

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: November 24, 2014

AGENDA ITEM: Cable Franchise Agreement- Five year extension with Comcast Cable Holdings, LLC.	AGENDA SECTION: New Business
PREPARED BY: Gloria Hirashima, Chief Administrative Officer DEPARTMENT: Executive	AGENDA NUMBER:
ATTACHMENTS: 1. Comcast Cable Holdings 5 year extension 2. Comcast Franchise Agreement	APPROVED BY:
	MAYOR CAO
BUDGET CODE:	AMOUNT:

Summary:

The City has a non-exclusive television cable franchise agreement that will expire this month. The City has negotiated a five year extension of the current Comcast agreement. City staff worked with Bob Duchon of River Oaks Communications Corp. to negotiate the extension. Originally, both Comcast and the City had been working towards a new 10 year agreement. Comcast offered a 5 year extension of the current agreement under existing terms. The City believes this is a preferable outcome at this time.

RECOMMENDED ACTION: Approve cable franchise 5 year extension with Comcast Cable Holdings, LLC.
COUNCIL ACTION:

AMENDMENT OF CABLE TELEVISION FRANCHISE

THIS AMENDMENT OF CABLE TELEVISION FRANCHISE is entered into by and between the City of Marysville, Washington (hereinafter called “Franchise Authority” or “City”) and Comcast Cable Holdings, LLC (formerly known as Comcast of California/Colorado/Texas/Washington, Inc.) and Comcast Cable Communications Management, LLC (formerly known as Comcast of Washington, IV, Inc.), hereinafter referred to collectively as “Comcast,” as of the 24th day of November, 2014.

WITNESSETH:

WHEREAS, Comcast holds a Cable Television Franchise dated September 22, 2003 (“Franchise”) to own and operate a cable system within the City, and

WHEREAS, Franchise Authority and Comcast each desire to enter into an amendment extending the term of the Franchise as set forth herein.

NOW, THEREFORE, Franchise Authority and Comcast agree as follows:

1. The term of the Franchise is hereby extended for five years commencing November 24, 2014 and running until November 23, 2019 subject to all of the other terms and conditions contained in the Franchise which shall remain in full force and effect, and
2. The extension shall be without prejudice to the rights of either party under the Cable Communications Policy Act of 1984 as amended.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment of Cable Television Franchise to be executed for the uses and purposes therein expressed on the day and year first written above.

Comcast Cable Holdings, LLC

City of Marysville, Washington

By: _____
Title _____

By: _____
Title Mayor _____

Comcast Cable Communications Management, LLC

By: _____
Title _____

cc: Doug Buell
Comcast
Mun Res
Code Pub

CITY OF MARYSVILLE *orig. file*
Marysville, Washington

ORDINANCE NO. 2492

AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON APPROVING A CABLE TELEVISION FRANCHISE BETWEEN THE CITY OF MARYSVILLE, WASHINGTON "CITY" AND COMCAST OF CALIFORNIA/COLORADO/TEXAS/WASHINGTON, INC., AND COMCAST OF WASHINGTON IV, INC.; (COLLECTIVELY "COMCAST").

THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. The Cable Television Franchise attached hereto and incorporated by this reference is hereby approved by the Marysville City Council subject to the acceptance by Comcast by timely filing with the City Clerk an unconditional, written acceptance of all of the terms and conditions of said Franchise. Failure of Comcast to timely file such an acceptance pursuant to the terms of the attached Cable Television Franchise shall be deemed a rejection of said franchise.

PASSED by the City Council and APPROVED by the Mayor this 13th day of October, 2003.

CITY OF MARYSVILLE

By David Weiser
DAVID A. WEISER, Mayor

ATTEST:

By Gerry Becker
GERRY BECKER, City Clerk

ORDINANCE - 1

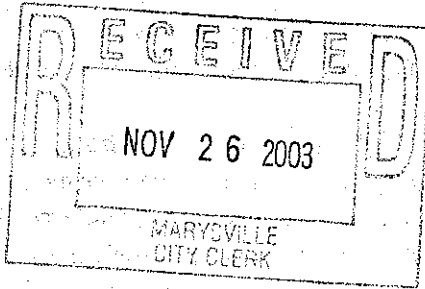
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Approved as to form:

By Grant K. Weed
GRANT K. WEED, City Attorney

Date of Publication: 10-22-03

Effective Date (5 days after publication): 10-27-03



THE CITY OF MARYSVILLE, WASHINGTON

CABLE TELEVISION FRANCHISE

CABLE TELEVISION FRANCHISE

This Cable Television Franchise ("Franchise") is entered into in Marysville, Washington, this 22nd day of September, 2003, by and between the City of Marysville, Washington a municipal corporation, (hereinafter "City") and Comcast of California/Colorado/Texas/Washington, Inc. (formerly known as Tele-Vue Systems, Inc.) and Comcast of Washington, IV, Inc. (formerly known as TCI Cablevision of Washington, Inc.), collectively known as Comcast, and hereinafter "Grantee". City and Grantee are sometimes referred to hereinafter collectively as the "parties."

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

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's proposal to provide cable television service within the City; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of state-of-the-art cable communications service, the high technical capability and reliability of cable systems in the Franchise Area, the availability of local programming (including educational and governmental access programming) and quality customer service; and

WHEREAS, diversity in cable service and local and non-local programming is an important policy goal and the Grantee's Cable System should offer a broad range of programming services; and

WHEREAS, flexibility to respond to changes in technology and subscriber interests within the cable service market should be an essential characteristic of this Franchise and the Grantee will take advantage of new technology to benefit subscribers and citizens as such technology becomes available; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain a cable system or systems within the boundaries of the City.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Franchise and the Exhibit attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein. 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 shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" means the availability for noncommercial use by various governmental and educational agencies, institutions, organizations, and other groups and individuals in the community, including the City and its designees, of particular channels on the Cable System to receive and distribute programming to Subscribers, as permitted under applicable law.

(A) "Educational Access" means Access where Schools are the primary users having editorial control over programming and services.

(B) "Government Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

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

1.3 "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 system equipment other than Subscriber premise equipment, whether hardware or software.

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

1.5 "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.

1.6 "Basic Service" means the Cable Service tier which includes, at a minimum, the retransmission of local television broadcast signals and Access programming.

1.7 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by an antenna, microwave, satellite dishes or any other means.

1.8 "Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and any future amendments thereto.

1.9 "Cable Internet Service" means any service offered by Grantee whereby Persons receive access to the Internet through the Cable System.

1.10 "Cable Operator" means any Person or groups 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 such a 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, which is required for the selection or use of such Video Programming or other programming service.

1.12 "Channel" means a portion of the frequency band capable of carrying a Video Programming Service, an audio service or a combination of Video Programming Services and audio services, whether delivered in an analog or digital format, on a twenty-four (24) hour per day basis or a portion thereof.

1.13 "City" means the City of Marysville, Washington, a municipal corporation.

1.14 "Connection", with regard to connections to public buildings, means installation of fiber optic or coaxial cable or other System related facilities through the outer wall of the building leaving adequate excess space to permit further connection to other facilities, plant or cable within the building.

1.15 "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.16 "Downstream" means carrying a transmission from the Headend to remote points on the System or to interconnection points on the System.

1.17 "Dwelling Unit" means any residential building, or each portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping and that is designed for residential occupancy.

1.18 "Expanded Basic Service" means cable programming services not included in the Basic Service and excluding premium or pay-per-view services.

1.19 "FCC" means the Federal Communications Commission or its lawful successor.

1.20 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying Cable Service or Institutional Network Service by means of electric lightwave impulses.

1.21 "Franchise" means the document in which this definition appears, which is executed between the City and Grantee, containing the specific provisions of the authorization granted and the contractual agreement created hereby.

1.22 "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.

1.23 "Gross Revenues" means any and all revenue derived directly or indirectly by the 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 fees charged Subscribers for Cable Services including Basic Service, any expanded tiers of Cable Service, other tiers of Cable Service, Premium Services; Cable Service installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, Cable Service lease payments to the Cable System, late fees and administrative fees; payments or other consideration received by the Grantee from programmers for carriage of Cable Services on the Cable System and accounted for as revenue under GAAP; revenues from rentals of converters or other Cable System equipment, advertising sales revenues, provided the advertising occurred on the Cable System within the Franchise Area; the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service and accounted for as revenue under GAAP; revenues from program guides, revenue from Cable Internet Service to the extent those services are considered a Cable Service under federal or State law, additional outlet fees, Franchise Fees, revenue from interactive services to the extent they are considered Cable Services under federal or State law, revenue from the sale or carriage of other Cable Services, and revenues from home shopping. Gross Revenues shall not include (i) 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; (ii) the capital advances and Capital Contribution referenced in Sections 9.6 and 9.7; or (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise Fees are not such a tax, and are therefore included in Gross Revenues.

1.24 "Headend" means any facility for signal reception and dissemination on the System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors and other related equipment.

1.25 "Institutional Network" or "I-Net" means that part of the System facilities or capacity designed for use by non-residential Subscribers including communications to, from and among government agencies, schools, libraries and other public agencies.

1.26 "Interconnect" or "Interconnection" means the linking of the System with another contiguous cable system, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner to permit the transmission and receiving of Access programming between the System and other cable systems.

1.27 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

1.28 "Noncommercial" means, in the context of Access Channels, that particular products and services are not promoted or sold. This shall not be interpreted to prohibit an Access Channel operator or programmer from soliciting and receiving financial support (i.e., fund raising) to produce and transmit programming on an Access Channel, or from acknowledging a contribution.

1.29 "Pay-Per-View Service" or "Premium Service" means Video Programming or other programming service choices (such as movie channels) offered to Subscribers on a per-channel, per-program or per-event basis.

1.30 "Person" means any individual, sole proprietorship, partnership, joint venture, association, corporation or limited liability entity, or any other form of entity or organization.

1.31 "Right-of-Way" or "Rights-of-Way" means land acquired or dedicated to the public or hereafter dedicated to the public for public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements and other similar public property located within the Franchise Area.

1.32 "School" means any state accredited public educational institution including, for example, primary and secondary schools (K-12).

1.33 "State" means the State of Washington.

1.34 "Subscriber" means any Person who lawfully receives Cable Service provided by Grantee by means of the System with Grantee's express permission.

1.35 "System" or "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 which includes video programming and which 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 which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. 541(c) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. 573 and federal regulations; or (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, System or Cable System refers to Grantee's Cable System in the Franchise Area.

1.36 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. 153(43)).

1.37 "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. 153(46)).

1.38 "Tier" means a category of Cable Services provided by the Grantee for which a separate periodic rate is charged.

1.39 "Upgrade" means improvements made to the Cable System necessary to meet the requirements of Section 11 herein.

1.40 "Upstream" means carrying a transmission to the headend from remote points on the System or from Interconnection points on the System.

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

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) 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 and Upgrade a System for the purpose of providing Cable Services, subject to the terms and conditions set forth in this Franchise. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Grantee, through this Franchise, is granted the right to operate its System using the Rights-of-Way within the Franchise Area in compliance with all lawfully enacted City Codes and procedures. In the event of a conflict between the City Code and this Franchise, the Franchise shall control. Additionally, nothing in this Franchise shall be deemed to waive the requirements of ordinances of general applicability lawfully enacted, or hereafter lawfully enacted, by the City. Grantee reserves the right to challenge provisions of any ordinance or other enactment of the City that conflicts with its contractual rights hereunder.

(C) This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

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

(E) 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 including, by way of example and not limitation, street cut permits; 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 including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

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

(G) This Franchise expressly authorizes Grantee to provide only Cable Services, and to construct, operate or maintain Cable Service facilities. This Franchise is not a bar to 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 conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide non-Cable services, Telecommunications Services or information services or relieve Grantee of its obligation to comply with any such authorization(s) that may be lawfully required. However, this Franchise shall not be read as a concession by Grantee that it needs authorization to provide non-Cable, Telecommunications or information services.

2.2 Use of Rights-of-Way

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

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

with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

2.3 Duration

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be eight (8) years from the effective date of this Franchise, unless terminated, reduced or extended as hereinafter provided.

2.4 Effective Date

(A) This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall take effect and be in force from and after the effective date of this Franchise.

(B) The effective date of this Franchise shall be the date on which it is accepted in writing by Grantee.

(C) The grant of this Franchise shall have no effect on the Grantee's duty under the prior franchises or any ordinances 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 franchises were in effect.

2.5 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, permits or licenses granted by the City to any Person to use any property for any purpose whatsoever, including the right of the City to use same for any purpose it 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.

2.6 Grant of Other Franchises

In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to use the Rights-of-Way for the purpose of constructing or operating a System or providing Cable Service to any part of the Franchise Area in which the Grantee is providing Cable Service under the terms and conditions of this Franchise or is required to extend Cable Service to under the provisions of this Franchise, the terms and conditions thereof, taken as a whole, shall be neither more favorable nor less burdensome to such Person than those contained herein in order that one cable operator not be granted an unfair competitive advantage over another.

2.7 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 lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied

and considered the requirements relating to an Upgrade of the System, and all other requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise, subject to applicable law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

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 such applicable laws, ordinances and regulations lawfully enacted pursuant to the police powers of the City, or hereafter enacted in accordance therewith, by the City. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, provided that such ordinances shall be reasonable and not destructive of the rights granted in this Franchise. Grantee shall pay those costs (in accordance with applicable law) associated with moving its System within the Right-of-Way as a result of the City's lawful exercise of its police powers.

SECTION 3. FRANCHISE FEES AND FINANCIAL CONTROLS

3.1 Franchise Fees

As compensation for the use of the 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%) of Grantee's Gross Revenues. Accrual of such Franchise Fees 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 payment shall be due and payable no later than thirty (30) days after the end of the preceding quarter.

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. However, the period for recovery of franchise fees payable hereunder is limited to six (6) years from the date on which payment by the Grantee was due.

3.4 Franchise Fee Reports

Each payment shall be accompanied by a written report to the City on a form approved by the City, verified by an authorized representative of Grantee, containing an accurate statement in

summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

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 records reasonably related to the enforcement of this Franchise and to recompute any amounts determined to be payable under this Franchise. If Grantee cooperates in making all relevant records available to the City, the City will attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous six (6) years. Any additional amounts due to the City as a result of the audit shall be paid within forty-five (45) days following written notice to the Grantee by the City, which notice shall include a copy of the audit findings. If the audit shows that Franchise Fees have been underpaid, by five percent (5%) in a calendar year or more, Grantee shall pay the cost of the audit up to ten thousand dollars (\$10,000) for each year of the audit period. Grantee's obligation to retain records related to a franchise fee audit shall expire six (6) years after each Franchise Fee payment has been made, or should have been made, to the City.

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 Late Payments

In the event any payment due the City is not timely made, Grantee shall pay, in addition to the amount due, interest at the rate established for judgments by the Snohomish County Superior Court, until the date the City receives the payment.

3.8 Underpayments

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 rate established for judgments by the Snohomish County Superior Court, compounded daily, calculated from the date the underpayment was originally due until the date the City receives the payment.

3.9 Maximum Franchise Fees

The parties acknowledge that, at present, applicable federal law limits the City to collection of a Franchise Fee of five percent (5%) of Gross Revenues in a 12-month period. In the event that at any time throughout the term of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues and the City elects to do so, then this Franchise shall be amended by the parties consistent with such change to provide that such excess amount shall be added to the franchise fee payments to be paid by Grantee to the City hereunder. Conversely, in the event that at any time throughout the term of this Franchise, the City may only collect an amount which is less than five percent (5%) of Gross Revenues for franchise fees due to a change in federal law, then this Franchise shall be amended by the parties consistent with such change to provide for such lesser percentage.

3.10 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers.

3.11 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the Rights-of-Way for Grantee's use of the Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise).

3.12 Payment on Termination

If this Franchise terminates for any reason, the 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 the Grantee since the end of the previous fiscal year. Within thirty (30) days of the filing of the certified statement with the City, Grantee shall pay any unpaid amounts as indicated. If the Grantee fails to pay its remaining financial obligations as required in this Franchise, the City may satisfy the same by utilizing the funds available in a letter of credit, if any, or other security provided by the Grantee.

3.13 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 in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Acts, or to delegate that power and right, or any part thereof, to the extent permitted under law, to any agent in the sole discretion of the City.

Nothing in this Franchise shall expand or limit the City's right of eminent domain under State law.

The Grantee and the City shall be entitled to all rights and be bound by all changes in local, State and federal law that occur subsequent to the effective date of this Franchise. The Grantee and the City acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes.

4.2 Charges

All of Grantee's 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.

4.3 Cross Subsidization

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

4.4 No Rate Discrimination

All of Grantee rates and charges shall be published (in the form of a publicly-available rate card), and shall be nondiscriminatory for all Persons of similar classes, under similar circumstances and conditions. Grantee shall permit Subscribers to make any in-residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to poor signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged appropriate service charges by Grantee. Nothing herein shall be construed to prohibit:

- (A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
- (B) The offering of reasonable discounts to similarly situated Persons;
- (C) The offering of rate discounts for Cable Service to government agencies or educational institutions; or
- (D) The offering of bulk discounts for Multiple Dwelling Units.

The Grantee shall offer a discount to those individuals who are low income (according to City guidelines) and who are also either permanently disabled or 62 years of age or older and who are the legal owner and resident of the dwelling unit. Such discounts will consist of at least thirty (30%) off of Basic Service (whether it is Basic Service only or combined with Expanded Basic Service or with a premium service), and Grantee is also encouraged to waive standard installation charges.

4.5 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. The schedule shall

include a description of the price, terms and conditions established by Grantee for Leased Access Channels.

4.6 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable local, state and federal laws.

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

4.7 Reserved Authority

The City reserves all rights and authority arising from the Cable Act and any other relevant provisions of federal, state or local laws.

4.8 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee or the City, 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 material breach of this Franchise.

4.9 Performance Evaluations

(A) Evaluation sessions may be held upon request by the City, but no more frequently than once a year, throughout the term of this Franchise.

(B) All evaluation sessions shall be open to the public and shall be announced by the City at least two (2) weeks in advance, in a newspaper of general circulation in the Franchise Area.

(C) Topics of discussion at any evaluation session may include, but are not limited to, Cable Service rates; 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 the City's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(D) During evaluations under this Franchise, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

SECTION 5. INDEMNIFICATION AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold harmless the City, its officers, officials, boards, commissions, agents and employees from any action or claim,

damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any death, or injury casualty or accident to a Person, equipment or property or arising out of or by reason of, the presence of or any construction, excavation, operation, maintenance, repair, reconstruction, upgrade, rebuild, upkeep or removal of the Cable System, by or for Grantee, its agents or its employees, or by reason of any neglect or omission of Grantee, its agents or its employees. Grantee shall consult and cooperate with the City while conducting its defense of the City.

(B) Procedures and Defense. The City shall give the 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. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim 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 prior written approval, which approval shall not be unreasonably withheld.

(C) Grantee's Duties. 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 duties of defense and indemnification under this Section.

(D) Expenses. 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 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 consultants' fees, and shall also include the reasonable value of any services rendered by the City 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.

5.2 Insurance Requirements

(A) General Requirement. Grantee must have adequate insurance during the entire term of this Franchise to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this Franchise, or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.

(B) Minimum Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth:

- (1) Commercial General Liability: Two million dollars (\$2,000,000) aggregate limit per occurrence for bodily injury, personal injury and property damage;
- (2) Automobile Liability: Two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
- (3) Employer's Liability: One million dollars (\$1,000,000).

(4) Excess Liability or Umbrella Coverage: Five million dollars (\$5,000,000).

C. Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The City shall be designated as an additional insured;

(b) The Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) The policy shall contain a severability of interests provision. 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.

(2) The insurance provided herein shall not be cancelled or the limits reduced so as to be out of compliance with the requirements of this Section without forty-five (45) days' written notice first being given to the City. If the insurance is cancelled Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

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

(E) Verification of Coverage. The Grantee shall furnish the City with a certificate of insurance. The certificate for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices, and are to be provided to the City upon acceptance of this Franchise. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

5.3 Letter of Credit

(A) 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 to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of ten thousand dollars (\$10,000).

(B) If a letter of credit is required pursuant to subsection (A), the letter of credit shall then be maintained at that same amount throughout the remainder of the term of this Franchise.

(C) After the giving of notice 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) Monetary remedies or damages assessed against Grantee as provided in this Franchise.

(D) The City shall give Grantee written notice of its intent to withdraw from the letter of credit pursuant to this subsection. Within thirty (30) days following notice that such withdrawal has occurred, Grantee shall restore the letter of credit to the full amount required by subsection (A). 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.

(E) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at the rate established for judgments by the Snohomish County Superior Court.

5.4 Bonds

(A) Upon commencement of the Cable System Upgrade, Grantee shall comply with the bonding requirements provided for in the Marysville Municipal Code. Grantee may be required to obtain other additional bonds in accordance with the City's ordinary practices.

(B) Grantee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the bond(s) or otherwise limit the City's recourse to any other remedy available at law or in equity.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards as the same may be adopted and amended from time to time by the City Council. Grantee reserves the right to challenge any customer service standards which it believes are inconsistent with its contractual rights granted under this Franchise.

6.2 Subscriber Privacy

Grantee will comply with privacy rights of Subscribers in accordance with federal, State and local laws.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

The City shall have access to, and the right to inspect, any books and records of Grantee and its Affiliates which are necessary for the enforcement of the provisions 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 Affiliate or a third Person. 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 that the City inspect them at Grantee's local office. If any books or records of Grantee are not kept in a local office and not made available in copies to the 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 expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The City agrees to keep confidential any proprietary or confidential books or records of Grantee to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential or proprietary 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, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the Person demanding access to such information within a reasonable time.

7.3 Records Required

Grantee shall provide to the City, upon request:

- (A) A complete set of route maps showing the location of Cable System facilities in the Franchise Area;
- (B) A copy of all FCC filings issued by Grantee or its Affiliates which relate to the operation of the System in the Franchise Area;
- (C) A list of Grantee's Cable Services, rates and Channel line-up;
- (D) A compilation of Subscriber complaints, actions taken and resolution, and a log of service calls; and

(E) Make available, at Grantee's local office, for inspection, plans and as-built maps of the Cable System.

7.4 Submittal of Documents

Upon written request, Grantee shall submit to the City copies of any 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 System within the Franchise Area. Grantee shall submit such documents to the City no later than forty-five (45) 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.

7.5 Annual Reports

Within ninety (90) days of the end of the calendar year, Grantee shall submit to the City a written report, which shall include, but not necessarily be limited to, the following information:

(A) A Gross Revenue statement for the preceding year and all deductions and computations for the period, and such statement shall be reviewed by a certified public accountant, who may also be the chief financial officer or controller of Grantee, prior to submission to the City;

(B) A summary of the previous year's activities regarding the development of the Cable System, including, but not limited to, beginning and ending plant miles, any technological changes occurring in the Cable System and the number of Subscribers for each class of Cable Service (i.e., Basic, Expanded Basic Service, Premium, etc.);

(C) A description of planned construction, if any, for the current year; and

(D) An executive summary of Subscriber complaints received in the previous year.

7.6 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, which are available to the City under this Franchise or otherwise.

7.7 Failure to Report

The failure or neglect of Grantee to file any of the information required under this Franchise (not including clerical errors or errors made in good faith) may, at the City's option, be deemed a breach of this Franchise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

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

- (A) Educational programming;
- (B) Washington news, weather and information;
- (C) Sports;
- (D) General entertainment including movies;
- (E) Children, family oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language programming;
- (H) Science/documentary;
- (I) National news, weather and information; and
- (J) Access programming.

8.2 Deletion of Broad Programming Categories

(A) 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.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the effective date of this Franchise must be maintained after any such modification.

8.3 Ascertainment of Programming and Customer Satisfaction

Upon request of the City, but not more frequently than once every two (2) years, the Grantee shall provide to the City written questions that it intends to use in upcoming surveys of customer satisfaction. The City may suggest new or modified questions, which the Grantee, in the reasonable exercise of its discretion, may add to the customer survey it conducts. Upon completion of the customer survey of Subscribers in the City, Grantee shall provide the results thereof to the City. Nothing herein shall be construed to limit the right of the City to conduct its own surveys at its own expense.

8.4 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for upgrade construction, maintenance or testing.

(B) In the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall reasonably cooperate with the City and the new Cable Operator to maintain continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services, if such services are requested by the City, when it no longer operates the Cable System.

8.5 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, statutes, regulations or standards now existing or hereafter adopted.

8.6 Parental Control Device

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

8.7 Cable Internet Service

Grantee has established a voluntary initiative to provide Cable Internet Service to all State-accredited K-12 schools and public libraries that are passed within 125 feet of the Cable System at no cost to the City or institutions. Grantee intends to provide at its expense each of these schools and libraries with one outlet of unlimited Internet access, including the necessary cable modem. The City encourages and supports Grantee's efforts in this area.

8.8 New Technology

If there is a new technology which in the City's opinion would enhance substantially the quality or quantity of programming available to Subscribers on the 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.

8.9 Services for the Disabled

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

SECTION 9. ACCESS

9.1 Access Channels

Upon the effective date of this Franchise and throughout the term hereof, Grantee shall make available at its expense:

One Governmental Access Channel for use by the City; and

One Educational Access Channel for use by the Marysville School District.

Additionally, upon completion of the System upgrade, Grantee shall carry all other available regional Access Channels in Snohomish County as part of the upgraded channel line up. Furthermore, upon completion of the System upgrade, all Subscribers in the Franchise Area will receive all of the Access Channels.

Any Access Channels provided via digital or compressed video technology shall have at least the same transmission quality as is used to carry any of the commercial Channels that deliver programming on the System. The provision of Access Channels via digital or compressed video technology will not reduce the total number of Access Channels required herein.

If Grantee makes a change in its Cable System and related equipment and facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access programming, Grantee shall at its own expense take necessary technical steps and provide necessary technical assistance, including the acquisition of all necessary equipment and full training of Access personnel, to ensure that the capabilities of Access Channels are not diminished or adversely affected by such change. For example, this provision 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 a digital format in order to be received by Subscribers.

9.2 Management and Control of Access Channels

(A) 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. Nothing herein shall prohibit the City from authorizing itself to be a Designated Access Provider.

(B) Grantee shall cooperate with the City and Designated Access Providers in the use of the System and Access facilities for the provision of Access Channels. To the extent allowed by law, the City agrees to indemnify, save and hold harmless Grantee from and against any and all liability resulting from the City's use of the Governmental Access Channel.

9.3 Additional Access Channels

In addition to the Access Channels referenced in Section 9.1 above, the City may require Grantee to make available at no charge additional Access Channels, as established by the triggers set forth below.

One additional channel shall be made available for each Access category when either of the initial channels required above respectively is used for original Educational Access or Governmental Access programming (excluding character generated and filler programming, e.g., AM/FM radio programming) during fifty percent (50%) of the hours between 10:00 AM and 10:00 PM, during any consecutive ten (10) week period. Except for character generated announcements, the programming shall be distinct and non-repetitive of the previous channel. Based upon this criteria, the Grantee shall, within six (6) months following a written request by the City, provide another designated Access Channel.

9.4 Location of Access Channels

Subject to must carry requirements, Grantee will continue to carry the City's programming on Channel 29 until such time as the Cable System Upgrade is completed. Furthermore, Grantee will institute common Channel assignments for compatible Access programming; for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number on its regional upgraded channel line-up. Grantee shall use its best efforts to provide ninety (90) days advance written notice to the City and at least thirty (30) days advance written notice to the City prior to any relocation of Access Channel 29. In connection with the movement of the City's Government Access Channel to another Channel number, Grantee shall provide, at its expense, a bill message on Subscribers' bills, and the City may provide, at its expense, a bill insert.

9.5 Access Interconnections

Grantee shall Interconnect the Access Channels of the Cable System with the Access Channels of any other contiguous cable system not owned or operated by Grantee or an Affiliate of Grantee if technically feasible and not financially burdensome to Grantee. Interconnection of Access Channels may be accomplished by direct fiber optic or cable connection or by other appropriate methods. Grantee shall not be required to Interconnect with the other cable system unless the cable operator of that system is willing to do so and such cable operator shall pay for its own costs of constructing and maintaining the Interconnect up to the connection point.

9.6 Access or I-Net Support Grants

No later than forty-five (45) days after the adoption of this Franchise, Grantee shall pay to the City a capital advance in the amount of \$88,000. Additionally, at the beginning of year two of this Franchise, Grantee shall pay to the City another capital advance in the amount of \$88,000. These are advance payments of the Capital Contribution set forth in subsection 9.7. These support grants may be used by the City for capital expenditures related to Access and/or I-Net construction, renovation, equipment or facilities. These grants shall in no way be considered in lieu of Franchise Fees and shall not reduce in any way Franchise Fees owed to the City under this Franchise. To the extent allowed by federal law, these capital advances may be treated as an external cost by Grantee and itemized on Subscribers' bills.

9.7 Capital Contribution

Commencing with the effective date of this Franchise, Grantee shall provide a capital contribution to the City for Access and/or I-Net capital costs ("Capital Contribution") in an amount not to exceed \$1.00 per Subscriber per month throughout the term of this Franchise. As of the effective date of this Franchise, that figure shall be \$1.00 per Subscriber per month. The monthly amount may be reduced, as determined by the City Council. Grantee shall be entitled to retain the Capital Contribution up to the amounts advanced in subsection 9.6. Thereafter, the Capital Contribution shall be paid quarterly to the City. Grantee shall not be responsible for paying the Capital Contribution with respect to gratis or bad debt accounts. Within ninety (90) days after the end of each year, Grantee shall provide a report to the City regarding such gratis or bad debt accounts, which report may be included as part of another report. The City can inquire as to the status of any such accounts, and the Grantee agrees to meet with the City, upon request, to discuss such matters as necessary. To the extent allowed by federal law, the Capital Contribution may be treated as an

external cost by Grantee and itemized on Subscribers' bills. The City shall have discretion to allocate the Capital Contribution in accordance with applicable law, provided the City submits a summary of capital expenditures from the Capital Contribution to Grantee within ninety (90) days of the end of each calendar year. To the extent the City makes Access and/or I-Net capital investments using City funds prior to receiving necessary capital advances or Capital Contribution funds, the City is entitled to apply subsequent capital advances or Capital Contribution payments from Grantee toward such City capital investments.

The City and Grantee agree that any Capital Contribution shall be referred to on Subscribers' bills as a "EG fee", "I-Net fee" or language substantially similar thereto. Grantee shall not change such reference on the Subscribers' bills without the prior written consent of the City, which consent shall not be unreasonably withheld.

9.8 Access Channels On Lowest Tier

All Access Channels provided to Subscribers under this Franchise shall be included by Grantee as a part of the Basic Service Tier.

9.9 Use of Educational and Governmental Access Channels

Access Channels shall be placed under the authority of the City for use related to governmental and educational purposes. Access Channel use shall include sponsorships and underwriting. Grantee shall not exercise editorial control over programming of any Access Channel made available to the City or the Marysville School District for their use. Grantee will not interrupt at its headend or hub site, the signal provided on any Access Channel, except during the upgrade, or during circumstances beyond Grantee's control or if necessary for testing or planned system maintenance purposes.

9.10 Technical Quality

The Grantee shall, at its expense, maintain all Access services, Channels and Interconnections at the same level of technical quality and reliability as that for the rest of its System. The Grantee shall, at its expense, provide routine maintenance and repair and replace, if necessary, any of Grantee's equipment required to carry a quality signal to and from the City's (and Designated Access Providers') and the Grantee's facilities for the Access Channels.

9.11 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 the Grantee to use underutilized time on the dedicated Access Channels. If Grantee believes that any Access Channel has underutilized time, Grantee may file a request with the City to use that time. In response to the request, the City will consider a combination of factors, including, but not limited to, the community's needs and interests, and the source, quantity, type and schedule of the programming carried on the Access Channel. The City will also consider, taking into account the mission of Access programming, whether it is feasible for the Designated Access Providers to cluster Access programming into blocks of time such that the Channel space can be compatibly shared between the Designated Access Provider and the Grantee and/or if several Designated Access Providers can combine their programming onto a single Access Channel. The City shall render its decision regarding the matter

within sixty (60) days of receiving the request. Should the City find that the Access Channel or a portion of the Access Channel may be used by the Grantee, then Grantee may begin using such time ninety (90) days after receipt of the decision. The Grantee's request shall not be unreasonably denied. Any permission granted pursuant to this subsection for use of an Access Channel or a portion thereof shall be considered temporary.

At such time as a Designated Access Provider believes that it has the resources and ability to utilize the Access Channel time currently used by the Grantee pursuant to this subsection, a Designated Access Provider may request that the City return such Channel or portion of the Channel for Access purposes. In response to the request, the City will consider a combination of factors, including, but not limited to, the community's needs and interests, and the source, quantity, type and schedule of the programming proposed to be carried on the Access Channel as well the applicant's ability and resources to acquire or produce the proposed Access programming. The City will also consider, taking into account the mission of the Access programming, whether it is feasible for the Designated Access Providers to cluster Access programming into blocks of time such that the Channel space can be compatibly shared between the Designated Access Provider and the Grantee and/or if several Designated Access Providers can combine their programming onto a single Access Channel. The City shall render its decision regarding the matter within sixty (60) days of receiving the request. Should the City find that the evidence exists to support the return of the Access Channel or a portion of the Access Channel to the Designated Access Provider, then Grantee shall surrender the Access Channel or the requested time on the Access Channel, as applicable, within ninety (90) days of receiving the decision. The Designated Access Provider's request shall not be unreasonably denied.

9.12 Information about Access Programming

Grantee shall include information about Access programming in the installation packet provided to Subscribers. The City shall supply the materials, for insertion in the packet, in a format consistent with Grantee's requirements.

9.13 Return Lines

In conjunction with the Cable System Upgrade, Grantee shall, at its expense, construct and maintain a fiber optic return line to the Headend (and hub[s] if applicable) from City Hall (on State Avenue) and the School District Service Center to enable the distribution of Governmental and Educational Access programming to Residential Subscribers on the Access Channels.

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

10.1 Right to Construct

Subject to generally applicable laws, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance, Upgrade or extension of Grantee's Cable System.

10.2 Right-of-Way Meetings

Subject to receiving advance notice, Grantee shall make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Cable System.

10.3 General Standard

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

10.4 Joint Trenching/Boring

Whenever it is possible and reasonably and financially practicable to joint trench or share bores or cuts, Grantee shall work with other providers (such as, but not limited to, telecommunications, gas and electric companies), licensees, permittees and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the City.

10.5 Movement of Facilities During Emergencies

During emergencies, the City may move Grantee's facilities without prior notice.

10.6 One Call

Grantee will maintain membership in good standing with the Utility Coordinating Council One Call Center or other similar or successor organization which is designated to coordinate underground equipment locations and installations. Grantee shall abide by the State's "Underground Utilities" statutes and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

10.7 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, and in providing for the proper restoration of such Rights-of-Way and to protect the public and the continuity of pedestrian or vehicular traffic. Grantee shall pay all generally applicable fees for the requisite City permits.

10.8 Emergency Permits

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

10.9 Compliance with Applicable Codes

(A) City Codes. Grantee shall comply with all applicable City codes, including, without limitation, construction codes, building codes, the Fire Code and zoning codes and regulations.

(B) Regulations and Safety Codes. Grantee shall comply with all applicable federal, State and City safety requirements, rules, regulations, laws and practices. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.10 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Rights-of-Way.

10.11 Least Interference

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

10.12 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to 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 good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents.

10.13 Notice to Private Property Owners

Except in the case of an emergency involving public safety or an outage, or service interruption to a large number of Subscribers, Grantee shall give reasonable advance notice to private property owners or tenants of work on or adjacent to such private property.

10.14 Underground Construction and Use of Poles

(A) The Grantee shall utilize existing poles and conduit wherever possible.

(B) In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) Where electric and telephone lines are underground at the time of Cable System construction or Upgrade, or when such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers. Related Cable System equipment, such as pedestals or power supplies, must be placed in accordance with the City's applicable code and permit requirements and rules.

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

(E) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own fiber optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction that involves trenching or boring, provided that the City has first provided reasonable notice to the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay City conduit and fiber optic cable in the Grantee's trenches and bores, provided the City shares pro rata in the cost of the trenching and boring with Grantee. The City shall be responsible for maintaining its respective conduit and fiber optic cable, which is buried in the Grantee's trenches and bores.

10.15 Repair and Restoration of Property

(A) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours.

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

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property or private property for one (1) year, unless a longer period is required by the City Code or any generally applicable ordinance or resolution of the City. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

(D) Private Property. Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use its best efforts to complete the restoration within twenty-four (24) hours, considering the nature of the work that must be performed.

10.16 Discontinuing Use

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall notify the City of its intention. Grantee may remove the facility or request that the City permit 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 Right-of-Way or modify the facility to protect the public health, welfare, safety, or convenience, or otherwise serve the public interest. The City may require Grantee to perform a reasonable combination of modification and removal of the facility. Grantee shall complete such removal and/or modification respectively in accordance with

a schedule reasonably set by the City. Until such time as Grantee removes or modifies the facility as reasonably directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to use, construct and/or maintain such facility, Grantee shall retain all liability for such facility and be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use.

10.17 Movement of Cable System Facilities For City Purposes

The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when necessary to protect or further the health, safety or welfare of the general public, and such work shall be performed at Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than ten (10) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$150,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro-rata share of such funds.

If the Grantee fails to complete the above work within the time prescribed and to the City's reasonable satisfaction, the City may cause such work to be done and bill the reasonable cost of the work to the Grantee, including all reasonable costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

10.18 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal, replacement, modification or disconnection of the Cable System be paid by the benefited party, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.19 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.20 Reservation of City Use of Right-of-Way

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

10.21 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the City regarding tree-trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.22 Inspection of Construction and Facilities

The City may inspect any of Grantee's facilities, equipment or construction within the Rights-of-Way and on other public property upon at least twenty-four (24) hours notice, or, in case of an 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, in writing, to make the necessary repairs and alterations specified therein forthwith 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, and to reasonably charge Grantee therefor.

10.23 Stop Work

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

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the person doing the work, or be posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and

- (5) Establish conditions under which work may be resumed.

10.24 Work of Contractors and Subcontractors

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

SECTION 11. SYSTEM UPGRADE/TECHNICAL STANDARDS

11.1 Subscriber Network

(A) Grantee shall connect, combine and upgrade its current Cable Systems into one operational hybrid fiber coaxial Cable System with a minimum capacity of two hundred (200) Channels of Video Programming, and the Cable System shall have two-way capability throughout the City, no later than thirty-six (36) months from the effective date of this Franchise. Grantee may provide for phased activation launches of applicable portions of the upgraded Cable System as nodes are completed. The Cable System shall be capable of supporting the full range of Cable Services offered by Grantee.

When Grantee has completed the upgrade of the Cable System throughout the City, Grantee shall send written notice to the City. The City shall have sixty (60) days from receipt of such notice to verify the records kept by the Grantee regarding the completion of the Cable System bandwidth expansion, and to complete such technical inspections as may be reasonably necessary to verify that the other components of the upgrade have been completed. The City may require the Grantee to provide additional facts and information, if necessary to verify the completion of the upgrade. Upon its completion of this review and inspection, the City shall notify the Grantee in writing of the City's position concerning the completion of the upgrade.

(B) Term Extension. Grantee shall receive a three (3) year term extension if the Cable System upgrade specified above is timely completed within twelve (12) months of the effective date, or a two (2) year term extension if the Cable System upgrade is completed within eighteen (18) months of the effective date. The City shall grant the term extension contingent upon its verification of the upgrade completion as provided above.

(C) Initial Term Reduction. If Grantee does not complete the upgrade of the Cable System specified herein within thirty-six (36) months of the effective date, then the initial eight (8) year term may be reduced, at the discretion of the City, by up to two (2) years. The City shall provide Grantee with written notice of its decision regarding an initial term reduction, if applicable.

(D) Upon request of the City, Grantee and the City will meet to discuss the progress of the upgrade and will work cooperatively to speed the construction process and to minimize the impact upon Subscribers. At each meeting, Grantee will provide a report on the upgrade, detailing Grantee's progress in satisfying the requirements of this Section.

(E) 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. Equipment must also be installed so that all signals received in stereo are retransmitted in stereo.

(F) All upgrade construction shall be subject to the City's policies and procedures for permitting.

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

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

11.2 Cable Services in Comparable Communities

Upon request, Grantee shall, every two (2) years following the effective date of this Franchise, provide detailed information to the City about Cable Services offered on a non-test basis in "similarly situated" cable systems in the region. If such Cable Services are not also being offered on Grantee's Cable System in the City, Grantee shall provide information on why such Cable Services are not being offered in the City and an estimated cost to supply such Cable Services. If economically feasible and technically available, Grantee shall deploy such services in a reasonable timeframe, provided that Grantee shall have the capability to recover its capital expenditures related thereto during the remaining time period left on this Franchise.

11.3 Standby Power

Grantee shall provide standby power generating capacity at the Cable System headend capable of providing twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies that will supply back-up power of at least two (2) hours duration throughout the trunk and 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 therefor.

11.4 Emergency Alert Capability

(A) In accordance with the provisions of applicable law, as such provisions may be amended from time to time, EAS activation will be accomplished in compliance with all federal, state and local laws.

(B) The City shall allow only appropriately trained and authorized persons to operate the EAS equipment provided pursuant to this subsection and shall take reasonable precautions to prevent any use of the Grantee's Cable System that in any manner results in an inappropriate use thereof. To the extent allowed by law, the City shall hold the Grantee, its employees and officers harmless from any claims arising out of the emergency use of the EAS facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.

(C) Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in accordance with applicable law. Upon request, Grantee will advise the City of the testing schedule so that the City may be present for the tests.

11.5 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal 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.

11.6 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and

(3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

(1) Cumulative leakage index testing;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Tests in response to Subscriber complaints; and

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the headend, and the condition of standby power supplies.

Upon request, all required technical performance tests may be witnessed by representatives of the City.

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

(D) Grantee shall promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a violation of this Franchise. Sites shall be re-tested following correction.

11.7 Additional Tests

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

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

SECTION 12. INSTITUTIONAL NETWORK

12.1 Private Network

The I-Net is a private communications network governed by this Franchise and the Cable Act. The I-Net may be used by the City and any other qualified I-Net user to provide any technically and legally compatible, non-commercial service. The City agrees to require all qualified I-Net users to stipulate and agree to the requirements specified herein. "Technically compatible" includes, but is not limited to the understanding that the I-Net will not be used in any way that will interfere with the signal quality and the normal operation of Grantee's Cable System. "Legally compatible" includes, but is not limited to, the understanding that the I-Net may not be used for the provision of Telecommunications Services unless by separate agreement between the Grantee and the City, and that the City will not lease, sublease, or resell access to the I-Net. In addition, the Grantee and the City shall at all times provide such management of the I-Net as applicable to ensure the necessary protection of proprietary I-Net signals.

12.2 Qualified I-Net Users

The I-Net will be for the use of the City and any Qualified I-Net user, which shall include: the City, schools, fire stations and other public safety facilities, the library, other municipal facilities, and other public entities or locations that Grantee and the City agree in the future may use the I-Net provided that they are located within the Franchise Area.

12.3 I-Net Use

(A) Continued Use of the I-Net. The City and other Qualified I-Net Users shall have an exclusive and indefatigable right of use of the I-Net infrastructure for non-commercial private network communications, which right cannot be revoked by the Grantee, or successor companies or entities, if any, throughout the term of this Franchise or any renewal(s), extension(s) or transfer(s) thereof, so long as the City has met its financial obligations to Grantee. However, the Grantee shall at all times own in fee and maintain, in accordance with a signed Institutional Network Maintenance Agreement which is attached hereto as Exhibit A and incorporated herein by reference, the aerial and underground fiber optic cable and associated facilities and equipment up to the termination points where physically connected to City-owned optronics.

(B) Appropriate uses of the I-Net include, by way of example and not limitation:

(1) High-speed two-way transmission of GIS and other data to and from City departments and to and from the facilities of other Qualified I-Net Users;

(2) Transmitting live and stored instructional materials (whether in the form of data, video or otherwise) for distance learning and staff training purposes to and from Qualified I-Net Users;

(3) Providing videoconferencing among municipal and educational locations and to other locations for municipal and educational purposes;

(4) Linking the public library and providing terminals at library locations that allow members of the public to access library databases and other remote databases for noncommercial purposes;

(5) Providing for remote origination of Access programming;

(6) Facilitating connections for telephone systems, security systems and other critical public entity communications applications, so long as such systems are not providing Telecommunications Service;

(7) Providing videoconferencing and data transmissions between public health care facilities; and

(8) Providing other services such as remote permitting, arraignments; and voice traffic to and from City and educational facilities.

12.4 I-Net Components

The City shall provide to Grantee a document which specifies certain initial sites to be served by the I-Net. The following I-Net components will be made available and selected by the City in cooperation with the Grantee in order to ensure the most efficient and cost-effective I-Net options. The parties intend that construction of the I-Net will be performed concurrently with the Upgrade of

Grantee's Cable System to the greatest extent possible in order to provide the most cost-effective I-Net construction.

(A) Backbone. An "I-Net Backbone" means those optical fibers that are integrated into the optical fiber portion of Grantee's Cable System, as well as those optical fibers that will extend from the integrated portion of Grantee's Cable system to the termination panel at the City's designated I-Net sites. The number of optical fiber strands constructed from the City's I-Net hub to each designated I-Net site shall be dependent upon the I-Net locations and uses selected by the City.

(B) Route. The City or the Qualified I-Net User will provide the route, including conduit where mutually agreed to, and the access rights from the property line of the I-Net site into the facility's termination panel location. Efforts will be made by Grantee and the City to ensure that the I-Net distribution system and drops share common paths with the Grantee's Cable System where it is possible to do so, in order to minimize costs to the Qualified I-Net Users. This portion of the I-Net will be owned and maintained by Grantee.

(C) Network Equipment. Grantee shall not install or be responsible for any I-Net end user equipment past the Demarcation Point on the termination panel at each I-Net site, unless through a separate agreement with the City or other Qualified I-Net User.

12.5 Determination of I-Net Costs

The City shall fund the following in return for Grantee's construction of the I-Net, and may use the Capital Advances and Capital Contribution referenced in Sections 9.6 and 9.7 of this Franchise:

(A) Base Construction Cost. The "Base Construction Cost" is the direct incremental cost of labor and materials that Grantee incurs in the construction, installation, and initial testing of the I-Net, as specified below:

(1) Costs of necessary materials to construct the I-Net from the City's hub to each I-Net site Demarcation Point. Grantee will use the same procurement process for obtaining separate I-Net fiber optics and related components as it uses to acquire similar materials for its Cable System, in order to provide the materials to the City in the most cost-effective manner; and

(2) The allocated portion of any additional fiber optics and related materials installed on an Incremental I-Net Backbone; and

(3) Reasonable and verifiable payments made by Grantee to contractors specifically for I-Net construction; and

(4) Actual wages and salaries of Grantee's employees performing construction of the I-Net, for such part of their time as is employed specifically on the I-Net; and

(5) Other costs incurred on the relevant portion of the I-Net in the performance of the work if and to the extent approved in advance in writing by the City.

The City shall not be charged for any indirect costs, except that twelve and a half percent (12.5%) will be added to the total of the costs specified in subsections 12.5 (A) (3)-(4) to cover the compensation of Grantee's employees and contractors who are involved in the design of the I-Net and other I-Net work whose time cannot be directly measured against the project, as well as to cover those miscellaneous expenses items which are not directly quantifiable. This twelve and a half percent (12.5%) figure shall be part of the "Base Construction Cost."

The Base Construction Cost shall not exceed the I-Net site costs as described in the Attachment to Exhibit A.

(B) Any unpaid balance shall bear interest at the prime rate plus two percent (2%) per annum. In order to reduce or eliminate interest payments owed to Grantee, the City may pay at any time any portion of the costs without penalty.

12.6 I-Net Construction

(A) Grantee shall, in consultation with the City, incorporate the I-Net optical fiber strands into its existing network where feasible, its upgrade design and the design of other major construction activity. The initial I-Net design shall be completed by Grantee and provided to the City on or before the Franchise acceptance date. As part of the completed design, Grantee shall provide the City with cost estimates pursuant to subsection 12.5, and maps showing the proposed design routing, for each identified I-Net site. The City shall have thirty (30) days from receiving the preliminary cost estimates and maps to give final approval thereof to Grantee. The City may require Grantee to make changes to ensure that the design is consistent with the City's requirements. All of Grantee's design engineering costs associated with cost estimates will be paid by the City. If the City does not act within the thirty (30) day period, Grantee may proceed with the upgrade or other major construction of the Cable System that encompasses the I-Net sites in question and shall not construct the I-Net design submitted. The City may later direct the Grantee to construct that portion of the I-Net in accordance with subsection 12.7. If the City orders changes to the design, the City shall have fifteen (15) days from receiving the modified cost estimates and design to approve the same. If the City does not act within the fifteen (15) day period, Grantee may proceed with the upgrade or other major construction of the Cable System for that phase and shall not construct the modified I-Net design submitted. The City may again later direct the Grantee to construct that portion of the I-Net in accordance with subsection 12.7. The City shall act at all times in an expeditious manner so as not to delay the upgrade or other major construction to the Cable System.

(B) The City may direct Grantee to construct or not construct any specific portions or segments of the I-Net up to the point where Grantee begins construction of the area where such I-Net portion is located. If the City wishes to add or delete sites after construction has commenced, the City shall submit its change order requests in writing to Grantee, and Grantee will make the changes and complete them as part of the construction of the Cable System. The City shall pay any additional costs caused by the change order, in addition to incremental costs. After receiving a request for a change order, Grantee promptly will provide the City with an estimate of the costs

including the requested changes. If the City then directs Grantee to proceed with the change, Grantee will make the change.

(C) Completion. The construction of the I-Net shall be substantially completed concurrent with Grantee's completion of the Cable System upgrade or other applicable major construction project.

(D) I-Net Fiber Optic Testing/Certification/Acceptance. All I-Net optical fibers installed either on an incremental build or separate build will be tested in accordance with Comcast's standards. OTDR and OLT (attenuation) bidirectional testing will be performed, and the results will be provided in the final documentation package. Tests will be conducted from demarcation point to demarcation point, which is typically from the City hub to the I-Net site. Industry standards for loss and attenuation will determine the acceptable loss of a given link (.25dB/connector; .1dB/splice; .35dB/km-1310nm; .25dB/km-1550nm). A copy of the documentation shall be provided in an electronic format that may be viewed or printed with standard office applications or software provided by Grantee.

Grantee shall notify the City at least ten (10) days prior to the date at which Grantee plans to certify and document the integrity of the I-Net fiber backbone through testing and verification. The City or its designee, shall have the option of attending any test conducted pursuant to this subsection. The City shall also have the option of conducting a physical inspection of the construction taking place in the Right of Way or on City property or other property used by the City, provided that this inspection should not include touching, moving or manipulating the fiber or the bulkhead, and provided further, that this inspection is conducted prior to the date of the Grantee's planned testing. A copy of the test results and documentation shall be provided to the City. If the test results or physical inspection do not/does not indicate compliance with the standards provided for herein, Grantee shall perform repairs and retesting and take any other action necessary until the I-Net meets such standards and is accepted as completed by the City. Acceptance shall be in the form of a letter from the City to Grantee.

(E) Nothing in this Franchise shall be read to prevent the parties from agreeing to different procedures for I-Net construction as long as those procedures permit the I-Net to be constructed efficiently and cost-effectively, so long as agreed upon changes and procedures are documented and approved by both parties. Consistent with this goal, it is the intent of the parties to cooperate to minimize any delay in the Cable System upgrade or other major construction while providing sufficient time to permit the City to review and approve design plans and cost estimates.

12.7 Future I-Net Construction

Grantee and the City shall cooperate in investigating and considering options for expansion of the I-Net. The City may direct Grantee to investigate and provide cost estimates regarding expansion of the I-Net plant at any time throughout the term of this Franchise and any extension(s), transfer(s) or renewal(s) thereof. After receiving a request for additional I-Net work, Grantee shall provide the City with an estimate of the costs associated with the additional fiber I-Net work within forty-five (45) days. All of Grantee's design engineering costs associated with cost estimates will be paid by the City. If the City then directs Grantee to perform the work, Grantee will perform it. After the

completion of the initial I-Net construction, any additional I-Net construction shall be performed and completed within six (6) months after the City directs that the work be performed, unless the parties agree in writing to a different completion date prior to commencement of the work.

12.8 Warranties/Acceptance

The acceptance of any component of the I-Net, or reimbursement therefore, shall not waive any defect in the work or constitute acceptance of workmanship or materials not in compliance with the applicable design and specification requirements. Grantee shall provide in its contracts for warranties of the workmanship and materials which are satisfactory to the City and will provide for the enforcement of such warranties and for the correction of workmanship or materials which is not provided in accordance with applicable design and specification requirements or which is otherwise defective.

12.9 Payment

(A) Form of Invoice. Grantee shall prepare and submit a payment schedule for the costs, including details on the Base Construction Costs and interest charges, if any, pursuant to subsection 12.5. The City shall determine the method of funding, and the cost may be paid on either a one-time, monthly or an annual basis.

(B) Payment. At its discretion, the City may use the capital advances and Capital Contribution specified in subsections 9.6 and 9.7 of this Franchise for payment of the I-Net costs.

12.10 I-Net Service Standards.

Grantee shall be responsible for meeting the I-Net service and maintenance standards described in the Institutional Network Maintenance Agreement. Grantee shall maintain the I-Net fiber plant at a high level of reliability.

(A) The I-Net shall be considered as experiencing an "outage" when the City or another Qualified I-Net User cannot, because of a problem resulting from the failure of any Grantee-provided fiber optic cable or an associated component, transmit video, voice and/or data communications to, from and/or on the I-Net.

(B) "Outage" conditions shall not include (i) service problems resulting from City-owned or Qualified I-Net User owned or installed equipment or facilities; (ii) infrequent scheduled preventive maintenance as long as the City and other Qualified I-Net Users are notified at least five (5) business days in advance; or (ii) *force majeure*.

12.11 No Other I-Net Costs.

The parties agree that there shall be no charges for the I-Net provided by Grantee, other than those charges specified in this Section 12 and in the Institutional Network Maintenance Agreement. The parties also agree that any costs to the Grantee associated with the I-Net are not Franchise Fees.

SECTION 13. SCRAMBLED CHANNEL

Within six (6) months of receipt of a written request from the City, Grantee, at its expense, shall make available a closed circuit, scrambled, encoded digital channel (the "Scrambled Channel") to be used for City training purposes. The scrambled channel shall be made available at the locations to be reasonably agreed upon by the parties. Each site shall receive one complimentary drop with a standard installation and one complimentary converter. The cost of additional converters, additional wiring and video monitors or television sets shall be borne by the City. Any aerial drop longer than one hundred twenty-five (125) feet, or sixty (60) feet underground (a "non-standard drop"), or system extension, that is required to provide the Scrambled Channel to a site will not be installed without prior written approval from the City, and the City shall be responsible for any additional costs resulting from the non-standard drop or system extension.

The Scrambled Channel shall be at a signal quality level consistent with other digital channels on Grantee's digital tier that carries the Scrambled Channel. If the signal quality of the Scrambled Channel does not appear to be of the same quality as other digital channels on Grantee's digital tier that carries the Scrambled Channel, Grantee shall use its best efforts to identify the cause of the problem, and promptly rectify the signal quality problem if it resides within Grantee's control. The City shall be responsible for rectifying any problem residing on its side of the termination panel at its programming origination site at City Hall.

Beyond the complimentary converters to be provided at Grantee's expense as identified in Section 13 (A), additional programmed converters shall be made available to the City, or other institutions authorized by the City, at the advertised retail rate upon the express written request of the City. The converters themselves shall be digital, and the signal(s) shall be addressable and scrambled such that residential and commercial Subscribers will not be able to see, hear or interpret the video or audio signal(s). Members of the public shall not be able to discern the programming provided over the Scrambled Channel. Programming provided over the Scrambled Channel shall be transported upstream over the PEG designated fiber optic connection from City Hall to Grantee's headend or hub for subsequent distribution via the downstream Scrambled Channel. All signal generation and transmission equipment located on the City side of the fiber termination panel at City Hall shall be the sole responsibility and expense of the City.

SECTION 14. SERVICE EXTENSION AND SERVICE TO PUBLIC BUILDINGS

14.1 Service Availability

(A) In General. Subject to the density provisions described in Section 14.1(D) below, Grantee shall provide Cable Service within seven (7) days of a request by any potential Residential Subscriber within the City. For purposes of this subsection, 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 Section.

(2) At a nondiscriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot aerial drop connecting to the exterior demarcation point for Residential Subscribers, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations.

(3) At nondiscriminatory monthly rates in accordance with applicable laws.

(B) Provision of Cable Service. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area. Notwithstanding the foregoing, Grantee may introduce new or expanded Cable Services on a geographically phased basis, where such services require an upgrade of the Cable System.

(C) Service to Multiple Dwelling Units. The Grantee shall provide cable service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise and all applicable laws.

(D) Customer Charges for Extensions of Service. For unusual circumstances, such as the existence of more than one hundred twenty-five (125) feet of aerial distance from distribution cable to connection of service to customers, or a density of less than twenty-five (25) residences per 5280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals twenty-five (25). Potential 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.

14.2 Connection of Public Facilities

Grantee shall, without charge, provide a standard installation and one outlet of Basic Service and Expanded Basic Service to all City owned (or leased) and occupied buildings, including, but not limited to, the current and former City Hall, fire stations and police stations, schools and public libraries in the City that are passed by the Cable System. In addition, Grantee shall provide, at no cost to the City or other entity, a standard installation and one outlet of Basic Service and Expanded Basic Service to future owned (or leased) and occupied City buildings, fire stations and police stations, schools and public libraries upon request, provided that the drop line from the feeder cable to such building does not exceed one hundred twenty-five (125) aerial feet unless the City or other entity agrees to pay the incremental cost of such drop line in excess of one hundred twenty-five (125) aerial feet, including the cost of excess labor and materials. The Cable Service provided herein shall not be distributed beyond each originally installed outlet without authorization from Grantee. Such Cable Service shall not be used for commercial purposes nor shall it be extended to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (i.e., a golf course).

If additional outlets are provided by Grantee pursuant to this subsection, the building owner and/or occupant shall pay the usual installation fees associated therewith; however, there shall be no additional charge for the Cable Service. Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes.

The City shall take reasonable precautions to prevent any use of Grantee's Cable System in City buildings that may result in an inappropriate use thereof. The standard installations and Cable Service provided pursuant to this subsection are voluntary initiatives of Grantee and will be continued throughout the term of this Franchise.

SECTION 15. FRANCHISE VIOLATIONS

15.1 Procedure for Remedying Non-Material Franchise Violations

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

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

(2) cure the default; or

(3) notify the City that Grantee cannot cure the default within 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. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

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

(C) If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other

reasonable timeframe as the City shall determine. In the event Grantee does not cure the default within such time to the City's reasonable satisfaction, the City may:

(1) Recommend the revocation of this Franchise pursuant to the procedures in subsection 15.2; or

(2) Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

(D) The determination as to whether a non-material violation of this Franchise has occurred shall be within the discretion of the City, provided that any such determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

15.2 Revocation

(A) The City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances:

(1) If Grantee fails to perform any material obligation under this Franchise (including, but not limited to, completion of the Cable System Upgrade within thirty-six (36) months of the effective date) or under any other agreement, ordinance or document regarding the City and Grantee;

(2) If Grantee willfully fails for more than three (3) days to provide continuous and uninterrupted Cable Service;

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

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

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

(6) If Grantee breaches a material provision of the Customer Service Standards.

(B) Prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a satisfactory response from Grantee, it may then seek a termination of the Franchise by the City Council in accordance with this subsection.

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

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

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise; or if the breach at issue is capable of being cured by Grantee, the City Council shall direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City Council determines that the Franchise is to be revoked, the City Council shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City Council's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within thirty (30) days of the date of the decision.

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

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

15.3 Procedures in the Event of Termination

(A) If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(1) Require Grantee to maintain and operate its Cable System and I-Net on a month-to-month basis until a new Cable Operator is selected; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 15.4, below.

(B) The City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment and without affecting electrical or telephone wires or attachments. The indemnification and insurance provisions and the letter of credit, if any, shall remain in full force

and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

(C) If Grantee fails to complete any removal required by subsection 15.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit, if any, if Grantee has not paid such amount within the foregoing thirty (30) day time period.

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

15.4 Purchase of Cable System

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

(B) The City may, at any time after Franchise revocation, termination or non-renewal, offer in writing to purchase Grantee's Cable System. In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a balance sheet and current profit and loss statement of Grantee's Cable System. The City shall, as applicable, pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

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

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City may assume.

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

15.5 Receivership and Foreclosure

(A) At the option of the City, subject to applicable law, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is timely vacated; or

(2) The receivers or trustees have timely and fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by

the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, 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 conditions of this Franchise.

15.6 Alternative Remedies

No provision of this Franchise shall be deemed to bar the City or the Grantee from seeking appropriate judicial relief. 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 the City to recover monetary damages for violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. 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, City Council, Boards, commissions, agents, or employees under federal, State, or local law (including, for example, Section 635A of the Cable Act).

15.7 Assessment of Monetary Damages

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 certain provisions 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 below for each day or part thereof that Grantee shall be in breach of specific provisions of this Franchise. Such amounts are agreed to by both parties as a reasonable estimate of the actual damages the City would suffer in the event of Grantee's breach of such provisions of this Franchise.

Subject to the City's giving written notice to the Grantee and a thirty (30) day right to cure period, the City may assess against Grantee monetary damages up to one thousand dollars (\$1,000.00) per day for failure to timely complete the Cable System Upgrade (including the I-Net) within thirty-six (36) months of the effective date; two hundred fifty dollars (\$250.00) per day for material departure from the FCC technical performance standards; one hundred dollars (\$100.00) per day for failure to provide the Access Channels or any equipment related thereto which is required hereunder; one hundred dollars (\$100.00) per day for each material violation of the Customer Service Standards; fifty dollars (\$50.00) per day for failure to provide reports or notices as required by this Franchise; and up to one hundred dollars (\$100.00) per day for any other material breaches or defaults under the Franchise.

15.8 Effect of Abandonment

If the Grantee abandons its Cable System or I-Net during the Franchise term, or fails to operate its Cable System or I-Net in accordance with its duty to provide continuous service, the City, at its option, may obtain an injunction, or operate the Cable System and I-Net, or designate another entity to operate the Cable System and I-Net temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City. If the City operates the Cable System or I-Net, or designates another entity to operate the Cable System or I-Net, the Grantee shall reimburse the City or the City's designee, as applicable, for all reasonable costs, expenses and damages incurred. If Grantee permanently abandons any of its facilities then, at the City's sole discretion, such facilities may become the property of the City.

SECTION 16. FRANCHISE RENEWAL

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

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

SECTION 17. FRANCHISE TRANSFER

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

(B) The 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 the Grantee. The word "control" as used herein is not limited to majority stock ownership but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented thereto.

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

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee or controlling party shall indicate whether, as applicable, 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 it 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 an independent certified public accountant, along with any other data that the City may reasonably require; and

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

(E) In reviewing a request for sale, transfer or change of 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, transfer or change of 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. Additionally, such Person shall effect changes as promptly as practicable in the operation of the Cable System, if any changes are necessary to cure any violations or defaults presently in effect or ongoing.

(F) The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all information required by law, such as a complete FCC Form 394. 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.

(G) Within thirty (30) days of any transfer, sale or change of 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 new controlling entity. In the case of a sale or transfer of ownership or change of control, the transferee or the new 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 the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise and will not be required to file an additional written acceptance.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an intra-company Affiliate; provided that the proposed assignee or transferee must show legal, technical and 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, subject to applicable law. 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 18. MISCELLANEOUS PROVISIONS

18.1 Discriminatory Practices Prohibited

Throughout the term of this Franchise, Grantee shall fully comply with all equal employment and nondiscrimination provisions and requirements of federal, State and local laws, and rules and regulations relating thereto.

18.2 Local Employment Efforts

Grantee shall use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever the Grantee employs contractors to perform work under this Franchise.

18.3 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:

Comcast of California/Colorado/Texas/Washington, Inc. and
Comcast of Washington, IV, Inc.
1525 75th St. S.W.
Everett, WA 98203
Attention: General Manager

With a copy to:

Comcast of California/Colorado/Texas/Washington, Inc. and
Comcast of Washington, IV, Inc.
22025 30th Avenue S.E.
Bothell, WA 98021
Attention: Franchising Department

City's address shall be:

City of Marysville
1049 State Avenue
Marysville, Washington 98270
Attention: City Attorney

18.4 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.

18.5 Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise. Grantee agrees that the additional commitments herein are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to the City.

18.6 Binding Effect

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

18.7 Authority to Amend

In addition to certain mandatory amendment provisions of Section 3.9, this Franchise may also be amended at any time by mutual written agreement between the parties.

18.8 Venue

Venue for any dispute related to this Franchise shall be in Snohomish County Superior Court in Everett, Washington.

18.9 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, and any other applicable local, State and federal laws, rules, regulations, legislation or orders (as such now exist, are later amended or subsequently adopted).

18.10 Guarantee

The performance of the Grantee shall be guaranteed in all respects by TCI West, Inc. A signed guarantee shall be filed with the City contemporaneous with Grantee's acceptance of this Franchise.

18.11 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 provision of this Franchise.

18.12 No Joint Venture

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

18.13 Waiver

The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same, nor shall the waiver by the City 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.

18.14 Severability

If any Section, subsection, paragraph 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 or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

18.15 Entire Agreement

This Franchise and Exhibit represent 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.

18.16 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by a reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which 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 which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which could not have been avoided by the Grantee which used its best efforts in its operations to avoid such problems, work delays caused by waiting for utility providers to service or perform make-ready services on their utility poles or other facilities to which the Grantee's Cable System is attached, and Grantee's inability to obtain federal, State or railroad permits despite Grantee's best efforts to do so.

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

18.17 Attorneys' Fees

If any action or suit arises in connection with this Franchise, the prevailing or substantially prevailing party (either the City or Grantee, as the case may be) shall be entitled to recover all of its reasonable attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper.

18.18 Actions 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.

18.19 Acceptance

Within forty-five (45) days after the passage and approval of this Franchise by Ordinance by the City Council, this Franchise shall be accepted by Grantee by filing with the City Clerk an unconditional, written acceptance of all of the terms and conditions of this Franchise. Failure of Grantee to file such an acceptance shall be deemed a rejection by Grantee, and the rights and privileges herein granted shall cease after expiration of the forty-five (45) day period, unless such timeframe is extended by ordinance duly passed for that purpose.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Marysville, Washington, this 10th day of November, 2003.

CITY OF MARYSVILLE

By David Weiser
DAVID A. WEISER, Mayor

ATTEST:

Gerry Becker
GERRY BECKER, City Clerk

APPROVED AS TO FORM

Grant K. Weed
GRANT K. WEED, City Attorney

Accepted and approved this 24th day of Nov, 2003.

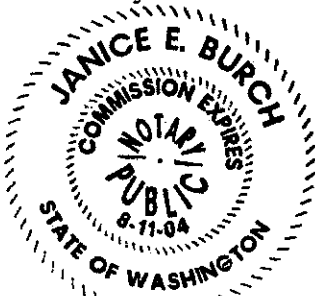
Comcast of California/Colorado/Texas/Washington, Inc.

By [Signature]
Its Regional Vice President - Finance

STATE OF WASHINGTON)
) SS
COUNTY OF SNOHOMISH)

On November 24, 2003, before me, a Notary Public in and for said State, personally appeared Steve Croney, know to me to be the Regional Vice President of Finance of the corporation that executed the within Instrument, known to me to be the person who executed the within Instrument on behalf of the corporation therein named as Grantee and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS My hand and official seal.



Janice E. Burch

Janice E. Burch, Notary Public
In and for the State of Washington
Residing in Mukilteo, WA
My Commission expires August 11, 2004.

Comcast of Washington, IV, Inc.

By [Signature]
Its Regional Vice President - Finance

STATE OF WASHINGTON)
) SS
COUNTY OF SNOHOMISH)

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In and for the State of Washington
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My Commission expires August 11, 2004.

EXHIBIT A

**INSTITUTIONAL NETWORK MAINTENANCE AGREEMENT
BETWEEN**

**Comcast of California/Colorado/Texas/Washington, Inc. and Comcast of
Washington, IV, Inc.**

AND

The City of Marysville

THIS INSTITUTIONAL NETWORK MAINTENANCE AGREEMENT (the "Agreement") is between the City of Marysville, a Washington municipal corporation, hereinafter the "City," and Comcast of California/Colorado/Texas/Washington, Inc. and Comcast of Washington IV, Inc., collectively referred to hereinafter as "Comcast". The parties intend to set forth in this Agreement the terms and conditions for provision of Institutional Network ("I-Net") maintenance by Comcast.

RECITALS

WHEREAS, the City is requiring provision of an I-Net as part of the attached franchise agreement with Comcast;

WHEREAS, Section 12 of the attached Franchise includes provisions for the manner in which the I-Net is constructed and used; and

WHEREAS, the parties have determined that I-Net maintenance should be addressed in the form of a separate document, which is provided for herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. City I-Net Fiber Connections To Public Buildings. Comcast will provide I-Net connections to the public buildings as designated in Exhibit 1, with each building connecting to the City's I-Net Hub. The City and all other Qualified I-Net Users (as referenced in the Franchise) shall have an indefatigable, exclusive right of use thereof for non-commercial private network communications, which right cannot be revoked by Comcast, or successor companies, if any, during the term of the Franchise or any extension(s) or renewal(s) or transfer(s) thereof. However, notwithstanding anything in this Agreement to the contrary, Comcast shall at all times own in fee and maintain the outside aerial and underground fiber optic cable and associated facilities and equipment up to said fiber termination points where physically connected to City-owned optronics.

Section 2. Fiber Construction and Termination. Fiber will be constructed and terminated in accordance with Comcast standard practices, including but not limited to practices concerning connectorization. Comcast is allowed to utilize, during the term of the Franchise and any extension(s) or renewal(s) thereof, City-owned conduit with available capacity, at no charge, for fiber construction (of the City I-Net and/or for Public, Educational and Governmental ["PEG"] Access purposes only) on City property and in

the Right-of-Ways, and the City has agreed to grant Comcast all necessary rights of entry, easements and licenses to accomplish construction to mutually agreed-upon sites. Each fiber connection has been terminated at an internal point of demarcation in a Comcast standard fiber termination panel, unless the City provided another means of termination, in which case the City has provided, at its expense, all necessary fiber termination equipment. At each fiber termination location the City has provided wall mount backboards and a power source for the basic termination, or such equipment as chosen by the City as a replacement.

Section 3. Maintenance of Fiber. Routine maintenance on the fiber used for City I-Net purposes and including associated facilities and equipment used exclusively by the City for I-Net communications will be conducted on the same schedule as routine maintenance of Comcast's Cable System. Any repairs effected upon the fiber and associated I-Net facilities and equipment shall be performed by Comcast, with prior notice of at least five (5) business days to the City when practicable. In emergency conditions, such as a natural emergency resulting from a windstorm, Comcast will effect emergency repair work on the Comcast utilized fiber and City utilized I-Net fiber, if any, in the course of conducting its own emergency repair work on its cable system, excepting where City utilized I-Net fiber may not be co-located with Comcast system plant on a strand or in conduit in which case Comcast fiber shall be repaired as a first priority and City utilized fiber shall be repaired as a second priority in a continuous repair window. In such event, Comcast shall have no liability to City for a delay in I-Net service restoration. Comcast shall levy an annual maintenance fee (as hereinafter described) for all routine maintenance upon the I-Net fiber and associated facilities and equipment from the Comcast side of the I-Net fiber termination panel located at each site out to and including the backbone fiber.

Section 4. Service Trouble Calls and Escalation. The City acknowledges that Comcast does not actively monitor the signal transmission upon City utilized I-Net fiber, and may have no notice of a service outage but for City-initiated notification. For any outages of City utilized I-Net fiber as determined by the City, the City shall notify its information technology ("IT") representative, who shall in turn, contact the Broadband Service Assurance Center ("BSAC"). Comcast shall respond on-site to any routine trouble calls within four (4) hours of receipt of notification at the BSAC and shall actively begin working on the problem until it is resolved. In order to document its work on the City-utilized I-Net fiber, Comcast will use its normal trouble ticket processes. In the event of an inability to initially resolve I-Net problems, Comcast shall follow its normal escalation procedures for correcting fiber outages. At the City's request, Comcast shall also notify the City and provide documentation of the I-Net problem resolution. Such documentation shall include, among other things, a description of the cause and resolution of the problem for each I-Net trouble ticket.

Section 5. Administration, Maintenance and Management of the I-Net. The City shall be responsible for the ongoing administration, maintenance and management of the non-backbone I-Net facilities and equipment located on the City side of the I-Net fiber termination panel located at each site, and the internal site network itself, unless it contracts with Comcast separately for a managed network. All such maintenance

conducted by the City shall be performed in accordance with industry standards, and any equipment owned and used by the City shall comply in all respects with applicable governmental codes, laws, ordinances or regulations.

Section 6. City I-Net Users to Provide Certain Electronics. Comcast shall be responsible for supplying and installing the specified fiber optic cable, for the City's use, to the specified fiber termination panel locations only, thereby providing a pathway for I-Net communications between sites.

COMCAST DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE MATERIALS SUPPLIED HEREIN, TO THE EXTENT PERMITTED BY LAW. COMCAST SHALL PURCHASE MATERIALS FOR THE I-NET FROM ITS CUSTOMARY SUPPLIERS, AND ALL MANUFACTURER AND SUPPLIER WARRANTIES SHALL CONTINUE TO APPLY. IN NO EVENT SHALL COMCAST BE LIABLE FOR DEFICIENCIES OR DEFECTS IN THE FIBER FACILITIES CAUSED BY THE CITY OR THE CITY'S AGENTS' OR EMPLOYEES' MISUSE, UNREASONABLE USE, NEGLIGENCE, ALTERATIONS OR IMPROPER REPAIR. COMCAST MAKES NO WARRANTIES EXPRESS OR IMPLIED, ARISING BY CUSTOM OR TRADE USAGE OR OTHERWISE CONCERNING THE FIBER FACILITIES AND/OR EQUIPMENT INSTALLED UNDER THIS AGREEMENT. IN NO EVENT SHALL COMCAST BE LIABLE TO THE CITY FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING IN ANY MANNER FROM THE CONTENT OR SERVICES THAT THE CITY CHOOSES TO PROVIDE OVER COMCAST'S FACILITIES.

Any "active" equipment or components, including but not limited to computers, network cards, optronics, electronics, and equipment racks, required for I-Net use shall be provided at the City's sole expense, unless the City has entered into a separate agreement with Comcast for a managed network, in which case the terms of such agreement shall govern equipment ownership.

Section 7. Equipment or Modifications. The City will not attach any equipment or otherwise modify the I-Net in any way that will interfere with the signal quality and the normal operation of Comcast's Cable System. The City may not access any part of the backbone fiber and associated facilities and equipment outside the actual I-Net site fiber termination panel, and the City's permitted access shall in no event extend beyond the City's side of the fiber termination panel.

Section 8. Undergrounding. When electric and telephone utility wiring in an area of the City are relocated underground, Comcast shall, in accordance with the Franchise, place its cable system underground at the same time. Comcast shall be responsible for relocating City I-Net utilized fiber when Comcast's system fiber is placed underground at the same time. Notwithstanding the foregoing, should an increased cost differential arise because of Comcast's having to do additional splicing, increase the size of its conduit, vaults, or fiber sheath (because of the undergrounding), then the City shall pay the reasonable, incremental cost differential pertaining to the City I-Net utilized fiber only.

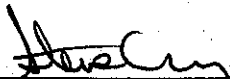
Section 9. Cost of I-Net Maintenance; Annual Maintenance Fee. The ongoing maintenance and repair of the City utilized I-Net fiber, whether or not scheduled or prompted by an emergency, shall be performed by Comcast as part of an annual maintenance program. The maintenance shall be paid for by the City at the beginning of the City's next fiscal year following execution of this Agreement and each anniversary thereafter. The maintenance fee shall initially be Five Hundred Dollars (\$500.00) per strand (route) mile per year. Such fee shall apply without regard to the number of necessary non-emergency or emergency repair incidents, and shall cover, without limitation, restoration of outages caused by third-party plant damage, damage wrought by inclement weather, quarterly system drive-outs for preventive maintenance, code compliance inspections, fiber functionality testing and re-documentation, pole change-outs and pole relocations, strand replacement, strand/facilities re-tensioning, anchoring, all labor, materials and equipment charges and associated engineering costs. The City shall make payment within ninety (90) days of receipt of an invoice. Should the City fail to make payment within such period, the City shall be assessed an interest charge from the date payment was due at an annual rate at the then current prime rate plus two percent (2%).

Section 10. Annual Maintenance Fee Increase. Effective on the first anniversary of the initial invoicing of the City for the annual maintenance fee (the "Adjustment Date"), and on each succeeding anniversary during the term of the Franchise, the annual maintenance fee payable by City to Comcast shall be increased by an amount equal to the increase in the Consumer Price Index (the "Index") for the greater Seattle metropolitan area published most immediately preceding that date which is twelve (12) months prior to the Adjustment Date; provided, however, that in no event shall the annual maintenance fee payable after the Adjustment Date be less than the annual maintenance fee payable before the Adjustment Date. Comcast shall not be obligated to make any adjustments or re-computations, retroactive or otherwise, by reason of any revision which later may be made in the Index figures first published for any period. If the Index is discontinued, the parties shall follow any official consumer price index, whether so named or designated or not, issued by any authorized agency of the United States which supplants the Index; otherwise, the parties shall use any comparable general wholesale or retail price index for the United States jointly selected by City and Comcast.

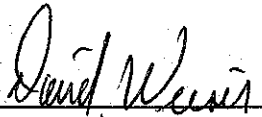
Section 11. Entire Agreement. This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral negotiations and agreements between them except that all provisions of the Franchise shall remain in full force and effect.

AGREED TO BETWEEN THE PARTIES on the last date written below.

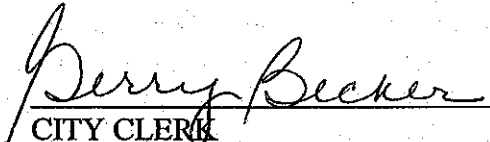
Comcast of California/Colorado/Texas/Washington, Inc. and Comcast of Washington IV,
Inc.


By: Steve Crony
its: Regional Vice President - Finance
Date: _____

CITY OF MARYSVILLE


By: David Weiser
its: Mayor
Date: November 10, 2003

ATTEST:


CITY CLERK

MARYSVILLE I-NET SITE LIST AND COST

1. Marysville Public Safety Center - 1635 Grove Street
2. Marysville City Hall - 1049 State Avenue
3. Public Works Building - 80 Columbia Avenue
4. Parks and Recreation Office - 6915 Armar Road
5. Marysville Public Library - 6120 Grove Street
6. Ken Baxter Senior/Community Center - 514 Delta Avenue
7. Cedarcrest Municipal Golf Course - 6810 68th Avenue NE
8. Marysville School District Service Center - 4220 80th Street NE
9. Fire Station 63 - 14716 Smokey Point Boulevard
10. Fire Station 62 - 5100 108th Street NE

Inside Plant (ISP) costs	\$ 98,561.99*
Outside Plant (OSP) costs	\$ 55,046.02
Total Cost to construct	\$153,608.01

* These costs are NOT based on "prevailing wage" environment; if "prevailing wage" requirements exist, costs will have to be adjusted appropriately.