

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: March 8, 2021**

<b>AGENDA ITEM:</b>	
Proposed Ordinance Consenting to Change of Control of WaveDivision I, LLC	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Burton Eggertsen	
<b>DEPARTMENT:</b>	
Legal	
<b>ATTACHMENTS:</b>	
Proposed Ordinance	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

WaveDivision I, LLC has a franchise to operate a cable television system in the City. Stonepeak Infrastructure Holdings, a Delaware limited liability company, has entered into an agreement to acquire Radiate Holdings L.P., a Delaware limited partnership, which is a parent company of WaveDivision I. Stonepeak has requested that the City consent to the change of indirect control of WaveDivision I.

Stonepeak has provided the City information required by FCC regulations, and City staff has reviewed the legal, technical, and financial qualifications of Stonepeak. Based on this review, City staff does not anticipate that the change of control will negatively impact the provision of television cable services in the City.

**RECOMMENDED ACTION:**

Staff recommends the City Council consider adopting the ordinance consenting to the change of control of WaveDivision I, LLC.

CITY OF MARYSVILLE  
Marysville, Washington

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON,  
CONSENTING TO CHANGE OF CONTROL OF WAVEDIVISION I, LLC**

WHEREAS, WaveDivision I, LLC (the “Franchisee”) owns, operates, and maintains a cable television system in the City of Marysville (the “City”) pursuant to a cable television franchise agreement (the “Franchise”), a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, the Franchisee is the current duly authorized holder of the Franchise; and

WHEREAS, pursuant to an Agreement and Plan of Merger (“Agreement”), funds associated with Stonepeak Infrastructure Partners (“Acquiror”), a Delaware limited liability company, will purchase 100% of the indirect ownership interests of Radiate Holdings, L.P., a Delaware limited partnership (which owns 100% of the indirect ownership interests in Franchisee), and, as a result, the indirect control of Franchisee will change (the “Change of Control”); and

WHEREAS, the Franchisee and Acquiror have requested the Consent of the City, have filed an FCC Form 394 with the City, and have provided the City with all information necessary to facilitate a decision by the City (collectively, the “Application”) ; and

WHEREAS, the City has reviewed the Application.

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

SECTION 1. The City accepts the Application and consents to the Change of Control.

SECTION 2. The City confirms that the Franchise is valid and outstanding and in full force and effect and there are no defaults under the Franchise. Subject to compliance with the terms of this Ordinance, all action necessary with respect to the Change of Control has been duly and validly taken.

SECTION 3. This Ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF MARYSVILLE

By \_\_\_\_\_  
JON NEHRING, MAYOR

Attest:

By \_\_\_\_\_  
TINA BROCK, DEPUTY CITY CLERK

Approved as to from:

By \_\_\_\_\_  
JON WALKER, CITY ATTORNEY

Date of publication: \_\_\_\_\_

Effective Date (5 days after publication): \_\_\_\_\_

CITY OF MARYSVILLE  
Marysville, Washington

ORDINANCE NO. 2993

AN ORDINANCE OF THE CITY OF MARYSVILLE GRANTING  
A FRANCHISE TO WAVEDIVISION I, LLC TO OPERATE A  
CABLE TELEVISION SYSTEM IN CITY RIGHTS-OF-WAY.

This Cable Television Franchise (“Franchise”) is entered into in Marysville, Washington, this 22 day of June, 2015, by and between the City of Marysville, Washington a municipal corporation, (hereinafter “City”) and WaveDivision I, LLC, a Washington limited liability company (hereinafter “Grantee”). City and Grantee are sometimes referred to hereinafter collectively as the “parties.”

WHEREAS, Grantee has applied to the City for a nonexclusive franchise to construct, maintain, operate, replace and repair a Cable System in, on, across, over, along, under or through Rights-of-Way within the Franchise Area; and

WHEREAS, the City 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 Franchise Area; 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, 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

ORIGINAL

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

## **SECTION 1. DEFINITIONS**

For the purposes of this Franchise 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”** is defined by the Cable Act at 47 U.S.C. § 522(2).

**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”** is defined by the Cable Act at 47 U.S.C. § 522(5).

**1.11 “Cable Service”** is defined by the Cable Act at 47 U.S.C. § 522(6).

**1.12 “Channel”** is defined by the Cable Act at 47 U.S.C. § 522(4).

**1.13 “City”** means the City of Marysville, Washington, a municipal corporation.

**1.14 “City Code”** means the ordinances of the City of Marysville having general applicability, which are codified as the Marysville Municipal Code.

**1.15 “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.

**1.16 “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.

**1.17 “Downstream”** means carrying a transmission from the Headend to remote points on the System or to interconnection points on the System.

**1.18 “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.

**1.19 “Expanded Basic Service”** means cable programming services not included in the Basic Service and excluding, for example, premium or pay-per-view services.

**1.20 “FCC”** means the Federal Communications Commission or its lawful successor.

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

**1.22 “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 and as defined in 47 U.S.C. § 522(9).

**1.23 “Franchise Area”** means the depicted area on Exhibit A (the “Initial Area”), including any areas immediately adjacent to the Initial Area annexed by the City during the term of this Franchise, or that may be added to the Franchise Area during the term pursuant to Section 12.

**1.24 “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; 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 that service is 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.

**1.25 “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.

**1.26 “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 “Locally Scheduled Original Programming”** means Government Access or Educational Access programming that is created by the City or its Designated Access Provider(s) including edited coverage of live programming. Any such programming shall only be considered Locally Scheduled Original Programming for the first two (2) cablecasts of same (initial airing and first repeat). Additional cablecasts of the same programming shall no longer be deemed Locally Scheduled Original Programming. Automated Video Programming filler, such as cablecasts of highways and roads, AM/FM Radio programming, NASA or video bulletin boards, does not constitute Locally Scheduled Original Programming.

**1.29 “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., fundraising) to produce and transmit programming on an Access Channel, or from acknowledging a contribution.

**1.30 “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.

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

**1.32 “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.

**1.33 “School”** means any state accredited public educational institution including, for example, primary and secondary schools (K-12).

**1.34 “State”** means the State of Washington.

**1.35 “Subscriber”** means any Person who lawfully receives Cable Service provided by Grantee by means of the System with Grantee’s express permission.

**1.36 “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.

**1.37 "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(50)).

**1.38 "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(53)).

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

**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"** is defined by the Cable Act at 47 U.S.C. § 522(20).

## **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. 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;

(3) Any permits or agreements for occupying any property of the City other than Rights-of-Way; or

(4) Any necessary or appropriate permits or agreements allowing Grantee to use, occupy or access property belonging to any Person other than the City, such as (by way of example only) permits and agreements allowing Grantee to place devices or equipment on poles, in conduits or in or on other structures that do not belong to Grantee.

(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 a Cable System. 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 Services 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 ten (10) years from the Effective Date of this Franchise, unless terminated, reduced or otherwise amended 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.

### **2.5 Franchise Nonexclusive; Grant of Other Franchises**

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 after the Effective Date of this Franchise to enter into the City's Rights-of-Way for the purpose of constructing or operating a cable 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 all 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 for 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 standard form utilized by Grantee, 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%) or more in a calendar year, Grantee shall pay the City's actual cost of the audit up to a maximum amount of twenty thousand dollars (\$20,000). 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, except as otherwise provided by applicable law, 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 in accordance with applicable law.

### **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 surety bond, 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 Act, 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's 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 (determine according to City guidelines consistently applied to other City discounts) 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 percent (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 Leased Access 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 Franchise Area 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 City.

(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; 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, it 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 Grantee's performance of its rights or obligations under this Franchise, or involve Grantee's System as installed in the Rights-of-Way pursuant to this Franchise. Grantee's insurance must

also cover the actions of Grantee's agents, representatives, contractors, subcontractors and their employees acting on behalf of Grantee under this Franchise.

(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 or certificates 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 Surety Bond**

(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 surety bond from a financial institution satisfactory to the City in the amount of ten thousand dollars (\$10,000).

(B) If a surety bond is required pursuant to subsection (A), the surety bond 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 surety bond 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 surety bond pursuant to this subsection. Within thirty (30) days following notice that such withdrawal has occurred, Grantee shall restore the surety bond to the full amount required by subsection (A). Grantee's maintenance of the surety bond shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the surety bond 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 surety bond was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the surety bond has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the surety bond 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) 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; and
- (D) A compilation of Subscriber complaints, actions taken and resolution, and a log of service calls.

Grantee shall 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**

Upon written request by the City, Grantee shall submit to the City in a reasonable timeframe annually 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 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) Sports;
- (C) General entertainment including movies;
- (D) Foreign language programming;
- (E) News, weather and information; and
- (F) 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 Surveys**

Upon request of the City, but not more frequently than once every three (3) 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 Franchise Area, 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 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.

**8.8 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 Lakewood School District.

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 Characteristics of Access Channels**

(A) Each Access Channel provided pursuant to Section 9 shall be subject to the following:

(1) Each Access Channel shall be viewable by every Subscriber as part of that Subscriber's service, without any additional service charge.

(2) It is the responsibility of the Designated Access Providers to provide Grantee with an upstream Access Channel signal at the termination panel hand-off point that meets or exceeds FCC technical standards, and Grantee shall deliver to Subscribers a downstream Access Channel signal that meets or exceeds FCC technical standards, and without material degradation. For purposes of this subsection, "material degradation" means where signal quality is noticeably degraded from that provided to Grantee at the demarcation point.

(3) The entire upstream Access Channel signal delivered to Grantee by a Designated Access Provider will be delivered to Subscribers. By way of example, if Designated Access Provider places closed captioning on its upstream Access Channel signal, Grantee shall deliver the Access Channel signal, including closed captioning, to its Subscribers.

(4) Subject to applicable law, Access Channels may be delivered to Subscribers in analog format or digital format provided that if Grantee elects to provide Access Channels in digital format while Grantee delivers some channels to its Subscribers in analog format, Grantee shall, at no additional cost to the Subscriber, provide digital-to-analog converters for the primary television set of each such Subscriber who requests such equipment to enable such Subscriber with analog-only television equipment to view the Access Channels carried in digital format.

(5) Within one hundred twenty (120) days following the commencement of carriage of any of the Access Channels in digital-only format or upon one hundred twenty



(120) days prior written notice from the City to Grantee, Grantee will commence carriage of one (1) of the Access Channels in high-definition format. The City may designate which of the Access Channels will be carried in high-definition format.

(6) For the elimination of doubt, Grantee will not be required under subsections (4) and (5) above to (i) transmit more than one (1) Access Channel in high-definition format, (ii) provide any equipment to the City to facilitate the creation, storage or distribution of any high-definition programming, or (iii) provide to Subscribers any equipment (other than the digital-to-analog converters described above) necessary to view the Access Channel in high-definition format.

### **9.3 Access Channel Video On Demand**

Within ninety (90) days following request by the City, Grantee will set aside sufficient storage capacity on its video-on-demand (“VOD”) server to store up to thirty (30) hours of Access Channel programming. The City will have the obligation and shall bear all costs and expenses to format (i.e., encode the Access Channel programming in the appropriate VOD format along with the appropriate metadata to enable its use in Grantee’s VOD server) and transport the formatted Access Channel programming to Grantee’s VOD server via a transport mechanism that is commonly used in the cable television industry. At such time that the City provides formatted Access Channel programming to Grantee as described above, Grantee will make such programming available to Subscribers that have access to Grantee’s other VOD programming in a manner consistent with such other VOD programming and at no additional cost to such Subscribers. The City will be responsible for “refreshing” the Access Channel programming on a periodic basis.

### **9.4 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 Designated Access Providers 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 Channel related 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 (i) the City’s provision of Access Channel signals and content to Grantee, and (ii) the City’s use of Access Channel related facilities.

### **9.5 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 one (1) additional activated Access Channel when either of the Access Channels required by Section 9.1 are used for Locally Scheduled Original Programming at least forty-eight (48) hours per week between 10:00 A.M. and 10:00 P.M., Monday through Friday during any consecutive ten (10) week period (“Threshold Requirement”). The initial

showing and first repeat shall count towards the Threshold Requirement. To meet the Threshold Requirement, the City or Designated Access Provider must produce distinct Locally Scheduled Original Programming. Programming from either of the existing Access Channels cannot be included in the calculation of the Threshold Requirement of the other Access Channel.

Once the Threshold Requirement has been met, Grantee shall, within six (6) months following a written request by the City, provide an additional Access Channel for use by the City or its Designated Access Provider.

#### **9.6 Location of Access Channels**

Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall use its best efforts to provide one hundred twenty (120) days advance written notice to the City and at least thirty (30) days advance written notice to Subscribers prior to any relocation of any Access Channel. In the event of Access Channel relocation, Grantee shall provide notice to Subscribers in the same manner as notice is provided for any other Channel relocation. In such event, the City or its Designated Access Provider may provide, at its expense, a bill insert regarding the Access Channel location change that Grantee shall include in Subscriber bills. Grantee shall provide, at its expense, a bill message on Subscriber bills.

#### **9.7 Access Interconnections**

Grantee shall Interconnect the Access Channels of the Cable System with the Access Channels of any other cable system not owned or operated by Grantee or an Affiliate of Grantee and providing Cable Service in the City if technically feasible and not financially burdensome to Grantee. Interconnections under this subsection shall be located at the City's Access Channel origination site or another mutually agreeable site.

#### **9.8 Access Capital Advance**

No later than forty-five (45) days after the Effective Date of this Franchise, Grantee shall pay to the City a capital advance in the amount of three thousand dollars (\$3,000). Additionally, at the beginning of year two of this Franchise, Grantee shall pay to the City another capital advance in the amount of three thousand dollars (\$3,000). These are advance payments of the Capital Contribution set forth in subsection 9.9. These advance payments of Capital Contributions may be used by the City for capital expenditures related to Access construction, renovation, equipment or facilities. These advance payments 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.

#### **9.9 Capital Contribution**

(A) Commencing with the Effective Date of this Franchise, Grantee shall provide a capital contribution to the City for Access capital costs ("Capital Contribution") in an amount not to exceed \$0.75 per Subscriber per month throughout the term of this Franchise. As of the effective date of this Franchise, that figure shall be \$0.75 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 pursuant to subsection 9.8.

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, and remaining reserve balance, from the Capital Contribution to Grantee within ninety (90) days of the end of each calendar year. To the extent the City makes Access 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.

(B) The City and Grantee agree that any Capital Contribution shall be referred to on Subscribers' bills as an "EG 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.

#### **9.10 Access Channels On Lowest Tier**

All Access Channels provided to Subscribers with a standard definition video signal under this Franchise shall be included by Grantee as a part of Basic Service. All Access Channels provided to Subscribers with a high definition video signal under this Franchise shall be included by Grantee as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

#### **9.11 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 pursuant to this Franchise. Grantee will not interrupt at its headend or hub site, the signal provided on any Access Channel, except during an upgrade, or during circumstances beyond Grantee's control or if necessary for testing or planned system maintenance purposes.

#### **9.12 Technical Quality**

The Grantee shall, at its expense, maintain all Access services, Channels (including functionality and signal quality) and Interconnections at the same level of technical quality and reliability as that for the rest of the Channels carried on the Cable System. Grantee shall provide all necessary equipment outside the demarcation point at the Access Channel provider's origination point, at Grantee's headend and throughout its distribution system to deliver the Access Channels to Subscribers. Grantee shall, at its expense, provide routine maintenance and repair and replace, if necessary, any of Grantee's transport lines and 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. With respect to signal quality, Grantee shall distribute the Access Channel signal it receives from the Designated Access Provider without material degradation. For purposes of this subsection, material degradation means where signal quality is noticeably degraded from that provided to Grantee by the Designated Access Provider at the demarcation point.

### **9.13 Underutilized Access Channels**

(A) 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 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.

(B) At such time as a Designated Access Provider believes that it has sufficient Locally Scheduled Original Programming (or the ability to create same) that would 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 Locally Scheduled Original Programming proposed to be carried on the Access Channel as well the Designated Access Provider's ability and resources to acquire or produce the additional proposed Locally Scheduled Original 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 Locally Scheduled Original 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 respective Locally Scheduled Original 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.

#### **9.14 Information about Access Programming**

If timely provided to Grantee by the City, Grantee shall include information about Access programming in any installation packet Grantee provides to Subscribers. The City shall supply said materials for insertion into any such packet in a format consistent with Grantee's requirements.

#### **9.15 Return Lines**

Grantee, at its expense, shall construct and maintain a return line to Grantee's Headend (and/or hub[s] if applicable) from City Hall (on State Avenue) and the Lakewood School District Service Center to enable the distribution of Governmental and Educational Access programming to Residential Subscribers on the Access Channels. If the Lakewood School District has not utilized the Educational Access Channel and if the Franchise Area covered by this Franchise Agreement has been expanded pursuant to Section 12.2 below to include a high school serving the Marysville School District and the Marysville School District desires to utilize the Educational Access Channel, then Grantee will construct and maintain a return line to serve the Marysville High School as described in this Section.

#### **9.16 Access Program Listings in Subscriber Guides**

If the City or one or more of the City's Designated Access Providers desires to contract with Grantee's program guide provider to get one or more Access Channels listed in the program guide, Grantee shall facilitate the City's initial contact with the program guide provider. If the City or one or more of the City's Designated Access Providers chooses to contract with Grantee's program guide provider as described in the preceding sentence, then the Access Channel(s) at issue shall be listed on Grantee's program guide in the same manner as other, commercial, 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 installation, 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 Franchise Area.

#### **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 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 provisions of the City Code, including, without limitation, construction codes, building codes, the Fire Code, Public Works Street Standards and zoning codes and regulations as they now read or are hereinafter amended.

(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**

(A) Upon forty-five (45) days written request by the City, Grantee shall provide a current, updated map of those portions of the Cable System that are located within the Public Right-of-Way. As of the Effective Date, Grantee does not have the ability to deliver such maps in an electronic format usable by a GIS database. However, Grantee expects to improve its technological mapping capabilities in the future. Accordingly, if, at the time of any such request,

Grantee has the ability to do so, Grantee shall provide the requested maps in both a digital format for use in GIS, either shapefile or geodatabase format, and in a hard copy format. The coordinate system of the digital data for overlaying on the City's GIS shall be Washington State Plane North **NAD 83 US Feet**. The data shall indicate locations of overhead cables and underground cables.

(B) Grantee warrants the maps and information supplied with any Right-of-Way permit application will be reasonably accurate to the best of Grantee's knowledge and upon request, within fifteen (15) days, will provide updated information for a particular location in connection with a permit application.

#### **10.11 Least Interference**

Work in the Right-of-Way, or on other public or private property in connection with this Franchise, 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 a 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, installed, 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, except to the extent any of the foregoing may be authorized by appropriate City permits. 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**

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its equipment and work sites in a safe manner in order to prevent accidents that may cause damage or injuries. All work undertaken on the Cable System shall be performed in compliance with applicable FCC or other federal and State regulations. The Cable System shall not endanger or interfere with the safety of Persons or property in the Rights-of-Way.

#### **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 Grantee intends to perform 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. Where utility facilities owned and operated by persons other than Grantee are also present or planned and involved in an undergrounding project, Grantee shall only be required to pay its fair share of common costs allocable to all of the facilities, in addition to the costs specifically attributable to the undergrounding of the Grantee's facilities. "Common costs" shall include necessary costs not specifically attributable to the installation or undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size and complexity of Grantee's facilities being installed or undergrounded in comparison to the total number and size of all other utility facilities being installed or undergrounded.

(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 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) 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) 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 Grantee facility comprising a part of the System 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**

Except as otherwise provided in Chapter 35.99 RCW, 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, if so located pursuant to this Franchise, 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 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. Grantee may, after receipt of the City's written notice requesting that Grantee relocate, remove, replace, modify or disconnect Grantee's facilities or equipment, submit to the City proposed written alternatives to such relocation. The City shall evaluate such alternatives and advise Grantee in writing if one or more of the alternatives are suitable to accommodate the City's project. The City shall give each alternative proposed by Grantee full and fair consideration. In the event the City ultimately determines that there is no reasonable or feasible alternative to the City's original request, or in the event Grantee does not propose written alternatives to the City, Grantee shall relocate,

remove, replace, modify or disconnect its facilities or equipment as requested. 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. 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**

Grantee shall have no obligation to permanently move, relocate, disconnect or otherwise modify any of Grantee's equipment or facilities lawfully installed in the Rights-of-Way at the request of any third-party. However, Grantee agrees that, upon receipt of a written relocation request from any third-party that is authorized to use and occupy the City's Rights-of-Way, Grantee will enter into good faith discussions with said third-party in an effort to reach mutually agreeable terms and conditions with respect to the requested relocation or other modification. If Grantee agrees to move, relocate, disconnect or otherwise modify any portion of the Cable System at the request of a third-party, Grantee may require that the costs associated with the movement, relocation, disconnection or other modification of the Cable System be paid by the requesting 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 Grantee's 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 Grantee's behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and 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 Grantee's contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and applicable laws governing the work performed by them.

## **SECTION 11. SYSTEM TECHNICAL STANDARDS**

### **11.1 Subscriber Network**

(A) Grantee's current Cable System is an operational 750 MHz hybrid fiber coaxial Cable System, and the Cable System has two-way capability throughout the Franchise Area. The Cable System shall be capable of supporting the full range of Cable Services offered by Grantee. The Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted. The Cable System is capable of supporting digital video in both standard definition and high definition formats.

(B) Equipment must be installed so that all closed captioned programming received by the Cable System shall include the closed caption signal on retransmission, 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.

(C) 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.

(D) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular part of 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 Franchise Area, Grantee shall provide information on why such Cable Services are not being offered by Grantee in the Franchise Area and an estimated cost to supply such Cable Services. At the City's request, and if economically feasible for Grantee, Grantee shall use commercially reasonable efforts to deploy such new Cable Services within the Franchise Area within a reasonable time frame; provided, however, that in no event shall Grantee be required to deploy new Cable Services or perform any other upgrades to or expansions of its System if Grantee will not be able (in the reasonable business judgment of Grantee) to recover its capital expenditures related to such new deployment, upgrade or expansion within the remaining term of this Franchise.

### **11.3 Advanced Cable Service**

If Grantee intends to offer an advanced Cable Service on any of its cable systems in the greater Seattle metropolitan area, then Grantee shall consider whether the Franchise Area may be a good location in which to beta test or otherwise perform an initial roll-out of such advanced Cable Service. If Grantee determines the Franchise Area may be a good location in which to beta test or otherwise perform an initial roll-out of such advanced Cable Service, Grantee shall so notify the City and ascertain whether the City desires to participate in such beta testing or initial roll-out.

#### **11.4 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.

#### **11.5 Emergency Alert Capability**

(A) Emergency Alert System (“EAS”) activation will be accomplished in compliance with all federal and state 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.

#### **11.6 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.

#### **11.7 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 the required 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.

### **11.8 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. SERVICE EXTENSION AND SERVICE TO PUBLIC BUILDINGS**

### **12.1 Service Availability**

(A) In General. Subject to the density provisions described in Section 12.1(B) below, Grantee shall initiate provision of Cable Service to a Dwelling Unit within seven (7) days of a

request by any potential residential Subscriber within the Franchise Area so long as the potential Subscriber meets Grantee's standard credit qualifications. For purposes of this subsection, a request for Cable Service to a Dwelling Unit shall be deemed made on the date on which a residential service agreement is signed by the potential residential Subscriber. Grantee shall provide such Cable 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 maximum of 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) Extension and Density. In any portions of the Franchise Area in which Grantee's Cable System is located, Grantee shall make Cable Service available to every residential Dwelling Unit where the minimum density is at least twenty-five (25) Dwelling Units per strand mile in areas served by overhead facilities, and sixty (60) Dwelling Units per line mile in areas served by underground facilities. Grantee may elect to provide Cable Services to areas not meeting the above density standards and charge the requesting resident(s) for the line extension on a non-discriminatory time and materials cost basis. In the event of such extension, Grantee may require that the payment of the capital contribution in aid of construction that is to be borne by such potential customers be paid in advance.

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

(D) Service to Multiple Dwelling Units. Upon request of the property owner, Grantee shall provide Cable Service to buildings with Multiple Dwelling Units in accordance with Grantee's standard form of Multiple Dwelling Unit agreement, this Franchise and all applicable laws.

## **12.2 Edge Out Construction; Incremental Expansion of Franchise Area**

(A) In general. The City and Grantee acknowledge and agree that as of the Effective Date, the Franchise Area and Grantee's System installed within the Franchise Area covers only a small portion of the City's total municipal area. The City and Grantee agree that it is desirable for Grantee to expand its System into other portions of the City so as to make Grantee's Cable Services available to larger portions of the City. However, the parties acknowledge that it is not economically feasible for Grantee to expand its System to serve the entire City at once. Instead,

the parties agree that an incremental build out of Grantee's System is an appropriate way to manage the gradual expansion of the Franchise Area.

(B) Expansion of Franchise Area. At any time during the term, Grantee may, in its sole discretion, elect to seek to expand its then-existing Franchise Area within the City to include additional areas of the City that are adjacent to Grantee's then-existing Franchise Area, using the process set forth below. Grantee will deliver written notice of any proposed expansion of the System and the Franchise Area to the City, which notice shall include maps showing the location of the proposed expansion (the "Expansion Area") and a description of Grantee's projected timeline for construction. Upon receipt of Grantee's expansion proposal, the City shall review same and may contact Grantee for additional information or to set up a meeting in which to discuss the proposed expansion. The City may propose changes or alterations to Grantee's proposed expansion, including changes to the boundaries or configuration of the proposed Expansion Area. Grantee and the City shall work together in good faith to arrive at a mutually acceptable Expansion Area. If the City determines that Grantee's proposed expansion, as adjusted or altered pursuant to discussions with the City, is a reasonable plan of expansion and is in the best interest of the City and its residents, then the City shall approve same. The City's designee shall have the authority to approve the proposed expansion on behalf of the City, by executing an addendum to this Franchise setting forth the new Franchise Area. To be effective, any such addendum must be counter-signed by Grantee.

(C) Construction of Expanded System. Beginning on the date on which an expansion of the Franchise Area has been formally approved as described in subsection (B) above, Grantee shall have a period of twelve (12) months in which to perform the construction necessary to expand its System into the Expansion Area before the service obligations contained in this Franchise begin to apply to Grantee within the Expansion Area.

(D) Entire City. Grantee is encouraged to propose multiple Expansion Areas during the term, as and when Grantee believes such expansion is economically feasible. Subject to market demand and the City's approval rights with respect to any Grantee expansion proposals, Grantee agrees to use commercially reasonable efforts to continually, throughout the Franchise term, evaluate the footprint of its System within the City (and the corresponding Franchise Area under this Franchise) for potential expansion.

### **12.3 Connection of Public Facilities**

(A) Historically, Grantee has not provided any complimentary Cable Service to City buildings, fire stations, police stations, schools or libraries in the Franchise Area. However, the City shall have the right, at any time during the term, upon giving at least ninety (90) days advance written notice to Grantee, to require Grantee to begin providing, on a complimentary basis, one outlet of Basic Service and Expanded Basic Service to one or more buildings that are owned or leased by the City for administrative purposes, fire and police stations, schools and libraries, provided that such buildings are located within 125 aerial feet (a standard installation) of Grantee's Cable System and provided that such buildings are not already receiving complimentary Cable Service from another provider. If the distance to any such building exceeds one hundred twenty-five (125) aerial feet from Grantee's Cable System, Grantee shall



connect such building and provide the complimentary Cable Service described above if the City or other entity agrees to pay Grantee for the additional, incremental cost to Grantee of performing the extended installation of such drop line in excess of one hundred twenty-five (125) aerial feet, including the cost of excess labor and materials. Grantee shall not be required to provide complimentary Cable Service to any buildings or portions of buildings that are not owned or leased by the City, that are not occupied and used by and for governmental administrative or educational purposes (storage facilities, etc.) or where Grantee would normally enter into a commercial contract to provide Cable Service, such as a prison/jail or a golf course. In instances where the City is leasing and occupying the premises at issue, the City shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building's owner. 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 or for viewing by the general public, except at City Hall.

(B) 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.

(C) 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.

(D) The fair market value of any complimentary Cable Service provided to the City by Grantee may be offset against Franchise Fees owed by Grantee if and to the extent allowed by law.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Procedure for Remediating Franchise Violations**

(A) If the City believes that Grantee has failed to perform any 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 13.2; or

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

(D) The determination as to whether a 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.

### **13.2 Revocation**

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

(1) If Grantee fails to timely cure a default under Section 13.1 above;

(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;

(6) If Grantee fails to timely pay Franchise Fees to the City if the City delivers formal notification of nonpayment to Grantee and Grantee does not pay all franchise fees owing within 30 (thirty) days of delivery of the notification; or

(7) 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 timely appeals the decision to a court of competent jurisdiction.

(3) Grantee and the City 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.

### **13.3 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 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 13.4, below.

(B) The City may order the removal of the above-ground Cable System facilities and such underground facilities from the Franchise Area 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 adversely affecting electrical or telephone wires or attachments. The indemnification and insurance provisions and the surety bond, 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 therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (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 surety bond, 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.

### **13.4 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.

### **13.5 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.

### **13.6 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).

### **13.7 Assessment of Liquidated Damages**

(A) 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.

(B) 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 liquidated damages up to 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 uncured material breaches or defaults under the Franchise; provided however, in no event shall the aggregate amount of any such monetary penalties assessed during the term of the franchise exceed fifty thousand dollars (\$50,000).

## **SECTION 14. 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 15. FRANCHISE TRANSFER**

(A) Subject to Section 617 of the Cable Act, 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 any proposed 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 sixty (60) days of the closing 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 contained elsewhere in this Section 15, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or all or any portion of the Cable System to an Affiliate of Grantee; 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 16. MISCELLANEOUS PROVISIONS**

### **16.1 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.

### **16.2 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.

### **16.3 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:



WaveDivision I, LLC  
115 South Maple Avenue  
PO Box 1630  
LaConner, WA 98257  
Attention: General Manager

With a copy to:

Wave Broadband  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033  
Attention: Steve Weed and Jim Penney

City's address shall be:

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

#### **16.4 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.

#### **16.5 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.

#### **16.6 Binding Effect**

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

#### **16.7 Authority to Amend**

In addition to certain amendment provisions of Section 2.6, and the potential expansion of the Franchise Area described in Section 12.2, this Franchise may also be amended at any time by mutual written agreement between the parties.

#### **16.8 Venue**

Venue for any dispute related to this Franchise shall be either in Snohomish County Superior Court in Everett, Washington, or the federal District Court for the Western District of Washington in Seattle, Washington, as appropriate.

### **16.9 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).

### **16.10 Guarantee**

The performance of Grantee under this Franchise shall be guaranteed in all respects by WaveDivision Holdings, LLC, a Delaware limited liability company. A signed guarantee shall be filed with the City contemporaneously with Grantee's acceptance of this Franchise.

### **16.11 Counterparts**

This Franchise may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on the parties hereto.

### **16.12 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.

### **16.13 No Joint Venture**

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

### **16.14 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.

### **16.15 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.

### **16.16 Entire Agreement**

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

### **16.17 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 Franchise Area 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.

**16.18 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.

**16.19 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.

**16.20 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 this Franchise shall be voidable at the discretion of the City.

PASSED by the City Council and APPROVED by the Mayor this 22 day of June, 2015.

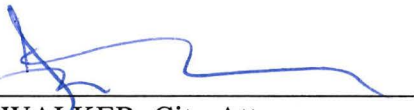
CITY OF MARYSVILLE

By   
JOHN NEHRING, Mayor

ATTEST:

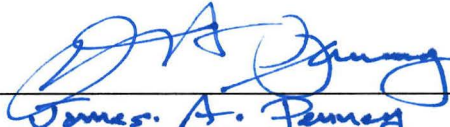
  
SANDY LANGDON, City Clerk

APPROVED AS TO FORM

  
JON WALKER, City Attorney

Accepted and approved this 22<sup>nd</sup> day of June, 2015.

WaveDivision I, LLC

By   
Name James A. Penney  
Its Executive Vice President

**Radiate Holdings, L.P.**  
**301 Commerce Street, Suite 3300**  
**Fort Worth, TX 76102**

Via Fedex

January 25, 2018

Jon Walker, City Attorney  
City of Marysville  
1049 State Avenue  
Marysville, WA 98270

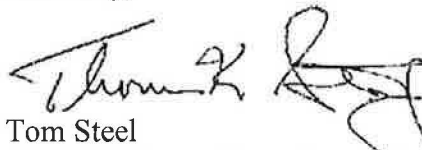
Dear Mr. Walker:

On June 19, 2017, Radiate HoldCo, LLC, a Delaware limited liability company and an indirect wholly-owned subsidiary of Radiate Holdings, L.P. (“Radiate”) and Wave Holdco, LLC (“Wave”) notified and provided you with a copy of the Securities Purchase Agreement for a proposed transaction between Radiate and Wave in which Radiate would acquire all the outstanding membership interests of Wave, including WaveDivision I, LLC (“Franchisee”), which currently holds a franchise to offer video service in your community (the “Transaction”). This letter is to inform you that Radiate and Wave obtained all necessary regulatory approvals for the transfer of control of Wave to Radiate, and the parties closed the Transaction on January 24, 2018.

While as a result of the Transaction, indirect control of Franchisee changed from Wave to Radiate, Franchisee’s legal name has not changed, and Radiate has no current plans to change the local operations or structure of Wave’s and Franchisee’s operations, or the services offered.

If you have any questions, please contact Tom Steel at (617) 670-2906 or at [Tom.Steel@rcn.net](mailto:Tom.Steel@rcn.net).

Sincerely,



Tom Steel  
Vice President of Regulatory & Public Affairs  
RCN Telecom Services, LLC