any report required by this Franchise shall be a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, that are available to the City under this Franchise.

## **SECTION 8. - PROGRAMMING**

### **8.1 Broad Programming Categories**

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

- (1) Educational programming
- (2) News, government, weather and information
- (3) Sports
- (4) General entertainment including movies ---
- (5) Foreign language programming
- (6) Children's programming

### **8.2 Deletion of Broad Programming Categories**

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

8.2.2 In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee shall follow the guidelines of federal law.

### **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 applicable federal, State or local laws.

### **8.4 Services for the Disabled**

Grantee shall comply with the Americans With Disabilities Act and any amendments or successor legislation thereto.

### **8.5 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available at no charge 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 Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

### **8.6 Complimentary Cable Service**

The City acknowledges that the Grantee currently provides certain complimentary video services to schools, libraries and municipal buildings, and that the ongoing provision of those services has been impacted by the FCC's recent 621 Order (FCC 19-80). At such time as Grantee elects to offset the value of complimentary service against Franchise Fees payable to the City, the Grantee agrees that it will do so after providing City one hundred twenty (120) Days' prior written notice. Upon written notice from the Grantee, the City shall be given the full 120 days to review the list of outlets receiving complimentary service and shall have the right to discontinue receipt of all or a portion of the



outlets receiving complimentary service provided by Grantee in the event Grantee elects to offset the value of complimentary service as set forth in the preceding sentence.

#### 8.7 New Technology

- 8.7.1 If there is a new technology, Cable Service program offering, programming delivery method or other such new development that Grantee in its sole discretion decides to beta test or trial on a limited basis in the marketplace, and such a test or trial is suited to the size and demographics of the City, Grantee shall be allowed by the City to conduct the trial or beta test in the City so long as such a test is technically feasible.
- 8.7.2 If there is a new technology that in the City's opinion would enhance substantially the quality or quantity of programming available to Subscribers on the Cable System, Grantee shall, at the request of the City, investigate the feasibility of implementing said technology and report to the City the results of such investigation within ninety (90) days from the date of such request.

### **SECTION 9. - EDUCATIONAL AND GOVERNMENTAL ACCESS**

#### 9.1 Access Channels

- 9.1.1 As of the Effective Date of this Franchise, Grantee provides, as part of the Basic Service package, at no charge, one (1) Access Channel for Governmental or Educational Access Programming which is shared by the communities of Lake Stevens, Monroe, Snohomish, and Granite Falls and is made available to customers on Channel 21.
- 9.1.2 The City acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirements listed above. This is accomplished through the inclusion of other regional access programming within the regional channel line-up that is available within the Franchise Area.
- 9.1.3 Grantee shall carry regional Educational Access Channels in the City. In the event Grantee makes any change in the Cable System and related equipment and facilities or in signal delivery technology, which change directly or indirectly affects the signal quality or transmission of any Access Channel programming or services, Grantee shall, at its own expense, take necessary technical steps, acquire new equipment so that the Access facilities and equipment may be used as intended to ensure that delivery of Access Video Programming signals is not diminished or adversely affected, including, among other things, so that live and taped programming can be cablecast with as good or better signal quality than existed prior to such change. For example, these provisions shall apply if Basic Service on the Cable System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

- 9.1.4 The Grantee will use reasonable efforts to minimize the movement of the Access Channel assignment. The Grantee shall provide to the City a minimum of sixty (60) days' notice prior to any relocation of the Access Channel unless the movement is required by federal law, in which case Grantee will provide the maximum amount of notice possible.

## 9.2 Management and Control of Access Channels

- 9.2.1 The City 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 City 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 City from authorizing itself to be a Designated Access Provider.
- 9.2.2 Grantee shall cooperate with the City and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access Channels.
- 9.2.3 The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise. 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 Educational Access and Government Access.

## 9.3 Underutilized Access Channels

Grantee and the City agree that it is their mutual goal to fully and efficiently use the Channel capacity of the Cable System, which may include allowing Grantee to use underutilized Access Channels. If Grantee believes that any Access Channel is underutilized, Grantee may file a request with the City to use that Access Channel. The City shall in its sole and absolute discretion render a decision regarding the matter within sixty (60) days of receiving the request. Should the City find that the Access Channel may be used by Grantee, then Grantee may begin using such Channel ninety (90) days after receipt of the decision.

## 9.4 Access Channel Identification/Location/Relocation/Bill Insertions

- 9.4.1 As of the effective date of this franchise, the Grantee shall maintain all existing return line(s) to facilitate the City's current Access connectivity to Grantee's Headend and hubs. If the City desires to install a return line(s) to provide Access content, over the term of this Franchise, in coordination with the communities listed in Section 9.1.1, upon one hundred twenty (120) days' written request by the City and at the City's cost for Grantee's reasonable time and materials, the Grantee shall begin the process to construct the requested return line(s). Grantee, upon request, and when space is available, shall provide the City the opportunity to include one (1) bill insertion per year. The City or

Designated Access Providers shall be responsible for the costs of printing its bill insertions, the cost of inserting the information into Grantee's bills and for any incremental postage costs. Bill insertions must conform to Grantee's reasonable mailing requirements. Grantee shall be provided an opportunity to review and approve all Access bill insertions.

9.5 Technical Quality

Grantee shall maintain all Access channels as required by FCC standards.

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

10.1 Construction

- 10.1.1 Grantee shall perform all maintenance, construction, repair, upgrade and reconstruction necessary for the operation of its Cable System in accordance with applicable laws, regulations, ordinances, City standards, and provisions of this Franchise. Prior to doing such work (with the exception of installations or general maintenance that involves no physical impact and with no disruption to the use of the Right-of-Way), Grantee shall apply for, and obtain, appropriate permits from the City, and give appropriate notices to the City, and Grantee shall pay all applicable fees upon issuance of the requisite permits by the City to Grantee. As a condition of any permits so issued, the City officials 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, protection of the public and the continuity of pedestrian or vehicular traffic. To the extent practicable and economically feasible, Grantee's construction and location of its facilities shall be of minimal impact to the City streets and sidewalks located within the Rights-of-Way. All construction and maintenance of any and all of Grantee's facilities within the Rights-of-Way shall, regardless of who performs the construction, be and remain Grantee's responsibility.
- 10.1.2 Prior to beginning any construction, excavations, or significant repair, Grantee shall provide the City with a construction schedule for work in the Rights-of-Ways as required by the City's permitting regulations. Further, Grantee shall meet with the City and other franchise and master permit holders and users of the Rights-of-Way upon written notice as determined by the City, to discuss options regarding scheduling and coordinating construction in the Rights-of-Way.
- 10.1.3 Grantee may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, permittees and franchisees so as to reduce so far as possible the number of Rights-of-Way cuts within the Franchise Area.
- 10.1.4 In the event that emergency repairs are necessary, Grantee will make best efforts to contact the City's Public Works Department prior to the

repair, however Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.2 Location of Facilities

Prior to doing any digging or excavation in the Rights-of-Way, Grantee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to RCW 19.122. Within three (3) business days, unless otherwise specified in federal, State or local regulations, after the City or any franchisee or permittee of the City notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense, mark on the surface all of its located underground facilities within the area of the proposed excavation.

10.3 Restoration of Rights-of-Way

10.3.1 When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way, Grantee shall promptly refill the opening and restore the surface as required by its permit to a condition as good or better than before the opening. The Grantee shall protect public and private property within the Rights-of-Way from damage.

10.3.2 If Grantee excavates the surface of any Rights-of-Way, Grantee shall be responsible for restoration in accordance with applicable regulations regarding the Rights-of-Way and its surface within the area affected by the excavation. The City may, after providing notice to Grantee, and Grantee's failure to respond within the agreed upon time, refill or repave any opening made by Grantee in the Rights-of-Way, and the expense thereof shall be paid by Grantee. In the event Grantee does not repair a Right-of-Way or an improvement in or to a Right-of-Way in a prompt timeframe or as agreed to with the City Engineer or any other department director as the City may designate, the City may repair the damage and shall be reimbursed its actual cost within thirty (30) days of submitting an invoice to Grantee. The cost of all repairs and restoration, including the costs of inspection and supervision shall be paid by Grantee. All of Grantee's work under this Franchise, and this Section in particular, shall be done in compliance with all laws, regulations and ordinances of the City and State. All work by Grantee pursuant to this Section shall be performed in accordance with applicable City standards.

10.3.3 The City Manager or any other department director as the City may designate shall have final approval of the condition of such streets and public places after restoration.

10.4 Maintenance and Workmanship

10.4.1 Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, stormwater, water pipes or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way by, or under, the City's authority.

10.4.2 Grantee shall provide and use any equipment and appliances necessary to control and carry Grantee's signals so as to prevent injury to the City'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 safe condition.

10.4.3 Grantee's transmission and distribution Cable System, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to unnecessarily hinder or obstruct the free use of Rights-of-Way, or other public property.

10.4.4 Grantee shall give reasonable notice, of at least seven (7) business days, to private property owners of underground construction work in adjacent Rights-of-Way.

10.5 Acquisition of Facilities

Upon Grantee's acquisition of facilities in any Rights-of-Way to the City of any area in which Grantee owns or operates any facility, such facilities shall immediately be subject to the terms of this Franchise. Further, at the City's request, Grantee shall submit to the City a statement describing all facilities involved, 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.

10.6 Reservation of Rights-of-Way

Nothing in this Franchise shall prevent the City from constructing any public work or improvement. The City may require Franchisee to relocate the Cable System within the right-of-way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of public welfare, health, or safety. Nothing contained within this Franchise shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted pursuant to RCW 35.99.060. In the case of a joint relocation project, Grantee shall be responsible for the cost of relocating its facilities. All such removal or relocation shall be preceded by sixty (60) days written notice or such additional time as may be provided by the City. Should Grantee fail to remove, adjust or relocate its facilities by the date established by the City's written notice to Grantee, the City may affect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee.

10.6.1 Movement of Cable System For and By the City

The City may remove or disconnect Grantee's facilities and equipment located in the Right-of-Way or on any other property of the City in the case of fire, disaster or other emergency. Except during an emergency, the City shall provide reasonable notice to Grantee prior to taking such action and shall provide Grantee with the opportunity to perform such action. Following notice by the City, Grantee shall remove, replace, relocate, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City, except that the City shall provide at least sixty (60) days' written notice of any major capital improvement project that would require the removal, relocation, replacement, modification or disconnection of Grantee's facilities or equipment. If Grantee fails to complete this work within the time

prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to Grantee. Grantee shall remit payment to the City within thirty (30) days of receipt of an itemized list of those costs.

**10.6.2 Movement 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 cost of such temporary change must be paid by the permit holder, and Grantee may require the estimated payment in advance.

**10.7 Rights-of-Way Vacation**

If any Rights-of-Way or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City specifically reserves to Grantee the right to continue the use of vacated Rights-of-Way, Grantee shall, without delay or expense to the City, remove its facilities from such Rights-of-Way, and restore, repair or reconstruct the Rights-of-Way where such removal has occurred. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City, to restore, repair or reconstruct such Rights-of-Way, the City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the City, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation.

**10.8 Removal of Discontinued Facilities**

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit to the City 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 the City allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Rights-of-Way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. The City 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 the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the City accepts abandonment or 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 the facility, as well as maintenance of the Rights-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, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access Channel purposes.

**10.9 Hazardous Substances**

**10.9.1** Grantee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Rights-of-Way.

10.9.2 Upon reasonable notice to Grantee, the City 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.

#### 10.10 Undergrounding of Cable

##### 10.10.1 Wiring

- (1) Where electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the City. Related Cable System equipment, such as pedestals, must be placed in accordance with applicable City Code requirements and rules. In areas where electric or telephone utility wiring are aerial, 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.
- (2) Grantee shall utilize existing poles and conduit wherever possible.
- (3) This Franchise does not grant, give or convey to Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person.
- (4) Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by Grantee. Therefore, if Grantee constructs, relocates or places ducts or conduits in the Rights-of-Way it shall submit these plans to the City in accordance with the City's permitting process so as to provide the City with an opportunity to request that Grantee place additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070. Other than submission of plans in accordance with the City's permitting requirements, nothing set forth herein shall obligate Grantee to slow the progress of any future construction of the Cable System to accommodate the City. In addition, Grantee agrees to cooperate with the City in any other construction by Grantee that involves trenching or boring. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in Grantee's trenches and bores under this paragraph.
- (5) The City shall not be required to obtain easements for Grantee.
- (6) Grantee may participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all utilities are being converted to underground facilities. If funds from a Utility Local Improvement District are provided to aerial providers to offset the

cost of undergrounding, excluding any entity operating under a tariff, Grantee's costs shall be proportionality paid for out of such funds.

**10.10.2 Repair and Restoration of Property**

If public property is disturbed or damaged by Grantee arising out of or in connection with the provision of Cable Service, Grantee shall restore the property to its former condition. Rights-of-Way or other City property shall be restored in a manner and within a timeframe approved by the City Manager, or his/her designee. If restoration of Rights-of-Way or other property of the City is not satisfactorily performed within a reasonable time, the City Manager, or his/her designee, may, after prior notice to Grantee, or without notice where the disturbance or damage may create a risk to public health, safety or welfare, or cause delay or added expense to a public project or activity, cause the repairs to be made at Grantee's expense and recover the cost of those repairs from Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Grantee shall issue payment to the City.

**10.11 Codes**

Grantee shall strictly adhere to City codes that do not directly conflict with the specific provisions of this Franchise. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference or if such construction does not comply with City codes or the permit, the City may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question at Grantee's sole expense.

**10.12 Construction and Use of Poles**

Grantee shall use existing poles when the installation of facilities above-ground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities and only in such event, then it may request permission from the City to install new poles and associated improvements. Only upon issuance of permits from the City shall it be lawful for Grantee to make excavations in the streets for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper authorities of Grantor, and each pole shall be set whenever practicable at an extension lot line. Grantor shall have the right to require Grantee to change the location of any pole, conduit, structure or other facility within Rights-of-Way when, in the opinion of Grantor, the public convenience requires such change, and the expense thereof shall be paid by Grantee.

**10.13 Tree Trimming**

Upon obtaining a written permit from the City, 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. Grantee shall be responsible for any damage caused by such trimming and shall make every attempt to trim such trees and shrubbery in a fashion that maintains their aesthetic appeal and the health of the tree. Grantee may not remove any trees without the express consent from the City.

#### 10.14 Standards

- 10.14.1 All work authorized and required hereunder shall be done in a safe, thorough and workman-like manner. Grantee must comply with all federal, State and local safety requirements, rules, regulations, standards, 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 must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.
- 10.14.2 All installations of equipment shall be permanent in nature, 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.
- 10.14.3 Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of bundles of unused cables.
- 10.14.4 Grantee shall ensure that all cable drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by Grantee as necessary.
- 10.14.5 In the maintenance and operation of its System in Rights-of-Way, alleys and other public places, and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the Rights-of-Way or other public places made by the Grantee in the course of its operations shall be guarded and protected at all times 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.

#### 10.15 Stop Work

On notice from the City that any work is being conducted contrary to the provisions of this Franchise, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the City. 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 mail 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 comply immediately with any stop work order issued by the City.

10.16 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be bonded in accordance with local ordinances, regulations and requirements. Work by contractors and subcontractors shall be 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, 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 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 laws governing the work performed by them. When pulling permits, a subcontractor must clearly state their connection to Grantee.

10.17 GIS Mapping

Grantee shall provide the City with records of Grantee's overhead and underground trunk and distribution facilities within the Franchise Area in a standard geographic information system (GIS) format. All updates of the GIS shall be submitted to the City Manager within thirty (30) days upon annual request. Nothing in this section requires the Grantee to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers.

10.18 Pole Transfers

If Grantee leases a pole from a third party and such third party later abandons the pole, for example by building a replacement pole, Grantee shall remove or relocate its facilities within the Rights-of-Way within sixty (60) days of such notification from the third party pole owner, provided that such other structure or place has been made available to the Grantee with sufficient time to allow for the relocation, and provided further that if Grantee needs additional time, that Grantee notify the City of the anticipated schedule.

10.19 Strand Mounted WiFi Facilities

10.19.1 Subject to the provisions of this Franchise and applicable safety and electrical codes, Grantee is allowed to place strand mounted wireless facilities on its own cables strung between existing utility poles.

10.19.2 Grantee shall comply with the following requirements:

- (1) each strand mounted WiFi facility must be less than two and half (2.5) cubic feet in volume;
- (2) only one strand mounted WiFi facility is permitted per cable strung between two poles;
- (3) the WiFi strand mounted facilities shall be placed as close to the pole as technically feasible and may not be placed more than six (6) feet from the pole or in that portion of the Right-of-Way used for vehicular travel;

- (4) Grantee may not place an ancillary pole or ground mounted equipment to accommodate such strand mounted WiFi facilities, unless in the case of ground mounted equipment placed in pre-existing equipment cabinets;
  - (5) the strand mounted WiFi facilities must comply with any applicable FCC requirements related to RF emissions and interference. Upon request, Grantee shall validate that such device meets FCC standards by producing documentation certified by an RF engineer; and
  - (6) such strand mounted WiFi facilities must be removed if they cause a threat to public health or safety.
- 10.19.3 The deployment of these strand mounted WiFi facilities shall not be considered small cell facilities. To the extent Grantee performs work in the Rights-of-Way associated with the installation, maintenance, construction, repair or upgrade of these strand mounted WiFi facilities, Grantee is required to obtain the appropriate permits consistent with SECTION 10. - . Further, such strand mounted facilities must be operated as part of the Cable System.

## **SECTION 11. - CABLE SYSTEM DESIGN**

### **11.1 Cable System Specifications**

Prior to the effective date of this Franchise, Grantee undertook a voluntary upgrade of its Cable System to a fiber-to-the-node Cable System architecture, with fiber-optic cable deployed from the Headend to the nodes and tying into a coaxial Cable System already serving Subscribers. Active and passive devices currently are passing a minimum of 750 MHz, and the Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of a particular manner in which the signal is transmitted. Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise.

### **11.2 Closed Captioning**

Equipment must be installed so that all closed-captioned 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.

### **11.3 No Income Discrimination**

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.

### **11.4 Enforceability of Design and Performance Requirements**

Grantee acknowledges that the minimum Cable System design and performance requirements set forth in this Franchise are enforceable, to the extent allowed by law.

11.5 System Review

The City may hold a hearing to review whether or not the Cable System and the Cable Services offered by Grantee are meeting demonstrated community needs and interests, taking into account the cost of meeting those needs and interests. The parties recognize that, as of the Effective Date, the City is not permitted to require the provision of specific Video Programming pursuant to this subsection.

11.6 Equal and Uniform Service

The Grantee shall provide access to equal and uniform Cable Service offerings throughout the Franchise Area along public rights-of-way, provided that nothing shall prohibit the Grantee from activating additional Cable Services to Subscribers on a node by node basis during an upgrade of its Cable System.

## **SECTION 12. - TECHNICAL STANDARDS**

12.1 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable technical standards authorized or required by law, including, FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

12.2 Cable System Performance Testing

Grantee shall, at its expense, perform all tests on its Cable System required by the FCC (including FCC required test points located within the City) and shall maintain written records of its test results. Upon request, all FCC required technical performance tests may be witnessed by representatives of the City. Copies of such test results will be provided to the City upon request. All required technical performance or other Cable System tests shall be at the expense of Grantee and may be witnessed by representatives of the City. Upon request, Grantee will notify the City before any required technical proof-of-performance or other testing occurs. Grantee shall promptly take such measures as are necessary and diligently continue the same until completion in order to correct any performance deficiencies fully and to prevent their recurrence. Grantee's failure to correct deficiencies identified through this testing process shall be a violation of this Franchise. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

## **SECTION 13. - SERVICE EXTENSION**

13.1 Service Availability

13.1.1 In general, except as otherwise provided herein, Grantee shall provide a standard aerial installation of Cable Service within seven (7) days of a request by any Person within the Franchise Area. For standard

underground installations scheduling shall be done within seven (7) days of a request for service. 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. Grantee shall provide such service:

- (1) with no line extension charge except as specifically authorized elsewhere in this Franchise;
- (2) at a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot aerial drop or sixty (60) foot underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations; and
- (3) at non-discriminatory monthly rates for all Subscribers, excepting commercial Subscribers, MDU Bulk Subscribers and other lawful exceptions to uniform pricing.

13.1.2 No Customer shall be refused service arbitrarily. However, for non-Standard Installations of service to Subscribers, or a density of less than thirty (30) residences per 5280 aerial cable-bearing strand feet of trunk or distribution cable, or sixty (60) residences per 5280 underground trench feet of trunk or distribution cable, Cable Service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. Grantee may require that the payment of the capital contribution in aid of construction be borne by such potential Subscribers be paid in advance. 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 shall 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 cable-bearing mile of its trunk or distribution cable and whose denominator equals thirty (30) for an aerial extension or sixty (60) for an underground extension. 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.

13.1.3 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.

## **SECTION 14. - STANDBY POWER AND EAS**

### **14.1 Standby Power**

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power supplies that will supply back-up power of

at least two (2) hours duration throughout the distribution networks, and four (4) hours duration at all nodes and hubs. 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 two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request therefore.

#### 14.2 Emergency Alert Capability

14.2.1 In accordance with, and at the time required by, the provisions of FCC Regulations or other federal or state requirements, as such provisions may from time to time be amended, Emergency Alert System ("EAS") implementation will be accomplished in compliance with the Washington State EAS Plan and to be in compliance with or further Homeland Security requirements or applications

14.2.2 Grantee shall ensure that the EAS is functioning properly at all times in accordance with FCC regulations.

### **SECTION 15. - FRANCHISE BREACHES; TERMINATION OF FRANCHISE**

#### 15.1 Procedure for Remedying Franchise Violations

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

- (1) respond to the City in writing, contesting the City's assertion that a default has occurred, and requesting a hearing in accordance with subsection 15.1.2, below;
- (2) cure the default; or
- (3) notify the City in writing 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 the City in writing and in detail as to the exact steps that will be taken and the projected completion date. Upon five (5) business days' prior written notice, either the City or Grantee may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, the City may set a hearing, in front of the hearing examiner, in accordance with subsection 15.1.2 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.

- 15.1.2 If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection 15.1.1(3), or denies the default and requests a hearing in accordance with subsection 15.1.1(1), or the City orders a hearing in accordance with subsection 15.1.1(3), the City shall set a public hearing, in front of the hearing examiner, to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the hearing in writing and such hearing shall take place no less than seven (7) days after Grantee's receipt of notice of the hearing. At the hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense. At any such hearing, the City or the hearing examiner shall not unreasonably limit Grantee's opportunity to make a record that may be reviewed should any final decision of the City be appealed to a court of competent jurisdiction. The determination as to whether a default or a material breach of this Franchise has occurred shall be within the City's sole discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction.
- 15.1.3 If, after the public hearing in front of the hearing examiner, the hearing examiner determines that a default still exists, the hearing examiner shall order Grantee to correct or remedy the default or breach within fourteen (14) days of the hearing examiner's notification or within such other reasonable timeframe as the hearing examiner shall determine. In the event Grantee does not cure within such time as per the direction of the hearing examiner, the hearing examiner may:
- (1) Assess and collect monetary damages in accordance with this Franchise; and
  - (2) Recommend to the City Council termination of this Franchise; or
  - (3) Recommend to the City Council to pursue any other legal or equitable remedy available under this Franchise or applicable law.
- 15.1.4 The determination as to whether a violation of this Franchise has occurred pursuant to this Section herein shall be within the sole discretion of the hearing examiner. Any such determination by the hearing examiner shall be accompanied by a record, to which Grantee's contribution shall not be limited by the City or the hearing examiner (i.e., the hearing examiner shall hear any interested Persons and shall allow Grantee an opportunity to be heard, to cross examine witnesses, to present evidence and to make additions to the hearing record). Any such final determination made by either the hearing examiner pursuant to 15.1.3(1) or the City Council pursuant to 15.1.3(2) or 15.1.3(3) shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be taken within thirty (30) days of the issuance of the final determination. The City shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.
- 15.1.5 The intent of the Parties is to require compliance with this Section before either Party may commence legal action in a court of proper jurisdiction.

## 15.2 Alternative Remedies

- 15.2.1 No provision of this Franchise shall be deemed to bar the right of either party 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 either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.
- 15.2.2 The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the City, its officers, officials, Boards, commissions, agents, or employees under federal, State, or local law including by example Section 635A of the Cable Act. Grantee shall not have any monetary recourse against the City, or its officers, officials, Board, commissions, authorized agents or employees for any loss, costs, expenses or damages arising out of any provision, requirement of this Franchise or the enforcement thereof.

15.3 Assessment of Liquidated Damages and Letter of Credit

Subject to Section 5.3:

- 15.3.1 The Performance Bond or letter of credit shall provide that funds will be paid to the City; and in an amount for liquidated damages charged pursuant to this Section, in payment for any monies owed by Grantee to the City as a result of any material acts or material omissions by Grantee pursuant to this Franchise or a pattern of repeated violations of any provisions of this Franchise.
- 15.3.2 In addition to the recovery of any monies owed by Grantee to the City or damages to the City as a result of any material acts or material omissions by Grantee pursuant to the Franchise; the City in its sole discretion may, after notice and opportunity to cure as provided in Section 15.1, charge to and collect from the Performance Bond or letter of credit the following liquidated damages:
- (1) For failure to provide data, documents, reports or information or to cooperate with the City during an application process or Cable System review or as otherwise provided herein, the liquidated damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.
  - (2) For a material breach of the customer service standards, the liquidated damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.
  - (3) For failure to comply with any of the material provisions of this Franchise or customer service standards, or other City ordinance for which liquidated damages is not otherwise specifically provided pursuant to this paragraph (C), the liquidated damages shall be up to \$350.00 per day for each day, or part thereof, such failure occurs or continues.



- 15.3.3 Each violation of any material provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of ninety (90) days in any given year.
- 15.3.4 If any subsequent letter of credit delivered pursuant thereto expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in Section 15.3.1.
- 15.3.5 The City and Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, the City and Grantee agree that Grantee shall pay to the City the sums set forth above for each day that Grantee shall be in breach of the specific provisions of this Franchise. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the City would suffer in the event of Grantee's breach of such provisions of this Franchise.
- 15.3.6 Collection of Liquidated Damages
- (1) The Performance Bond and letter of credit referred to in Section 5.3 may be drawn upon by the City for breach of a material provision after notice and opportunity to cure.
  - (2) The City shall give Grantee written notice of any intent to withdraw under this subsection. Within seven (7) days following receipt of such notice, Grantee shall restore the Performance Bond and letter of credit to the amount required under this Franchise. Grantee's maintenance of the Performance Bond or letter of credit shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the Performance Bond or letter of credit or otherwise to limit the City's recourse to any other remedy available at law or in equity.
  - (3) The assessment of liquidated damages does not constitute a waiver by the City 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 the City by reason of the breach of this Franchise or to seek specific performance.
  - (4) Grantee's maintenance of the security required herein or by applicable code shall not be construed to excuse unfaithful performance by Grantee of this Franchise; to limit liability of Grantee to the amount of the security; or to otherwise limit the City's recourse to any other remedy available at law or equity.

#### 15.4 Revocation

15.4.1 This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured pursuant to Section 15.1, or in the event that:

- (1) Grantee attempts to evade or fails to perform any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;
- (2) Grantee makes a material misrepresentation of fact in the negotiation of this Franchise;
- (3) Grantee abandons the Cable System, or terminates the Cable System's operations;
- (4) Grantee fails to restore service to the Cable System after three (3) 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 City, it being the intent that there shall be continuous operation of the Cable System; or
- (5) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Grantee's creditors, or all or part of Grantee's Cable System is sold under an instrument to secure a debt and is not redeemed by Grantee within thirty (30) days from said sale.

15.4.2 Additionally, 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 (at the option of the City and subject to applicable law) whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless directed otherwise by a court of competent jurisdiction.

15.4.3 If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City 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) the City 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 the City to assume and be bound by all of the terms and provisions of this Franchise.

#### 15.5 Abandonment; Purchase of the Cable System

15.5.1 If Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with any duty to provide continuous service to Subscribers or Persons as required herein, the City, at its option, may operate the System or; designate another entity to operate the System temporarily until Grantee restores service under

conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City. Grantee shall reimburse the City for all reasonable costs, expenses and damages incurred, including reasonable attorney fees, court expenses and attributed expenses for work conducted by City's staff or authorized agents.

15.5.2 If at any time this Franchise lawfully terminates, the City shall have the option to purchase the Cable System.

## **SECTION 16. - FRANCHISE TRANSFER**

### **16.1 Transfer of Ownership or Control**

16.1.1 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, consolidation or change of control; 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 the City, which consent shall be by the City Council, acting by ordinance or resolution.

16.1.2 Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of 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 Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

16.1.3 The parties to the sale, change in control or transfer shall make a written request to the City for its approval of a sale or transfer or change in control and shall furnish all information required by applicable law.

16.1.4 In seeking the City's consent to any change in ownership or control, the proposed transferee or controlling entity 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;
- (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 or controlling entity, along with any other data that is lawfully required; 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.

- 16.1.5 The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of receipt of the FCC Form 394 application, provided it has received a complete application. Subject to the foregoing, if the City 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 the City agree to an extension of time.
- 16.1.6 Within thirty (30) days of any transfer or sale or change in control, if approved or deemed granted by the City, Grantee shall file with the City 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 or controlling entity, and the transferee or controlling entity 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 Grantee is not replaced by another entity, 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. The approval of any change in control shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise. For purposes herein to the extent that a change of control involves an entity that was not an Affiliate prior to the contemplated transaction, the City's consent shall be required for such change in control.
- 16.1.7 In reviewing a request for sale or transfer or change in control, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer or change in control upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.
- 16.1.8 Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment, change in control or transfer of the Franchise or Cable System to an Affiliate of Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise including resolution of any non-compliance issues. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; 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 17. - PROHIBITED PRACTICES AND NOTICES**

### **17.1 Preferential or Discriminatory Practices Prohibited**

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, ethnic or national origin, religion, age, sex, sexual orientation, or physical or mental disability. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment and non-discrimination provisions and requirements of federal, State and local laws, and rules and regulations relating thereto.

### **17.2 Notices**

Throughout the term of this 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 to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

Grantee's address shall be:

Government Affairs  
Comcast Cable Communications, LLC  
15815 25<sup>th</sup> Ave W  
Lynnwood, Washington 98087

With a Copy To:

Government Affairs  
Comcast Cable Communications, LLC  
400 Sequoia Dr, STE 100  
Bellingham, WA 98226

the City's address shall be:

City Clerk  
City of Granite Falls  
PO Box 1440  
Granite Falls, WA 98252

## **SECTION 18. - MISCELLANEOUS PROVISIONS**

### **18.1 Cumulative Rights**

Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the

exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

18.2 Costs to be Borne by Grantee

Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to any public meeting or hearing provided for pursuant to this Franchise.

18.3 Binding Effect

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

18.4 Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

18.5 Venue

The venue for any dispute related to this Franchise shall be United States District Court for the Western District of Washington or in Snohomish County Superior Court.

18.6 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington (as amended), the Cable Act as amended, any applicable rules, regulations and orders of the FCC, as amended, and any other applicable local, State and federal laws, rules, and regulations, as amended. Except as provided in Section 2.3.2 or otherwise in this Franchise, Ordinance No. 949-2018 is hereby repealed and of no further force or effect. To the extent there is a conflict between this Franchise and any the City Ordinance or Resolution, the terms and provisions of this Franchise shall control.

18.7 Captions

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

18.8 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 that would indicate any such relationship with the other.

18.9 Waiver

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party 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.

18.10 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.

18.11 Compliance with Federal, State and Local Laws

Grantee shall comply with applicable federal, state and local laws, rules and regulations, now existing or hereafter adopted.

18.12 Force Majeure

Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Grantee to anticipate and control, including war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages, slowdowns, availability of materials, labor or equipment, power outages exceeding back-up power supplies or work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached.

18.13 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 and written negotiations between the parties.

18.14 Attorneys' Fees

If any action or suit arises in connection with this Franchise, attorneys' fees, costs and expenses in connection therewith shall be paid in accordance with the determination by the court.

18.15 Action of the City or Grantee

In any action by the City or Grantee mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

18.16 Acceptance

Within sixty (60) days of receipt of an executed Franchise from the City, this Franchise shall be accepted by Grantee by filing with the City Clerk an unconditional, written acceptance of all of the terms, provisions and conditions of this Franchise, in a form substantially similar to Exhibit A attached hereto. In addition to the written acceptance, Grantee shall furnish the additional insured endorsements and certificates of insurance required pursuant to Section 5.2 and the Performance Bond pursuant to Section 5.3. The failure of Grantee to file

such an acceptance shall be deemed a rejection by Grantee and this Franchise shall then be voidable at the discretion of the City.

18.17 Construction of Franchise

The provisions of this Franchise shall be liberally construed to promote the public interest.

**SECTION 19. - EFFECTIVE DATE**

This Franchise, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after the passage and publication of an approved summary thereof consisting of the title.



APPROVED by the Granite Falls City Council this 18<sup>th</sup> day of November, 2020.

THE CITY OF GRANITE FALLS

  
\_\_\_\_\_  
MATTHEW HARTMAN, MAYOR

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
DARLA REESE, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
THOMAS H. GRAAFSTRA, CITY ATTORNEY

FILED WITH THE CITY CLERK: November 4, 2020  
PASSED BY THE CITY COUNCIL: November 18, 2020  
PUBLISHED: November 21, 2020  
EFFECTIVE DATE: November 26, 2020  
ORDINANCE NO. 998-2020

EXHIBIT A

THE CITY COUNCIL  
THE CITY OF GRANITE FALLS, WASHINGTON

In the matter of the application of Comcast :  
Cable Communications, LLC for a franchise : Franchise Ordinance No. 998-2020  
to construct, operate and maintain facilities :  
in, upon, over, under, along, across, and :  
through the franchise area of the City of :  
Granite Falls, Washington : ACCEPTANCE

WHEREAS, the City Council of the City of Granite Falls, Washington, has granted a franchise to Comcast Cable Communications, LLC, its successors and assigns, by enacting Ordinance No. 998-2020, bearing the date of November 18, 2020; and

WHEREAS, a copy of said Ordinance granting said franchise was received by Comcast Cable Communications, LLC on \_\_\_\_\_, 2020, from said City of Granite Falls, Snohomish County, Washington.

NOW, THEREFORE, Comcast Cable Communications, LLC for itself, its successors and assigns, hereby accepts said Ordinance and the franchise contained therein and all the terms and conditions thereof, and files this, its written acceptance, with the City of Granite Falls, Snohomish County, Washington.

IN TESTIMONY WHEREOF said Comcast Cable Communications, LLC has caused this written Acceptance to be executed in its name by its undersigned \_\_\_\_\_ thereunto duly authorized on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST: COMCAST CABLE COMMUNICATIONS, LLC

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

Its: \_\_\_\_\_