

City of Tacoma, Washington

**Comcast Cable Franchise
Agreement**

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COMCAST CABLE FRANCHISE AGREEMENT

THIS CABLE FRANCHISE AGREEMENT (“Agreement”) is made and entered into this _____ Day of _____, 2009, by and between the City of Tacoma, a municipal corporation operating under the laws of the State of Washington (hereinafter “City”), and Comcast of Tacoma, Inc. and Comcast of Puget Sound, Inc. (collectively the “Franchisee”). As used herein, the terms “Party” or “Parties” shall refer to City and Franchisee individually or jointly as indicated by the context in which used.

WHEREAS, on December 8, 1998, the City passed Ordinance No. 26233 granting a franchise which is now held by Franchisee; and

WHEREAS, pursuant to Subtitle 16A of the Tacoma Municipal Code and in accordance with Section 546 of the Cable Communications Policy Act of 1984, as amended, (Pub. L. No. 98-549, 98 Stat. 2779 (codified at 47 U.S.C. § 521 et seq hereinafter “Cable Act”) Franchisee has requested renewal of its Franchise in the City; and

WHEREAS, the City is authorized to grant one or more nonexclusive cable franchises pursuant to Subtitle 16A and applicable state and federal law; and

WHEREAS, the City intends to exercise the full scope of its municipal powers to the extent not prohibited by state and federal law, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens of the City; and

WHEREAS, the City has identified the future cable-related needs and interests of the City and its community, has considered the financial, technical and legal qualifications of the Franchisee, and has determined that the Franchisee’s plans for its Cable System are adequate, in a full public proceeding affording due process to all Parties; and

WHEREAS, the City has found Franchisee to be financially, technically and legally qualified to operate the Cable System; and

WHEREAS, the City has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein and the Parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the renewal of the Franchise the Franchisee hereby agrees to comply with the provisions of this Franchise and Subtitle 16A of the Tacoma Municipal Code.

SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein which are defined in Subtitle 16A, shall have the same meaning or be interpreted as provided in Subtitle 16A and if not defined there, shall be construed consistent with the Cable Act and if not defined there, shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. A reference to Subtitle 16A, Chapter 10.22, the City Code or to the City’s Charter refers to the same as amended from time to time. References to governmental entities (whether Persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

1.1 “Access,” “PEG Access,” or “PEG Use” refers to the availability of the Cable System for Public, Education or Government Use by various agencies, institutions, organizations, groups, and individuals, including the City and its Designated Access Providers, to acquire, create, and distribute programming not under Franchisee's editorial control, including, but not limited to:

A. “Public Access” or “Public Use” means Access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their Programming;

B. “Education Access” or “Education Use” means Access where accredited educational institutions are the primary or designated programmers or users having editorial control over their Programming; and

C. “Government Access” or “Government Use” means Access where government institutions or their designees are the primary or designated programmers or users having editorial control over their Programming.

1.2 “Access Channel” means a Channel set aside for PEG Use.

1.3 “Access Facilities” means facilities designated for PEG Use, and equipment, including, but not limited to, modulators, demodulators and transmitters, as well as production facilities and equipment for PEG Use of PEG Channels.

1.4 “Addressability” means the ability of a Cable System which allows Franchisee to signal an individual Subscriber’s converter box to affect changes in levels of Cable Services.

1.5 “Applicable Law” means any local law, or federal or state statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.

1.6 “Basic Service” means any service tier that includes the retransmission of local television broadcast signals.

1.7 “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

1.8 “Cable Service” means:

A. The one-way transmission to Subscribers of (1) video programming, or (2) other programming services; and

B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

1.9 “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:

A. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

B. A facility that serves Subscribers without using any Public Rights-of-Way;

C. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, 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;

D. An Open Video System that complies with 47 U.S.C. § 573; or

E. Any facilities of any electric utility used solely for operating its electric utility systems.

1.10 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television signal whether in an analog or digital format. The definition does not restrict the use of any Channel to the transmission of analog television signals.

1.11 “City” means the City of Tacoma, a first-class city of the State of Washington, existing pursuant to its Charter, the Washington State Constitution, and the laws of the State of Washington.

1.12 “Code” means the City of Tacoma, Washington Municipal Code as may from time to time be amended.

1.13 “Commercial Use,” as applicable to Access Facilities, shall mean the use of such Access Facilities where the primary purpose is generating profit, and includes, by way of example, the selling of air-time, and any Programming or use which, in whole or in part depicts, demonstrates, or discusses products, services, or businesses for the primary purpose of benefiting or enhancing a profit-making enterprise.

Commercial Use does not include by way of example, (a) Programming and the identification of financial supporters similar to what is provided on public broadcasting channels; (b) the solicitation of financial support for the provision of PEG Access by Designated Access Providers and for charitable, educational or governmental purposes; or (c) programming offered by accredited public educational institutions which may offer tele-courses over an educational PEG Channel.

1.14 “Day,” unless otherwise specified, shall mean a calendar day.

1.15 “Designated Access Provider(s)” or “DAP” means the entity or entities that control, operate, manage or co-manage the use of any Access Facilities or part of any Access Facilities.

1.16 “Downstream” means the direction of signal transmission from the headend to Subscriber terminals.

1.17 “Effective Date” means the date of execution of this Franchise by Franchisee, which shall occur no more than thirty (30) Days following the date of adoption of this Franchise by the City.

1.18 “Expanded Basic Service” refers to the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

1.19 “Franchise” means this document executed between City and Franchisee, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.

1.20 “Franchise Area” means that area within the present and future corporate limits of Tacoma that Franchisee is authorized to serve.

1.21 “Franchisee” means Comcast of Tacoma, Inc., a Washington corporation, and Comcast of Puget Sound, Inc., a Washington corporation and permitted successors and assigns. References to Franchisee shall mean each of them, jointly and severally, individually and collectively, and the permitted successors and assigns of each as more fully described in Section 13.6 herein.

1.22 “Gross Revenues” means any and all revenue derived directly or indirectly by the Franchisee, or by any other entity that is a cable operator of the Cable System including Franchisee’s affiliates, from the operation of Franchisee'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, optional Premium Services; pay-per-view services; installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the City, late fees and administrative fees, payments or other consideration received by the Franchisee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise fees required by Section 12.1 of this Franchise, revenue from interactive services to the extent they are considered Cable Services under Applicable Law; revenue from the sale or carriage of other Cable Services, and revenues from home shopping, and other revenue-sharing arrangements. Gross Revenues shall include revenue received by any entity other than the Franchisee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include (a) to the extent consistent with GAAP, 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; (b) the Capital Fee specified in Section 6.3 of this Franchise; or (c) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber or user by the state, City or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit. The Franchise fee is not such a tax.

The Parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing Applicable Law. If there is a change in federal law subsequent to the Effective Date of this Franchise, such change shall not impact this Gross Revenues definition unless the change specifically preempts the affected portion of the definition above.

1.23 “Interconnect” or “Interconnection” means the linking of the Cable System with another cable system, communications system, or those portions of the Cable System outside the Franchise Area, including technical, engineering, physical,

financial, and other necessary components to accomplish, complete, and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the interconnected facilities.

1.24 “Leased Access” means the use of Channel capacity designated for Commercial Use by Persons unaffiliated with Franchisee as defined in Section 532 of the Cable Act (47 U.S.C. § 532).

1.25 “Master Control Center” refers to the designated site located at 1224 S. Martin Luther King Jr. Way, where PEG Programming may be originated, produced, collected, switched, managed, processed and retransmitted by the City to Franchisee’s headend or other location.

1.26 “MVPD” means a multichannel video programming distributor, which is an entity engaged in the business of making available for purchase by Subscribers or customers, multiple Channels of video programming.

1.27 “Pay Service” or “Premium Service” refers to a Cable Service (such as movie Channels or pay-per-view programs) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.28 “PEG Access Channel” means any Channel on a cable system set aside by a Franchisee for PEG Use, including, by way of example and not limitation, an Access Channel as that term is defined in this Franchise.

1.29 “Person” includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

1.30 “Rights-of-Way” or “Public Rights-of-Way” shall have the meaning set forth in Subtitle 16A, Section 16A.01.030.

1.31 “School” means accredited public or private, non-profit primary and secondary schools and colleges (which term includes all accredited post-secondary institutions, including, by way of example and not limitation, community colleges, technical colleges and universities).

1.32 “Subscriber” means the City, any government entity, or any Person who lawfully receives any Cable Service from Franchisee over the Cable System.

1.33 “Subscriber Network” means that portion of the Cable System used primarily by the Franchisee in the transmission of Cable Services to residential Subscribers.

1.34 “System” means the Franchisee’s Cable System.

1.35 “Subtitle 16A” refers to Subtitle 16A of the Tacoma Municipal Code, as amended from time to time.

1.36 “Title 10” refers to Title 10 of the Tacoma Municipal Code, as amended from time to time.

1.37 “Upstream” means the direction of signal transmission from Master Control Center toward the headend.

1.38 “Video Services” means programming provided by, or generally considered comparable to programming provided by, a cable operator as the term “cable operator” is defined in the Cable Act.

SECTION 2. FRANCHISE

2.1 Grant of Franchise

A. The City hereby grants to Franchisee a non-exclusive Franchise authorizing Franchisee to occupy the City's Public Rights-of-Way within the Franchise Area to construct, repair and operate a Cable System to provide Cable Services. Provided, however, that such grant is subject to and must be exercised in strict accordance with the provisions hereof, Title 10 and Title 16A of the Code, and the Tacoma City Charter, including, but not limited to, the provisions set forth in Article VIII. Said Franchise shall constitute both a right and an obligation to provide the services of the Cable System in accordance with the provisions of this Franchise.

B. This Franchise does not authorize the provision of any service other than the services specified above, or in any way relieve the Franchisee of any obligation to obtain any authorizations, licenses or franchises to use the Rights-of-Way to provide other services, or to comply with any requirements with respect to the use of the Rights-of-Way or the provision of such services to the extent consistent with Applicable Law. The provisions of this Franchise are not a bar to the imposition of similar, different or additional conditions with respect to the use of the Rights-of-Way in connection with the provision of services other than Cable Services. Nothing herein shall be read to prevent Franchisee from providing other non-cable services to the extent consistent with Applicable Law.

C. No Public Rights-of-Way shall be used by Franchisee if the City, determines that such use is inconsistent with the terms, conditions or provisions by which such Public Rights-of-Way were created or dedicated, or presently used under Applicable Laws.

D. No rights shall pass to the Franchisee by implication. Without limiting the foregoing, by way of example and not limitation, the Franchise shall not include or be a substitute for:

1. Any other permit or authorization generally required under the Code for the privilege of transacting and carrying on a business within the City that may be required by the City;

2. Any permit, agreement or authorization generally required under the Code in connection with operations on or in public streets or property, including, by way of example and not limitation, street cut permits; or

3. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City, including the Tacoma Department of Public Utilities, or a private entity.

By way of further example, and without limiting the foregoing, this Franchise shall not be read to diminish, or in any way affect, the authority of the Tacoma Department of Public Utilities to control and charge for the use of the Light, Water, and Belt Line Divisions' real estate, fixtures or personal property. Therefore, if Franchisee desires to use such property it must obtain necessary agreements or consents for that purpose, as may be required by the City.

2.2 Acceptance of Franchise

A. Franchisee shall execute and return to the City three (3) original countersigned copies of this ordinance and a signed acceptance, in a form substantially identical to Exhibit A of the Franchise granted hereunder and all required documents and payments as set forth in this Section 2.2 within thirty (30) Days after the date of passage of the ordinance by the City Council. The countersigned ordinance and acceptance shall be returned to the City accompanied by the required evidence of insurance; a payment for publication costs; billable work order deposit, if one is not already in place; letter of credit; or any required security deposit. The Franchise rights granted herein shall not become effective until all of the foregoing are received in acceptable form. In the event Franchisee fails to submit the countersigned ordinance and acceptance as provided for herein, or fails to provide the required accompanying documents and payments, within the time limits set forth in this section, the grant of the Franchise shall be null and void.

B. By this acceptance, the Franchisee does not waive its rights to challenge the lawfulness or enforceability of any provision of Applicable Law.

C. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

2.3 Relation to Other Provisions of Law

The Franchisee, through this Franchise, is granted the right to operate its Cable System using the Public Rights-of-Way within the Franchise Area in compliance with the Code, as may be amended periodically. The Franchisee specifically agrees to comply with the lawful provisions of the Code and lawful applicable regulations of the City, and subject to the police power exception below, in the event of a conflict between the lawful provisions of the Code or lawful applicable regulations of the City and this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to the Code or any regulation of City, except in the lawful exercise of City's police power. Franchisee acknowledges that the City may modify its generally applicable regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Franchisee agrees to comply with such lawful modifications. Franchisee reserves all rights it may have to challenge such lawful modifications whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

The Franchisee has notified City that Franchisee does not agree with Sections 16A.01.030.W and X and 16A.01.040.A and B of the Code as currently drafted. Franchisee specifically reserves any and all rights it may have to contest the enforceability of Sections 16A.01.030.W and X and 16A.01.040.A and B of the Code and does not, by executing this Franchise agree to be bound by Sections 16A.01.030.W and X and 16A.01.040.A and B of the Code. City reserves its rights to enforce Sections 16A.01.030.W and X and 16A.01.040.A and B of the Code to the maximum extent permitted under all Applicable Laws.

2.4 Franchise Term

The term of the Franchise shall be ten (10) years, unless extended by mutual agreement of the Parties or terminated sooner in accordance with this Franchise, the Code, or the City Charter.

2.5 Franchise Non-exclusive

The grant of authority for use of the City's Public Rights-of-Way, as conferred herein, is not exclusive and does not establish priority for use over other franchise holders, permit holders and the City's own use of public property. Nothing in this Franchise shall affect the right of the City to grant to any other Person a similar franchise or right to occupy and use the Public Rights-of-Way or any part thereof for the erection, installation, construction, reconstruction, operation, maintenance, dismantling, testing, repair or use of a Cable System within the City. Additionally, the Franchisee shall respect the rights and property of the City and other authorized users of Public Rights-of-Way. Disputes between the Franchisee and other parties over the use,

pursuant to this Franchise, of the Public Rights-of-Way shall be submitted to the City for resolution consistent with the requirements of the Code.

2.6 Competitive Equity

A. New Video Service Provider. If any other wireline MVPD enters into any agreement with the City to provide Video Services to subscribers in the City, the City, upon written request of the Franchisee, shall permit the Franchisee to construct and/or operate its Cable System and provide Video Services to subscribers in the City under the same agreement as applicable to the new MVPD. Within one hundred twenty (120) Days after the Franchisee submits a written request to the City, the Franchisee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the new wireline MVPD.

B. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a wireline MVPD to provide Cable Service or Video Service to subscribers in the City, or that otherwise changes the nature or extent of the obligations that the City may request from or impose on a wireline MVPD providing Cable Service or Video Service to subscribers in the City, the City agrees that if another wireline MVPD avails itself of such new law and provides Cable Service or Video Service in the City, upon Franchisee's written request, the City shall permit the Franchisee to terminate this Franchise and, subject to Applicable Law, provide Cable Service or Video Service to Subscribers in the City on the same terms and conditions as are applicable to the other wireline MVPD under the changed law. The City and the Franchisee shall implement the provisions of this section within one hundred twenty (120) Days after the Franchisee submits a written request to the City.

2.7 Competition from City

The grant of this Franchise shall in no way prevent the City from competing with Franchisee in the provision of any service, or prevent the City from authorizing others to compete with Franchisee. However, to the extent that the City competes with Franchisee in the provision of Cable Services, the Parties agree:

A. In this Section 2.7, a reference to the "fees, taxes and support of PEG Use," with respect to the municipally-owned system, refers to the following items, whether paid directly by the municipally-owned system or imposed on its Subscribers:

1. agreement fees or taxes, assessments or fees paid in lieu of agreement or franchise fees;
2. support provided for PEG Use and the Institutional Network also known as CityNet; and
3. gross earnings taxes.

A reference to “gross revenues,” with respect to the municipally-owned system, refers to gross revenues derived from the operation of that system to provide Cable Services.

B. In this section, a reference to the “fees, taxes and support of PEG Use,” with respect to Franchisee’s Cable System, refers to the following items:

1. the Franchise fees paid under Section 12.1.A;
2. the PEG support provided under Section 6.3.A; and
3. the business and occupation tax paid under Title 6 of the Code.

C. 1. If the municipally-owned system is not required by the City to pay the same percentage of its gross revenues through fees, taxes and support of PEG Use as the Franchisee is required to pay through fees, taxes and support of PEG Use, then the Franchisee may request that its obligations under Sections 6.3.A and 12.1.A and under the business and occupation tax be reduced so that the total percentage of Gross Revenues paid by Franchisee for fees, taxes and support of PEG Use is the same as the total percentage of gross revenue of the municipally-owned system for fees, taxes and support of PEG Use, or to a Franchise fee of one percent (1%) of Gross Revenues plus the business and occupation tax, whichever is greater. Franchisee’s request shall be in writing, and the City shall have ninety (90) Days from the date it receives the request to equalize the obligations by reducing the Franchisee’s obligations or increasing the obligations of the municipally-owned system or its subscribers. However, Franchisee’s obligation shall not exceed fourteen percent (14%) of Gross Revenues, or the business and occupation tax plus a Franchise fee of one percent (1%) of Gross Revenues, whichever is greater.

2. If, after Franchisee has made its request and the ninety-Day (90-Day) period has passed, the Franchisee believes that the City has failed to equalize obligations as required by Section 2.7.B. above, Franchisee may commence an action for specific performance in any court of competent jurisdiction to have its obligations under Sections 6.3.A and 12.1.A reduced so that the percentage of Gross Revenues payable by Franchisee thereunder is the greater of (a) the percentage of Gross Revenues derived from the operation of the municipally-owned system to provide Cable Services that the municipally-owned system or its Subscribers pay as described in Section 2.7.B.1.; or (b) one percent (1%) of Gross Revenues as a Franchise fee.

D. 1. Franchisee shall have the remedies provided for in this Section 2.7.D unless the municipally-owned system is required to provide the same number of full motion video PEG Access Channels to Subscribers as the Franchisee.

2. If the municipally-owned system is not required to provide the same number of PEG Channels as Franchisee, then Franchisee may request that its obligation to provide PEG Channels be reduced to the obligation assumed by the

municipally-owned system. The request must be in writing. The City shall have ninety (90) Days from the date it receives the request to reduce Franchisee's obligations or to increase the obligations of the municipally-owned system.

3. If, after Franchisee has made its request and the ninety-Day (90-Day) period has passed, the Franchisee believes that the City has failed to satisfy its obligation to equalize the obligations, Franchisee may commence an action for specific performance in any court of competent jurisdiction to have its PEG Channel obligations reduced so that they are equivalent to the obligations of the municipally-owned system.

E. 1. Specific performance shall be the only remedy available under this Section 2.7. Franchisee is only entitled to relief prospectively, and, in no case, may it seek restoration of funds already paid to the City, except amounts paid to the City during the pendency of a court action seeking specific performance of obligations under Section 2.7.B.3.

2. Franchisee agrees that it will not raise a claim or defense challenging the validity of the business and occupation tax, so long as the total percentage of Gross Revenues, that it pays under Section 6.3.A, Section 12.1.A and the business and occupation tax under Title 6 of the Tacoma Municipal Code, is equal to or less than the percentage of gross revenues derived from the operation of the municipally-owned cable system to provide Cable Services that is paid by the municipally-owned system or its Subscribers, as described in Section 2.7.B.3. However, Franchisee otherwise reserves the right to challenge the validity of the business and occupation tax at any time.

F. If there is a dispute as to whether the Franchisee is entitled to a reduction under Section 2.7.B.3, Franchisee must continue to pay the disputed amounts to the City pending resolution of the dispute. If there is a dispute as to whether the Franchisee is entitled, under Section 2.7.B., to a reduction of its obligation to provide PEG Channels to Subscribers, it shall continue to provide the required PEG Channels pending resolution of the dispute.

G. Franchisee's obligations under Sections 6.3.A and 12.1.A shall be increased so that they are equal to the obligations of the municipally-owned system if, after a reduction, the obligations of the municipally-owned system referenced in Section 2.7.B.1 increase. However, in no case, shall the obligations of Franchisee under Sections 6.3.A and 12.1.A exceed the maximum amount of eight percent (8%) of Gross Revenues. The Franchisee's obligations to provide PEG Channels shall be increased so that they are equal to the obligations of the municipally-owned system if the obligations of the municipally-owned system to provide PEG Channels are increased. However, Franchisee will not be required to provide more PEG Channels on the Subscriber Network than Franchisee is required to provide under Section 6.1.

H. Nothing in this section shall be interpreted to waive the City's taxing authority. Unless every part of Section 2.7.B through G is enforceable, no provision in Section 2.7.B through G shall be enforceable.

2.8 Suspension of Obligations During Competition with City

A. As of the date of this Franchise, there is competition between Franchisee's Cable System and a municipally-owned cable system that is authorized to provide Cable Service throughout the City. The Franchise requirements described below shall be suspended, as provided below for so long as that competition continues, in accordance with this section.

Competition exists as of the Effective Date of this Franchise, because a municipally-owned cable system is authorized to provide Cable Service for a fee throughout the City to residential Subscribers in all or substantially all of the City. Competition shall be deemed to have ceased during such period after the Effective Date of this Agreement where (1) there is no municipally-owned cable system capable of providing Cable Service by extending a drop to fifty percent (50%) or more of the residences in the areas within the City that are served by Franchisee; or (2) there is no municipally-owned cable system that satisfies (1) above that is providing Cable Service to residential Subscribers for a fee.

B. The enforcement of the following Sections shall be suspended during any period where there is competition as defined in this Section 2.8:

Section 2.9 - Periodic Public Review of Agreement;

Section 4.1.B-C - Availability of Signals and Equipment;

Section 4.3.D - Standby Power; and

Sections 5.1-5.2. Categories of Programming Service; Changes in Video Programming Services.

C. Regulation of rates for the provision of Cable Services, pursuant to Section 8.2 A-B, shall be suspended; however, other fees and charges shall remain subject to regulation to the extent not prohibited by law, including, by way of example and not limitation, rates for disconnection and late fees and charges.

D. The enforcement of the following sections shall be modified or the requirements suspended as described below during any period where there is competition as defined in Section 2.8.A: Sections 8.3, 8.4, 8.5, 8.9, and 9.2 shall be deemed to apply with respect to those Franchise provisions that have not been suspended (and as to all acts or omissions occurring prior to the suspension date).

2.9 Periodic Public Review of Franchise

Within sixty (60) Days of the third (3rd) and sixth (6th) annual anniversary of the Effective Date of this Franchise, the City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Franchisee continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance, local regulatory environment, community needs and interests, and other such factors. Both the City and Franchisee agree to make a full and good faith effort to participate in the review.

2.10 Transfers

A. Every Transfer shall be subject to the prior written approval of the City except as provided herein. A Transfer means any transaction in which:

1. All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Public Rights-of-Way);
2. There is any change, acquisition, or direct or indirect transfer of control of the Franchisee;
3. The rights and/or obligations held by the Franchisee under this Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or
4. The transfer of stock in a corporation so as to create a new controlling interest constitutes a Transfer. The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

B. A Transfer without the prior written approval of the City is a material violation of this Franchise and shall make the Franchise subject to termination by the City, as provided herein and in Subtitle 16A, Section 16A.01.110.

C. If Franchisee submits an application for approval of any Transfer in accordance with federal regulations (47 C.F.R. Section 76.502), the City shall process said application in accordance with those regulations. Applications for approval of any Transfer shall also be filed, and the City shall process such applications, in accordance with procedures set out in Subtitle 16A, Section 16A.03.060, so long as they are not in conflict with applicable federal law.

D. Franchisee shall, within sixty (60) Days of the closing date of any Transfer, file with the City Clerk a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or Transfer, certified and

sworn to as correct by Franchisee. Every such Transfer, whether voluntary or involuntary, may be deemed void and of no effect by the City unless Franchisee files the required copy within the sixty-Day (60-Day) period.

E. In addition to the exceptions noted in Subtitle 16A, Section 16A.03.060.F, the requirements of this section shall not be deemed to prohibit the use of Franchisee's property as collateral for security in financing the construction or acquisition of all or part of the Cable System franchised hereunder. However, no such arrangement may be made if it would in any respect under any condition prevent the Franchisee or any successor from complying with the Franchise and Applicable Law, nor may any such arrangement permit a third party to succeed to the interest of the Franchisee, or to own or control the Cable System, without the prior consent of the City. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of the City under this Franchise, and other Applicable Law.

F. Franchisee shall promptly notify the City of any proposed change in, transfer of, or acquisition by any other Person of an ownership interest in Franchisee that results in a change in control of Franchisee within the meaning of this Section 2.10.A. However, if the proposed change in control merely results in a Transfer from Franchisee to another entity that is one hundred percent (100%) owned by Franchisee's parent, and such parent provides any City mandated guaranty of performance of the Franchisee Affiliate's performance after the Transfer, then such Transfer shall not require the prior approval of the City, so long as all the conditions on Affiliate Transfers set forth in Subtitle 16A, Section 16A.03.060.F are satisfied.

2.11 Continuity of Service and Right to Purchase the System

A. In the event the City has declared a forfeiture for cause or otherwise revoked for cause the Franchise as provided herein, or in the event of expiration of the Franchise without the Franchise being renewed or extended (referred to below collectively as a "termination"), Franchisee shall, at the direction of the City expressed by ordinance, continue its operations for such reasonable period of time as is necessary to permit transition to another provider, which period may be established taking into account any appeal of the termination. During such period, Franchisee shall continue to be bound by all its obligations under the Franchise, Subtitle 16A and the Code. During this period, Franchisee shall not Transfer any portion or all of its Cable System to any other Person, including parts of the System rented, leased, or lease-purchased; or significantly alter the Cable System or remove property from the City, or otherwise encumber the Cable System in any manner, without prior written consent of the City. The Franchisee's obligations to remove its facilities under Title 10, Section 10.22.190, Abandonment and Removal of Facilities, shall be deferred for the period for which Franchisee is required to operate pursuant to this section.

B. Any right of the City to acquire the Cable System, as provided for by the City Charter, shall be subject to and exercised in accordance with applicable federal law.

2.12 Right to Require Removal of Property/Right to Remove Property

A. The Franchisee shall be liable for removing the Cable System upon termination of the Franchise whether by action of the City or by passage of time, as may be required by the City consistent with Title 10, Section 10.22.190, Abandonment and Removal of Facilities, and shall be obligated to restore affected property to the same or better condition as existed just prior to such removal, in accordance with Title 10, Section 10.22.190, subject to any rights Franchisee may have to abandon property in place, as set out in Title 10, Section 10.22.190. In addition to such obligations as may be established by Title 10, Section 10.22.190, Franchisee agrees that if Franchisee fails to remove property that the City requires it to remove, the City may perform the work and collect the cost thereof from Franchisee.

B. To the extent any portion of the Cable System in the Public Rights-of-Way or on any other public property is not removed by the Franchisee within the time period specified by Title 10, Section 10.22.190 or such other period as the City may establish, the property will be deemed abandoned and shall become the property of the City if the City wishes to own it. Provided, that, in no case shall the Franchisee be provided less than twelve (12) months to remove its facilities, measured from the date the Franchisee is ordered to remove its facilities.

C. Any order by the City issued pursuant to this Section 2.12 to remove the Cable System, in whole or in part, shall be sent by registered or certified mail to Franchisee not later than twenty-four (24) months following the date of Franchise termination, or, if later, the final resolution of any appeal of the termination.

D. Franchisee shall file a written removal plan with the City not later than thirty (30) Days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

E. Any right of the City to acquire the Cable System, provided for in Section 2.11, does not affect the City's authority to require Franchisee to remove its Cable System upon Franchise termination, as provided in this Section 2.12 and Title 10, Section 10.22.190, nor does it affect the City's right to assume ownership of any portion of the Cable System that is abandoned. Within sixty (60) Days of a request by the City, the Franchisee shall execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances.

2.13 Subscribers Right to Obtain Service

It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Franchisee are honored during the term of the

Franchise or any continuation period. In addition to the obligations established under the other provisions of this Franchise, in the event that Franchisee elects to rebuild, modify, or sell the Cable System, Franchisee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstance.

2.14 Responsibility for Costs

Except as expressly provided otherwise, any act that Franchisee is required to perform under this Franchise shall be performed at its cost. If Franchisee fails to perform work that it is required to perform within the time provided for performance, the City may perform the work and bill the Franchisee for documented costs. The Franchisee shall pay the amounts billed within thirty (30) Days. The Parties agree that any amounts paid pursuant to this section or Subtitle 16A, are not Franchise fees and fall within one or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this section is intended to affect, in any way (by expansion or contraction), Franchisee's rights under Applicable Law governing rates.

2.15 Work of Contractors and Subcontractors

Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, Subtitle 16A, Title 10 and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Franchisee's behalf are familiar with the requirements of the Franchise, Subtitle 16A, Title 10 and other Applicable Laws governing the work performed by them.

2.16 Survival of Terms

Upon the termination or forfeiture of the Franchise, Franchisee shall no longer have the right to occupy the Public Rights-of-Way for the purpose of providing Cable Service. However, Franchisee's obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms. By way of illustration and not limitation, Sections 2.12, 2.13, 2.14 and 2.15 of this Franchise shall continue in effect as to Franchisee notwithstanding any expiration, forfeiture, or revocation of the Franchise, except to the extent that a City-approved Transfer of the Cable System is completed, and another entity has assumed full and complete responsibility for the Cable System or for the relevant acts or omissions.

SECTION 3. OPERATION IN STREETS AND RIGHTS-OF-WAY

3.1 Use of Public Rights-of-Way

Franchisee may, subject to the terms of this Franchise and Subtitle 16A and other Applicable Laws, construct, operate and maintain a Cable System to provide Cable Services in Public Rights-of-Way. Without limiting the foregoing, Franchisee expressly agrees that it will construct, operate and maintain its System in compliance with, and subject to, the requirements of Subtitle 16A and Title 10 of the Code, including, by way of example and not limitation, those governing the placement of its Cable System, and with other applicable City Codes and will obtain and maintain all bonds and permits required by the same.

3.2 Construction, Operation or Repair

Subject to Section 2.3 herein, in connection with the construction, operation or repair of the Cable System, Franchisee shall, in all cases, comply with the Code.

A. 1. Franchisee shall, by a time specified by the City after ninety (90) Days written notice, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work, public facility, improvement, or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Cable System. Collectively, such matters are referred to below as the “public work.” Notwithstanding any other requirements of this Section 3.2, Franchisee’s responsibility for the costs of moving its wires on City-owned poles to accommodate the construction of a municipally-owned cable system shall be governed by its pole attachment agreement with the pole owner if the agreement addresses that issue.

2. In the event of an emergency, or where the Cable System creates, or is contributing to, an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Cable System without prior notice, and charge the Franchisee for costs incurred.

3. If any Person that is authorized to place facilities in the Rights-of-Way requests Franchisee to protect, support, temporarily disconnect, remove, or relocate Franchisee’s facilities to accommodate the construction, operation, or repair of the facilities of such other Person, the Franchisee shall, after thirty (30) Days advance written notice, take action to effect the necessary changes requested. Unless the matter is governed by a valid contract or a state or federal law or regulation applicable to Franchisee by its terms, or unless the relocation of Franchisee’s Cable System is necessary by reason of the Cable System being installed in violation of

Applicable Laws, Codes or other requirements, the reasonable cost of the same shall be borne by the Person requesting such protection, support, temporary disconnection, removal, or relocation. In no case will the cost of disconnection, removal, or relocation be charged to the City.

4. Franchisee shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its facilities to permit the moving of buildings or other objects. The Franchisee may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the Person requesting the same. The Franchisee shall be given at least thirty (30) Days' advance written notice to arrange for such temporary facility changes.

B. The Franchisee's obligation to construct, operate, and repair its Cable System in compliance with all laws, ordinances, departmental rules and regulations and practices affecting such System, includes, by way of example and not limitation, the obligation to construct, operate and repair in accordance with zoning codes, safety codes and City construction standards, including the applicable version of the Standard Specifications for Road, Bridge and Municipal Construction, as prepared by the Washington State Department of Transportation (WSDOT) and the Washington State Chapter of American Public Works Association (APWA); the applicable version of the City of Tacoma Amendments to the WSDOT and APWA Standard Specifications, City of Tacoma Standard Plans, the City's Right-of-Way Restoration Policy, as amended, the National Electrical Safety Code, the Washington State Electrical Construction Code, the National Electrical Code as adopted by the City and good and accepted industry practices.

C. Except in cases of emergency repairs, Franchisee's construction, operation, or repair of its Cable System shall not commence until all required permits have been properly filed for and obtained from the proper City officials and all required permits and associated fees paid. In case of emergency repairs, appropriate permits shall be obtained no later than the third business day following commencement of work.

D. Franchisee must follow City-established requirements for placement of facilities in Public Rights-of-Way, including the specific location of facilities in the Public Rights-of-Way, and must in any event install facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing communications facilities. The City may require that facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Public Rights-of-Way; may deny access if a Franchisee is not willing to comply with the City's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place, or manner of installation and charge the Franchisee for all the costs associated with removal.

E. In accordance with Title 10, Section 10.22.150.C.9 and applicable state law, Franchisee agrees that, as a condition of a permit for installation of conduit, the

City may require it to install conduit in excess of its reasonably foreseeable requirements for the purpose of accommodating the City where the City Manager determines it is appropriate to do so to minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of Rights-of-Way capacity, or to protect environmentally sensitive areas.

F. To the extent possible, Franchisee shall use existing poles and conduit existing at the time of permitting in installing its Cable System. Additional poles may not be installed in the Public Rights-of-Way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City.

G. 1. In accordance with Title 10, Section 10.22.150.C.5, whenever all existing utilities are located underground in an area in the City, Franchisee must also locate its Cable System underground, including Cable System facilities, such as drops, which cross private property.

2. Whenever any owner of poles locates or relocates underground within an area of the City, Franchisee shall concurrently relocate its facilities underground.

3. The City Manager may, for good cause shown, exempt a particular portion of the Cable System from the obligation to locate or relocate facilities underground, where relocation is impractical, or where the interest in protecting against visual blight can be protected in another manner. Nothing in this Section 3.2.G prevents the City from ordering Franchisee to locate or relocate its Cable System underground under other provisions of the Tacoma Municipal Code.

H. 1. Franchisee shall participate (if needing to remain in that particular Right-of-Way), upon request, in LID conversion of said overhead facilities to underground. Franchisee shall provide estimates to the City at no cost. Should an LID be adopted by the City Council, Franchisee shall participate and be reimbursed for the cost of the undergrounding.

2. Unless otherwise specified by the City, Franchisee shall provide the preliminary-cost estimate, facility-conversion designs and final-cost estimates to the LID program representative within sixty (60) Days of request. At the request of the LID program representative, the Franchisee shall perform underground construction and movement of customer connections underground (overhead reclaim), in coordination with the undergrounding services provided by the other LID utility participants.

3. If federal or state funds are made available to the City for conversion to underground LIDs, the Franchisee shall be permitted to share in such funds to the extent legally permissible.

I. Franchisee shall promptly repair any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction,

operation or repair of its Cable System. Public property and Public Rights-of-Way must be restored at Franchisee's expense to the satisfaction of the City or, at a minimum, to a condition which existed prior to the disturbance or damage.

J. Tree trimming shall be performed in accordance with Title 10, Section 10.22.150.C.8.

K. In any dispute over the adequacy of a restoration, the Department of Public Works Director shall, in his/her sole discretion, make the final determination.

L. Franchisee shall not remove any underground cable or conduit, except as hereinafter provided, unless it is directed to do so by the City under other provisions of this Franchise, Title 10, Section 10.22.190, other provisions of the Code or Applicable Law.

1. Franchisee shall not remove any of its underground cable or conduit which requires trenching or other opening of the Rights-of-Way without the express permission of the City.

2. Where trenching or other opening of the Rights-of-Way is required, Franchisee must post bonds as the City may require pursuant to Title 10, Chapter 10.22. Franchisee must restore the affected property to as good or better condition than existed just before removal.

3. Subject to the City's rights to purchase the Cable System and other rights under Title 10, Franchisee may voluntarily remove any of its underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the Rights-of-Way.

3.3 Right to Inspect and Order Corrections

The City may visually inspect the Cable System at any time to ensure compliance with this Franchise and Applicable Law, including to ensure that the Cable System of Franchisee is constructed and maintained in a safe condition. The City may not conduct a physical inspection of the Cable System or open any vaults, pedestals or conduits without the express permission of the Franchisee. The City may not inspect the Cable System located on Franchisee's property other than for permitted work. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Franchisee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes.

SECTION 4. SYSTEM DESIGN AND CAPACITY

4.1 Availability of Signals and Equipment

Franchisee shall, at a minimum:

- A.** Make available to Subscribers all signals that are required to be made available by the Federal Communications Commission (FCC) or as federal law provides.
- B.** Make available a minimum of seventy-five (75) activated Channels.
- C.** In addition to satisfying any obligations it may have under federal or state law, make available parental control devices to all Subscribers who request them. These devices should enable the Subscriber to block the video and audio portion of any Channel or Channels.
- D.** Upon written request, Franchisee will provide and install one outlet of all Basic Service and Expanded Basic Service to: (1) any public safety facility in the City except for general prison/jail population use; (2) each School for education purposes in the City; and (3) all other local government buildings. The outlet and service shall be provided to all the buildings without monthly charge, and to all buildings without installation charge, except as provided below. However, in the case of Schools with multiple buildings on a single campus, the obligation to provide a drop to that School is satisfied by providing an outlet to a single building on that campus, designated by the School. In the case of a School with multiple campuses, this section requires one outlet to be provided per campus.

Notwithstanding anything to the contrary set forth in this section, Franchisee shall not be required to provide an outlet to such buildings, unless it is technically feasible. The City and Franchisee agree that the provision of the outlets contemplated hereunder to the locations listed in Exhibit B is technically feasible and will not so adversely affect the Cable System, unless some unforeseen and unanticipated event occurs, e.g., such as it becomes illegal or technically infeasible to provide the outlets.

If the drop line to such building exceeds a standard residential installation drop of one hundred twenty-five (125) feet, as specified by the FCC at 47 C.F.R. § 76.309, the Franchisee will accommodate the drop up to three hundred (300) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided, the City or other agency agrees to pay the incremental cost of such drop in excess of one hundred twenty-five (125) feet or the necessary distribution line extension of the Cable System, including the cost of such excess labor and materials. The recipient of the service will secure any necessary right of entry.

4.2 Equal and Uniform Service

Franchisee shall provide access to equal and uniform Cable Service throughout the Franchise Area.

4.3 System Characteristics

A. Prior to the Effective Date of this Franchise, the Franchisee undertook a voluntary upgrade of its Cable System to a fiber-to-the-node Cable System architecture, with fiber-optic cable deployed from the headend to the nodes and tying into a coaxial Cable System already serving Subscribers. Active and passive devices currently are passing a minimum of 750 MHz, and the Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of a particular manner in which the signal is transmitted. Franchisee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise.

B. Franchisee shall install or maintain equipment so that all closed captioned programming received by the Cable System shall include the closed caption signal and shall be transmitted to Subscribers so long as the closed caption signal is provided consistent with FCC standards.

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

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

E. Emergency Alert Capability

1. Franchisee shall install and maintain for use by the City an Emergency Alert System ("EAS") meeting all applicable requirements of federal law.

2. Franchisee's System shall include the capability for the City to access the EAS using non-location-specific technology, without the assistance of the Franchisee, in the event of emergency or for reasonable tests, to override at least the audio on all Channels on Franchisee's System to utilize the federally mandated EAS in accordance with applicable state or local plans or with broadcaster preemption or override of individual signals.

3. Franchisee shall broadcast all EAS messages initiated by the City or Pierce County.

F. Standby Power. Franchisee shall provide standby power generating capacity at the Cable System headend and at all hubs. Franchisee shall maintain standby power System supplies, rated at least at two (2) hours duration at each of the nodes. Standby power must be in place as the System is upgraded and throughout the term of the Franchise. In addition, Franchisee shall have a plan in place throughout the Franchise term, and all resources necessary for implementation for dealing with power outages of more than two (2) hours.

4.4 Technical Standards

Franchisee shall be responsible for insuring that the Cable System is designed, installed, maintained, repaired and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter 1 of Title 47 of the Code of Federal Regulations as revised or amended from time to time. The City shall have the right to obtain a copy of tests and records related to the standards upon request, and shall have the authority to enforce compliance with such standards, except as may be prohibited under federal law and regulation.

4.5 Performance Testing

A. The following requirements and the requirements of Subtitle 16A shall be met by Franchisee, to the extent that federal law does not prohibit the City from enforcing them.

B. Franchisee shall perform all System tests at the intervals required by Section 76.601 of the FCC Rules and Regulations, Part 76, Subpart K (Technical Standards). Upon request by the City, Franchisee shall provide copies of completed FCC reports within seven (7) working days of the request. These tests shall include, without limitation:

1. initial proof of performance for any construction;
2. semi-annual compliance tests.

C. In addition to the rights to inspect provided for in Subtitle 16A, for initial and semi-annual FCC proof-of-performance tests, the City shall be given the opportunity by Franchisee to review test sites. Upon request, the tests shall be witnessed by representatives of the City. Upon request, Franchisee shall notify the City of the time and place of the next scheduled test and shall cooperate in facilitating the City's witnessing at the time of the tests. The City may at any time, at its own expense, conduct independent visual inspections of the System, but the City shall not have the right to access the System without Franchisee's express consent.

D. Franchisee shall be required to take promptly such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Franchisee's failure to correct deficiencies identified

through this testing process shall be an independent violation of its obligation to maintain the Cable System. Sites shall be re-tested following correction.

E. It shall be the responsibility of the Franchisee to document that the System and its operation are in compliance with FCC technical specifications and performance requirements. If the City has received Subscriber complaints regarding the performance of the Cable System and the City determines that the most efficient or only reasonable way to determine a question of Franchise compliance involves specific electronic testing of the System in addition to tests required by the FCC, the Franchisee shall, upon written notice by the City, perform such testing, give the City an opportunity to witness the testing and provide the City with documentation of the testing results. If the test results indicate that Franchisee is not in compliance with this Franchise or other applicable state or federal law, the City shall have all enforcement remedies available under this Franchise.

4.6 Interconnections

A. If requested to do so by the City, the Franchisee shall promptly:

1. Interconnect the System with any adjacent willing cable system in King and Pierce Counties, for the purpose of delivering PEG Programming. A “willing cable system” means the system of any cable operator operating under a franchise or other authority which authorizes the construction or operation of a cable system in an adjacent community, who is willing to Interconnect with Franchisee's Cable System on fair and reasonable terms, and who pays its own cost of installation and operation of the facilities located within its own territory which are required for Interconnection, or any system described in Section 4.6.C.

2. Enter into negotiations with the other cable system, serving the adjacent jurisdiction, identified by the City to establish an Interconnection agreement, determining where the Interconnect shall be located and how costs for the Interconnection will be shared, and developing a schedule for prompt Interconnection. Franchisee's Interconnection obligations under this Franchise shall be subject to such agreement being reached with the other cable system. The City shall cooperate fully with the Franchisee to obtain the consent of the other cable system to Interconnect on fair and reasonable terms. Prior to requiring an Interconnect between Franchisee and a willing cable system, the City must obtain the consent of the local jurisdiction regulating such cable system.

B. Once the City requests Franchisee to Interconnect, the Franchisee is under an obligation to Interconnect promptly. The Franchisee shall have one hundred twenty (120) Days to reach an agreement on the terms of Interconnection with the entity with which it will be Interconnecting (assuming an agreement is needed with that entity to complete the Interconnection), and to submit that agreement to the City. In the event that the parties to the agreement fail to submit that agreement, either may submit its Interconnection proposal to the City. The City, after public hearing, may establish the

Interconnection requirements, and the parties shall promptly Interconnect in accordance with the City's direction. However, nothing in this section prevents either party from appealing the City's order to a court of competent jurisdiction if the party believes that it is unreasonable.

C. If the cable system to which Franchisee is asked to Interconnect is owned by Franchisee or is an Affiliate of Franchisee, then such system is deemed a willing cable system and it is Franchisee's sole responsibility to obtain the consent of such system and to complete the Interconnection, at no cost to the City. Franchisee shall provide and/or maintain the Interconnection with any cable system in King or Pierce County that is owned by Franchisee or an Affiliate of Franchisee. Prior to requiring an Interconnect between Franchisee and a willing cable system, the City must obtain the consent of the local jurisdiction regulating such cable system.

D. The Franchisee will provide adequate bandwidth on each Interconnection to deliver all PEG Access signals provided for under Section 6 from the Master Control Site(s) to designated Interconnections, and to deliver all PEG Access signals provided from the Interconnected systems to the Master Control Site(s).

E. Notwithstanding the foregoing, Interconnection is only required if technically feasible. Franchisee may terminate an Interconnection for any period where an Interconnecting system is delivering signals in a manner which endangers the technical operation of Franchisee's Cable System.

F. Nothing in this paragraph alters Franchisee's Channel obligations for PEG Programming delivered to Subscribers on the Franchisee's Cable System. Unless the City directs otherwise, or an affected jurisdiction objects, any Interconnection shall allow PEG Channels to operate without disruption or delay across and within the Franchise Area boundaries.

G. It is the Franchisee's responsibility to ensure that the signals it provides to the Interconnect meet FCC technical standards. It is not the Franchisee's responsibility to ensure that the signals provided to the Interconnect by another Interconnecting system meet industry standards. However, it is Franchisee's obligation to ensure that signals delivered to or from an Interconnect shall be equivalent in technical quality to the signal at its point of origin.

H. Franchisee shall continue to provide and maintain all Interconnections, in existence as of January 1, 2009, with at least the capacity of which they were capable at that date, without cost to the City. Such Interconnections shall be capable of carrying all PEG Channels available for exchange between the systems of the Interconnected jurisdictions, except that the requirement for transmission of PEG Channels from the System to other jurisdictions shall extend only to those PEG Channels provided for under Section 6 of this Franchise. If Interconnections must be upgraded in order to facilitate such carriage of PEG Access signals, such upgrades shall be treated as new Interconnections, and installed according to the terms of this Section 4.6.

I. Any equipment and construction costs borne by Franchisee in connection with the obligation to provide for PEG Access Interconnection, shall be considered a capital cost in support of PEG Access in addition to the capital support required under Section 6.3.A. The City agrees that such cost is an “external cost” as such term is used in 47 C.F.R. Section 76.922 on the date of this Franchise, and as such, the cost is permitted under federal law and regulation to be passed through to Subscribers, to the extent and in a manner provided for in federal regulations governing the same.

J. The City shall be permitted to Interconnect the System with any other communications system at the Master Control Site, for PEG Access. Franchisee agrees that any PEG Access Programming routed to the Master Control Site via Franchisee’s System, or otherwise, may be processed there and distributed to any destination for PEG Access.

SECTION 5. PROGRAMMING AND SERVICES

5.1 Categories of Programming Service

Franchisee shall provide video programming services in at least the following broad programming categories:

- A. news and information;
- B. children/family;
- C. foreign language;
- D. ethnic;
- E. arts and cultural;
- F. sports; and
- G. general entertainment.

5.2 Changes in Video Programming Services

No category of video programming that Franchisee is required to carry under Section 5.1 may be deleted by Franchisee without City approval, subject to any rights the Franchisee may have to modify the requirements under 47 U.S.C. § 545. The City reserves the right to regulate to the fullest extent permitted by law to insure that the mix, level, and quality of service are maintained or increased, as permitted in 47 U.S.C. §545 (a).

5.3 Obscenity and Program Control

Subject to applicable federal law, Franchisee shall not transmit over the Cable System Programming which is obscene or otherwise unprotected by the Constitution of the United States; provided, however, Franchisee shall in no way be responsible for or exercise control over PEG Access Programming.

SECTION 6. PEG USE OF THE SYSTEM

6.1. Franchisee Responsibilities

A. At the time of Franchise execution, Franchisee shall provide six (6) PEG Access Channels.

B. Franchisee shall provide a technically reliable path, which will in no way degrade the technical quality of the PEG Access Channels, from the City's Master Control Center, currently located at the Municipal Services Center, 1224 Martin Luther King Jr. Way, to the Franchisee's headend on which all PEG Access Channels shall be transported for distribution on Franchisee's Subscriber Network. If the City determines to relocate Master Control Center and constructs its own return line to the Franchisee's headend, the Franchisee will accept the signal and will cover all costs associated with bringing the signal into Franchisee's headend facility. Franchisee shall not impose any other costs or ongoing fees to the City related to this obligation.

C. All PEG Access Channels may be delivered by City to Franchisee in either analog or standard digital format. Any and all costs associated with any modification of the PEG Access Channels or signals after the PEG Access Channels/signals leave the City's Master Control Center shall be provided free of charge to the City and borne by the Franchisee. Franchisee shall also agree to be bound by the requirements of letter of agreement entered into by and between the City and Franchisee dated _____, 2009.

D. All PEG Channels required under this Franchise shall be carried by the Franchisee on the Basic Service tier in a manner consistent with Applicable Law, without special expense, except by separate agreement between the Parties. Franchisee shall provide one (1) analog PEG Channel, to be programmed in City's sole discretion, on the Basic Service tier consistent with Applicable Law, for as long as Franchisee offers analog programming. At such time as the Franchisee provides all-digital programming, the one (1) analog PEG Channel referenced in the preceding sentence may be converted to standard digital.

E. Notwithstanding the foregoing, on or after January 1, 2011, the City shall have the right, so long as sixty (60) Days advance written notice is provided to Franchisee, to mandate that Franchisee provide one (1) additional PEG Access Channel, for a total of seven (7) PEG Access Channels, on Franchisee's system. On or after January 1, 2014, the City shall have the right, so long as sixty (60) Days advance

written notice is provided to Franchisee, to mandate that the Franchisee provide one (1) additional PEG Access Channel, for a total of eight (8) PEG Access Channels on Franchisee's system.

F. Franchisee shall not cause any programming to override PEG Access Channels programming on any PEG Access Channel, except by oral or written permission from the City, with the exception of Emergency Alert System signals.

G. Franchisee shall allow the City to place bill stuffers in Franchisee's Subscriber statements at a cost to the City not to exceed Franchisee's out of pocket cost, no less frequently than once per year, or at such time as a PEG Channel is moved or relocated, upon the written request of the City and at such times that the placement of such materials would not materially and adversely effect Franchisee's cost for the production and mailing of such statements. The City agrees to pay Franchisee in advance for the actual cost of such bill stuffers.

H. Franchisee will maintain TV Tacoma on Channel 12 unless a local broadcast must carry issue requires a change.

I. Franchisee will place PEG Access Channels dedicated for educational use in a consecutive block of Channel numbers. The PEG Access Channels will be located reasonably close in proximity to other broadcast Channels and/or other commercial video Channels, excluding Pay Service programming offered by Franchisee in the City. The Franchisee agrees that PEG Access Channels located immediately below Channel # 1 are not considered in reasonably close proximity. The Franchisee agrees not to encrypt the PEG Channels any differently than other commercial Channels available on the system. In conjunction with any occurrence of PEG Channel(s) relocation, Franchisee shall provide a minimum of nine thousand dollars (\$9,000.00) of in-kind air time on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City's pre-produced thirty-second (30-second) announcement explaining the change.

J. Franchisee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Law so that Subscribers will have ready access to PEG Access Channels. This shall not be construed to require Franchisee to pay any third-party fees that may result from this obligation.

6.2 City Responsibilities

A. City shall ensure PEG Access Channels and signals leaving the Master Control Center(s) are in compliance with applicable FCC technical standards so that they can be processed in Franchisee's headend and retransmitted onto the Subscriber Network.

B. City shall not allow Commercial Use or lease of PEG Access Channels without the express written permission of Franchisee.

C. The City may select Designated Access Providers (DAPs), execute DAP Agreements with rules for operating PEG Channels and authorize itself to be a DAP. Franchisee shall operate and maintain its Cable System to insure the uninterrupted operation of PEG Channels.

6.3 Financial Support for PEG Access

A. Franchisee shall pay to the City as capital support for Access Facilities, one percent (1%) of Gross Revenues, payable monthly with Franchise Fees. The City may use PEG capital support provided by Franchisee for the capital costs associated with the I-Net, so long as such costs are dedicated solely to construction and maintenance of the I-Net for the purpose of transmission and distribution of PEG signals between Access Facilities (whether such facilities are at a fixed location (studio or park) or are in a mobile van). In no event shall the City use any portion of the PEG capital fee in a manner inconsistent with 47 U.S.C. § 542(g)(2)(C) or any other applicable provisions of the Cable Act and FCC regulations. Franchisee retains the right to audit the City's public books and records, upon reasonable advance written notice, for compliance with this section. None of the PEG capital support will be used to provide commercial services.

B. PEG Access Funding. The City will establish an account in a special revenue fund for any PEG capital contributions from Franchisee which shall be used for PEG capital funding and I-Net capital costs.

C. Should Franchisee continue to provide Cable Service after the scheduled expiration of the Franchise, until and unless this Franchise is superseded by a renewed Franchise in accordance with Applicable Law, Franchisee shall continue to make monthly capital support payments for, and in support of PEG Access Facilities and I-Net as specified hereinabove.

D. Any PEG Access capital support amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the *Wall Street Journal* on the day the payment was due, whichever is greater.

E. Franchisee agrees that support for PEG Access required by the Franchise is not intended to be a Franchise fee within the meaning of 47 U.S.C. § 542(g) and falls within one or more of the exceptions thereto. To the extent consistent with Applicable Law, the Franchisee agrees that it will not offset or reduce its payment of past, present or future Franchise fees required pursuant to Section 12.1 of this Franchise, as a result of its obligation to remit the PEG contribution required by Section 6.3 of this Franchise.

F. PEG Reports. The City shall submit a report annually to Franchisee on the use of PEG Channels and capital PEG Access support required by this Franchise. The report shall identify the use of capital support funds in sufficient detail to depict itemized capital expenditures and hours of Programming, including, but not limited to, the number of hours programmed, what percentage of Programming was original cablecast and what percentage of Programming was repeat. The City shall submit the report to Franchisee within one hundred twenty (120) Days of the close of the City's fiscal year. Franchisee may review records of the City regarding the use of Channels and capital funds provided to verify that the requirements of this section are being satisfied.

6.4 Technical Quality

A. Franchisee shall maintain its System in accordance with FCC Technical Standards so that PEG signals and Interconnections of PEG signals are at the same level of technical quality and reliability as other commercial signals carried by Franchisee, so long as the signal comes to Franchisee at that level of quality. There shall be no significant deterioration in signal from the point of origination Upstream to the point of reception Downstream. All processing equipment used by Franchisee for processing PEG signals will be of similar quality to the processing equipment used for other commercial Channels.

B. Within twenty-four (24) hours of a written request from City to the Franchisee identifying a technical problem and requesting assistance, Franchisee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Franchisee is responsible, and, if so, Franchisee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the Parties shall meet with engineering representation from Franchisee and the City in order to determine the course of action to remedy the problem.

6.5 Change in Technology

In the event Franchisee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change, Franchisee shall, at its own expense, purchase such equipment as may be necessary.

6.6 Relocation of Franchisee's Headend

In the event Franchisee relocates its headend, Franchisee will be responsible for replacing or restoring the existing dedicated connection at Franchisee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards without additional costs to the City.

6.7 Pass-through of PEG Access Capital Support

The City recognizes that the capital support for PEG Access required in Section 6.3.A above and any Interconnections in Section 4.6, represent obligations, created under the terms of the Franchise. To the extent provided for in federal law, such costs and fees paid by Franchisee may be passed through to Subscribers and itemized on Subscriber bills.

SECTION 7. [INTENTIONALLY OMITTED]

SECTION 8. REGULATORY PROVISIONS

8.1 Intent

The City shall have the right to administer and regulate activities of the Franchisee up to the fullest extent of the law. The failure to reserve a particular right to regulate, or reference a particular regulation in this Franchise, shall not be interpreted by negative implication or otherwise to prevent the application of a regulation or any other Applicable Law to Franchisee. Without limiting the foregoing, the Franchisee agrees as follows in Section 8.2.

8.2 Regulation of Rates and Charges

A. Right to Regulate. The City shall have the right to regulate Franchisee's rates and charges to the maximum extent permitted by Applicable Law.

B. Notice of Change in Rates and Charges. Franchisee agrees to provide notices of changes in rates as required by Applicable Law.

C. Rate Discrimination Prohibited.

1. Franchisee agrees that it will not discriminate among Subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, or neighborhood of residence; and shall comply with the non-discrimination requirements of applicable federal, state and local laws.

2. Franchisee shall be permitted to establish discounted rates and charges for providing Cable Service to qualified low-income handicapped or low-income elderly Subscribers and other discounts Franchisee is entitled to establish under federal law so long as the discounts are available in a uniform and consistent manner to similarly situated Subscribers.

8.3 Franchise Breaches; Termination of Franchise

A. Procedure for Remediating Franchise Violations. If City believes that

Franchisee has failed to comply with any material terms of the Franchise or has failed to perform in a timely manner, City shall notify Franchisee in writing with specific details regarding the exact nature of the alleged noncompliance or default. Upon receipt of such notice, Franchisee shall:

1. Respond to City within ten (10) Days contesting City's assertion that a default has occurred and requesting a hearing in accordance with paragraph B, below;
2. Within thirty (30) Days cure the default; or
3. Notify City, as soon as commercially practicable that Franchisee cannot cure the default within the thirty (30) Day cure period because of the nature of the default. In the event the default cannot be cured within thirty (30) Days, Franchisee shall promptly take all reasonable and commercially practicable steps to cure the default and notify City in writing and in detail as to the exact steps that will be taken and the projected completion date. Upon five (5) Days' prior written notice, either City or Franchisee may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, City may set a hearing in accordance with paragraph B below.

If the default relates to any of the following situations, Franchisee shall respond or cure the default as set forth above within ten (10) Days:

(a) if Franchisee does not pay an undisputed Franchise fee payment, in accordance with Section 12.1 A; or

(b) if Franchisee does not provide the PEG Channels or the PEG Capital Fee to the City's, in accordance with Section 6.3.A.

B. If Franchisee does not cure the alleged default within the cure period stated above, or by the projected completion date under paragraph A.3, or denies the default and requests a hearing in accordance with paragraph A.1, or City orders a hearing in accordance with paragraph A.3, City shall set a public hearing at which Franchisee will be provided an opportunity to present evidence to contest the alleged violation. City shall notify Franchisee of the hearing in writing and such hearing shall take place no less than seven (7) Days after Franchisee's receipt of notice of the hearing. The Franchisee may request that the hearing be conducted by a hearing examiner, in accordance with Chapter 1.23 of the Municipal Code. At such a hearing the Franchisee shall have all due process rights set forth in Chapter 1.23 of the Municipal Code, as specifically determined by the hearing examiner. The determination as to whether Franchisee is in default of this Franchise shall be within City's sole discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be taken within thirty (30) Days of the issuance of the determination of the City. City shall receive notice from Franchisee of any appeal concurrent with any filing to a court of competent jurisdiction.

C. If, after the hearing, City determines that a default still exists, City shall order Franchisee to correct or remedy the default or breach within fourteen (14) Days of City notification or within such other reasonable timeframe as City shall determine. In the event Franchisee does not cure within such time to City's reasonable satisfaction, City may:

1. Assess and collect monetary damages in accordance with this Franchise;
2. Revoke this Franchise in accordance with Section 8.5 herein; or
3. Pursue any other legal or equitable remedy available under this Franchise or Applicable Law.

The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the City, its officers, officials, Boards, commissions, agents, or employees under federal, state, or local law, including, by example, Section 635A of the Cable Act. The Franchisee shall not have any monetary recourse against the City, or its officers, officials, Board, commissions, authorized agents or employees for any loss, costs, expenses or damages arising out of any provision, requirement of this Franchise or the enforcement thereof, subject to Applicable Law.

8.4 Assessment of Liquidated Damages and Letter of Credit

A. Franchisee shall maintain an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the City, from a National or State bank subject to reasonable approval by the City, in the amount of fifty thousand dollars (\$50,000.00).

B. The Letter of Credit shall provide that funds will be paid to the City and in an amount for liquidated damages charged pursuant to this section, in payment for any monies owed by the Franchisee to the City as a result of defaults by the Franchisee pursuant to this Franchise.

C. In addition to the recovery of any monies owed by the Franchisee to the City, the City, in its sole discretion, may, after notice and opportunity to cure as provided in Section 8.3, charge to and collect from the Letter of Credit the following liquidated damages.

1. For failure to provide data, documents, reports or information or to cooperate with the City during an application process or Cable System review or as otherwise provided herein, the liquidated damages shall be two hundred fifty dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

2. For failure of Franchisee to comply with construction, operation or maintenance standards or the provision of the return line as provided in Section 6.1.B, the liquidated damages shall be two hundred dollars (\$200.00) per Day for each Day, or part thereof, such failure occurs or continues.

3. For failure to provide the PEG Channels and/or PEG capital support payments required by this Franchise, the liquidated damages shall be two hundred fifty dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

4. For failure to comply with any of the material provisions of this Franchise or Customer service standards, or other applicable portion of the Code for which a liquidated damages is not otherwise specifically provided pursuant to this paragraph C, the liquidated damages shall be one hundred fifty dollars (\$150.00) per Day for each Day, or part thereof, such failure occurs or continues.

D. Each violation of any material provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. Any liquidated damages for any given violation shall be imposed upon Franchisee for a maximum of one hundred twenty (120) Days. If after that amount of time Franchisee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

The City may not assess any liquidated damage if the Franchisee has cured or commenced to cure, as may be appropriate in accordance with Section 8.3. In the event Franchisee fails to cure or commence to cure, or fails to refute the alleged breach, the City may assess liquidated damages and draw from the Letter of Credit and shall inform Franchisee in writing of the assessment.

E. If any subsequent Letter of Credit delivered pursuant to this Franchise expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in paragraph A of this section.

F. The City and the Franchisee 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 the Franchisee's breach of this Franchise. Accordingly, instead of requiring such proof of actual loss, the City and the Franchisee agree that the Franchisee shall pay to the City the sums set forth above for each Day that the Franchisee shall be in breach of the specific provisions of this Franchise. Such amounts are agreed by both Parties to be a reasonable estimate of the actual damages the City would suffer in the event of the Franchisee's breach of such provisions of this Franchise.

G. The Letter of Credit, referred to in Section 8.4.A, may be drawn upon by the City for breach of a material provision after notice and opportunity to cure as set forth in Section 8.3.

The City shall give Franchisee written notice of withdrawal under this subsection. Within seven (7) Days following receipt of such notice, Franchisee shall restore the Letter of Credit to the amount required under this Franchise. Franchisee's maintenance of the Letter of Credit shall not be construed to excuse unfaithful performance by Franchisee or to limit the liability of Franchisee to the amount of the Letter of Credit or otherwise to limit the City's recourse to any other remedy available at law or in equity.

Franchisee shall have the right to appeal to the City Council for reimbursement in the event Franchisee believes that the Letter of Credit was drawn upon improperly. Franchisee shall also have the right of judicial appeal if Franchisee believes the Letter of Credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the Letter of Credit shall be returned to Franchisee, with interest from the date of withdrawal.

The assessment of liquidated damages does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Franchisee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise once the one hundred twenty-Day (120-Day) period has expired.

Franchisee's maintenance of the Letter of Credit required herein shall not be construed to excuse unfaithful performance by the Franchisee of this Franchise, to limit liability of the Franchisee to the amount of the security, or to otherwise limit the City's recourse to any other remedy available at law.

8.5 Revocation

A. This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured, pursuant to Section 8.3, or in the event that:

1. Franchisee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;
2. Franchisee makes a material misrepresentation of fact in the negotiation of this Franchise;
3. Franchisee abandons the Cable System, or terminates the Cable System's operations;
4. Franchisee fails to restore service to the Cable System after three (3) consecutive Days of an outage or interruption in service; except in the case of an

emergency or during a force majeure occurrence, or when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the Cable System); or

5. Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Franchisee's creditors, or all or part of the Franchisee's Cable System is sold under an instrument to secure a debt and is not redeemed by Franchisee within thirty (30) Days from said sale.

B. Additionally, this Franchise may be revoked one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of the Franchisee (at the option of the City and subject to Applicable Law), whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless directed otherwise by a court of competent jurisdiction.

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

1. 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 City to assume and be bound by all of the terms and provisions of this Franchise.

8.6 Purchase of the Cable System

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

8.7 Failure to Enforce

Franchisee shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in Franchisee's conduct.

8.8 Force Majeure

Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Franchisee's control; the unforeseeable unavailability of labor or materials; labor stoppages or slow downs or power outages exceeding back-up power supplies. The acts or omissions of Affiliates are not beyond the

Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. The Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

8.9 Alternative Remedies

Where the City elects to pursue liquidated damages pursuant to Section 8.4, that election shall constitute the City's sole and exclusive remedy for one hundred twenty (120) Days. Thereafter, the City shall have available any other remedy under this section. For those violations where the City elects not to pursue liquidated damages, no provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of Title 10 or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by Franchisee, once the one hundred twenty (120) Days has expired where the remedy of liquidated damages has been exercised, or to seek and obtain judicial enforcement of Franchisee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy available at law or in equity.

SECTION 9. REPORTING REQUIREMENTS

9.1 Monthly, Quarterly and Annual Reports

A. Along with monthly Franchise fee payments, Franchisee shall submit a written report to the City, which shall contain a listing of all categories of Gross Revenues earned by Franchisee and the revenue associated with such categories, in sufficient detail and with sufficient explanation to enable the City to understand the report and to verify the accuracy of the payments. The report shall include an explanation of any deductions made from Gross Revenues in the calculation of payments.

B. Franchisee shall provide written quarterly reports within forty-five (45) Days of the end of each calendar quarter containing the following information:

1. The number of service calls (calls requiring a truck roll), received by type, during the prior quarter; and

2. The number and type of outages known by the Franchisee for the prior quarter affecting more than ten (10) Subscribers specifying the following: the duration; the geographical area; the number of Subscribers affected; and, if known, the cause.

C. Franchisee shall provide written annual reports no later than one hundred twenty (120) Days after the end of its fiscal year containing such information as may be required from time to time by the City, and at least the following, unless the City waives the requirement:

1. A summary of the previous year's activities in the development of the Cable System, including descriptions of services begun or discontinued and the number of Subscribers gained or lost for each category of Cable Service;

2. A summary of complaints for which records are required under Subtitle 16A, Section 16A.03.030.C.1, identifying both the number and nature of the complaints received and an explanation of their dispositions;

3. A fully audited or certified revenue report from the previous calendar year for the Cable System;

4. An ownership report, indicating all Persons who, at the time of filing, control or own an interest in the Franchisee of ten percent (10%) or more;

5. A list of officers and members of the Board of Directors of the Franchisee and any Affiliates directly involved in the operation or the maintenance of the Cable System;

6. An organizational chart showing all corporations or partnerships with more than a ten percent (10%) interest ownership in the Franchisee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified, and so on, until the ultimate corporate and partnership interests are identified;

7. An annual report of each entity identified in Subtitle 16A, Section 16A.03.030.B.2(f), which issues an annual report;

8. A complete report on its plant, which shall state the physical miles of plant construction and plant in operation during the prior calendar year categorized as aerial and underground, identify any cases where Subscribers contributed to plant extension, and report the results of appropriate electronic measurements to show conformity with FCC technical standards;

9. A report showing, for each cable customer service standard in force, the Franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where Franchisee concludes it did not comply fully, the Franchisee will describe the corrective actions it is taking to assure future compliance; and

10. Once the information required by this Section 9.1.C.4-5 has been filed, it need be re-filed only if it changes.

D. Franchisee shall at all times maintain:

1. Records of all complaints received with information sufficient to allow the Franchisee to prepare the reports required in this Section 9.1. The term “complaints” as used herein and throughout this Franchise refers to complaints about any aspect of the Cable System or Franchisee’s operations, including, without limitation, complaints requiring service calls, and complaints about employee courtesy, billing, prices, programming, outages and signal quality;

2. Records of outages known to the Franchisee, with information sufficient to allow a Franchisee to prepare the reports required in this Section 9.1.

3. Records of service calls for repair and maintenance indicating the date and time service was requested; the date of acknowledgment; date and time service was scheduled, if it was scheduled; the date and time service was provided; and, if different, the date and time the problem was solved; and

4. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

9.2 Other Reports and Records

A. Franchisee shall at all times maintain and upon request of City provide once annually:

1. Maps of Franchisee’s trunk and distribution facilities within the Franchise Area and located in the Rights-of-Way in a standard geographic information system (GIS) format;

2. A copy of all FCC filings on behalf of Franchisee, its parent corporations or Affiliates that directly relate to the operation of the Cable System in the Franchise Area;

3. A list of Franchisee's Cable Services, rates and Channel line-ups, and Franchisee shall notify City of any new rate information and/or Channel line-up changes, at least thirty (30) Days prior to such new rates and/or Channel line-ups becoming effective;

4. A compilation of Subscriber complaints, actions taken and resolution, and a log of service calls.

5. Any additional records or information required to verify Franchisee's compliance with the terms and provisions of the Franchise.

B. Upon written request, Franchisee shall submit to City copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Franchisee 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 Franchisee's Cable System within the Franchise Area. Franchisee shall submit such documents to City no later than thirty (30) Days after receipt of City's request. Franchisee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. With respect to all other reports, documents and notifications provided to any federal, state or local regulatory agency as a routine matter in the due course of operating Franchisee's Cable System within the Franchise Area, Franchisee shall make such documents available to City upon City's written request.

9.3 Franchisee's Records

A. Throughout the term of this Franchise, the Franchisee agrees that the City, upon reasonable prior written notice to the Franchisee, may review such of the Franchisee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Franchisee's compliance with the provisions of this Franchise. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Franchisee for a minimum period of six (6) years. The Franchisee shall not deny the City access to any of the Franchisee's records on the basis that the Franchisee's records are under the control of any parent corporation, affiliated entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Franchisee shall provide such copies within thirty (30) Days of the receipt 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 the Franchisee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Franchisee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Franchisee's local offices or at one of Franchisee's offices more convenient to City or its duly authorized agent. If any books or records of the Franchisee are not kept in such 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 the Franchisee.

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

9.4 Preservation of Confidential Information

Franchisee may choose to provide any confidential books and records that it is obligated to make available to the City pursuant to this Franchise, by allowing the City, or its designated representative(s), to view the books and records at a mutually agreeable location and without City obtaining its own copies of such books and records. Alternatively, confidential or proprietary information may be disclosed pursuant to a reasonable non-disclosure agreement which shall be in the form attached hereto as Exhibit C, whereby the information required to be disclosed under this Franchise will be provided only to City's representative(s). The intent of the Parties is to work cooperatively to insure that all books and records reasonably necessary for City's monitoring and enforcement of Franchise obligations are provided to City. To the extent that Franchisee insists that records must be reviewed on site, and City's designated representative(s) must travel or otherwise incur costs to be able to review such information, Franchisee shall pay all reasonable costs incurred by City's representative(s) in so doing. To the extent that Franchisee does provide books or records directly to the City, City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under state or federal law. If City receives a demand from any Person for disclosure of any information designated by Franchisee as confidential, City shall, so far as consistent with Applicable Law, advise Franchisee and provide Franchisee with a copy of any written request by the party demanding access to such information within a reasonable time. If Franchisee believes that the disclosure of such documents by the City would interfere with Franchisee's rights under federal or state law, Franchisee may institute an action in the Pierce County Superior Court to prevent the disclosure by the City of such documents. Franchisee shall join the Person requesting the documents to such an action. Franchisee shall defend, indemnify and hold the City harmless from any claim or judgment as well as any costs and attorneys fees incurred in participating in such proceeding.

SECTION 10. CUSTOMER SERVICE POLICIES

10.1 Customer Service Standards

Franchisee shall, throughout the Franchise term, comply with FCC Customer Service Standards as set forth in 47 C.F.R. §76.309(b), the Customer Service Standards set forth in Subtitle 16A; and the customer service policies set forth herein. In the event of a conflict, the stricter standard shall apply unless the City expressly provides otherwise. To the extent consistent with Applicable Law, nothing herein shall prohibit Franchisee from recovering the costs associated with the obligations of this section.

10.2 Response to Customers and Cooperation with City

Without limiting the foregoing, Franchisee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Franchisee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

10.3 Customer Service Agreement and Manual

A. Franchisee shall provide to Subscribers a "Welcome Kit" that includes an accurate, comprehensive service agreement and a customer manual for use in establishing Subscriber service, in accordance with 47 C.F.R. §76.1602.

B. Upon request by the City, the Franchisee shall provide the City a current copy of the Welcome Kit.

C. A copy of the customer service manual shall be provided to each Subscriber at the time of initial hookup and any reconnection hookup (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the manual is requested by the Subscriber. Within sixty (60) Days following material policy changes, information regarding the changes will be provided to Subscribers. No provision of the customer service agreement shall be valid or enforceable to the extent that it is inconsistent with this Franchise or Applicable Law; provision of service may not be conditioned on waiver of rights by any Subscriber. Copies of the customer service manuals and the contract, and any updates, provided to Subscribers shall be provided to the City upon request.

SECTION 11. LINE EXTENSION POLICY

11.1 Standard Installation

Service shall be provided to any potential Subscriber upon request. Franchisee shall make service available at standard installation rates and standard service rates, for every potential Subscriber:

A. Whose dwelling is one of a minimum of twenty (20) dwelling units per one (1) aerial cable mile or a minimum of forty (40) dwelling units per one (1) underground cable mile, or five (5) dwelling units per one-quarter (1/4) aerial mile, or ten (10) dwelling units per one-quarter (1/4) underground cable mile measured from the nearest existing point on the Cable System from which service could be extended; or

B. Whose dwelling is situated such that cable constructed from the nearest point on the Cable System from which service could be extended would pass or is projected to pass (in the case of a development) an average of twenty (20) dwelling units per one (1) aerial cable mile, or an average of forty (40) dwelling units per one (1) underground cable mile; or

C. Where connection to the potential Subscriber's dwelling from cable plant constructed as required under this Franchise requires no more than a one hundred twenty-five-foot (125-foot) aerial drop or a sixty-foot (60-foot) underground drop (whichever would be required in order to comply with the applicable City Code) measured from the nearest cable plant or the Public Rights-of-Way, whichever is closer.

D. Upon receiving a request for service where Franchisee proposes to require the potential Subscriber to pay for the cost of extension, Franchisee shall promptly prepare an estimate of the cost of extension, and the amount the potential Subscriber would be required to pay under this section.

11.2 Isolated Areas

Potential Subscribers requesting service but requiring service extended beyond the standard installation and service provisions under Section 11.1 shall be provided service under the following provisions:

A. In any case where the standard in Section 11.1.C is not satisfied, the potential Subscriber may be required to pay the additional cost of constructing a drop beyond one hundred twenty-five (125) feet aerial or sixty (60) feet underground from the nearest point on the Cable System or the nearest point on the Public Rights-of-Way, whichever is closer.

B. Where a potential Subscriber and Franchisee reach an independent agreement for the provision of service, so long as the agreement does not involve any violation of the requirements and standards of this Franchise, and provided the potential Subscriber is apprised of its rights under the Franchise.

11.3 Annexed Areas

In the event that the City annexes any area which is being provided Cable Service by an operator other than Franchisee, nothing in this Franchise shall obligate Franchisee to provide service to that area, so long as the other operator provides facilities and services comparable to the facilities and services provided for under this Franchise. Provided, however, that:

A. If Franchisee does not provide service throughout such annexed area within six (6) months of annexation (or such longer period as the City may prescribe by regulation, where the City concludes extension is not feasible within six (6) months), the City may limit the Franchise Area so it does not include the annexed area;

B. If Franchisee files to be exempted from rate regulation on the grounds that it faces effective competition in any way related to the operation of the cable operator serving the annexed area, it must extend service into the annexed area upon request from a potential Subscriber; or

C. If Persons in such annexed area request service from Franchisee, so that Franchisee has requests for service such that it would have an average of eight (8) Subscribers per mile if it extended service into the annexed area to serve such Persons, Franchisee shall extend its Cable System to serve such Persons.

SECTION 12. COMPENSATION AND FINANCIAL PROVISIONS

12.1 Payments

A. Franchise Fee Amount. In partial consideration for the right to occupy Public Rights-of-Way to provide Cable Service, during the term of the Franchise and any extensions, Franchisee shall pay City five percent (5%) of its Gross Revenues as a Franchise fee. In the event Franchisee bundles or combines Cable Services (which are subject to the Franchise Fee) with Non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Franchisee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

B. Franchise Fee No Limitation. The payment by Franchisee of a Franchise fee, as required under Section 12.1.A, shall not alter Franchisee's obligation to continue to pay the City's business and occupation tax levied pursuant to Tacoma City ordinances. By way of example and not limitation, no deductions, including current nor previously paid Franchise fees, shall be subtracted from the Gross Revenue amount upon which Franchise fees are calculated and due for any period, nor shall copyright fees or other license or Franchise fees paid by Franchisee be subtracted from Gross Revenues for purposes of calculating Franchise fees.

C. Manner of Payment. Franchise fees shall be paid monthly and to the City Treasurer or to such bank account of the City, as may be designated by the City Treasurer. The Franchisee shall file with the City a written statement the form of which shall be approved by the City and signed by an officer or authorized representative of the Franchisee, which identifies in detail the sources and amounts of each category of Gross Revenues collected by the Franchisee during the previous month for which payment is made, and any allowable deductions and showing the manner in which the Franchise fee is calculated. Franchisee agrees that no acceptance of any payment shall be construed as an accord that the amount paid is, in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

D. Late Payments. Franchise fees shall be due within twenty-five (25) Days of the end of each calendar month. Franchisee shall remit payment no later than forty-five (45) Days from the end of each calendar month before it shall be subject to

interest for late payment. If the Franchise fee is paid later than forty-five (45) Days interest shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published daily in the *Wall Street Journal*, on the day the payment is due but unpaid, whichever is greater.

E. Period of Limitations. The period of limitation for recovery of any Franchise fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, subject to tolling as provided as a matter of law or equity. Subject to such tolling or as provided as a matter of law or equity, unless within six (6) years from and after the due date for a particular payment, the City makes written request to review Franchisee's records with respect to such Franchise fee payment (either individually or as part of a broader request) recovery shall be barred with respect to such payment and the City shall be estopped from asserting any claims whatsoever against Franchisee relating to any alleged deficiencies in that particular payment.

F. Uses of Funds for PEG. In order to utilize PEG Access Channels and capital support, and accomplish the provision of PEG Access for the City's residents, the City requires services, including, but not limited to, Channel operation, Access center management and staffing, playback and cablecasting, training, promotion and community outreach. It is the City's intention to utilize a portion or all of the Franchise fees paid by Franchisee to provide for such services. However, should the City decide not to utilize Franchise fees for PEG Access purposes, Franchisee's obligation to pay Franchise fees shall not be altered.

12.2 Performance Bond

A. Prior to the Effective Date of the Franchise, Comcast of Tacoma, Inc., a Washington corporation, and Comcast of Puget Sound, Inc., a Washington corporation ("Franchisee"), shall, in addition to any other bond or security fund obligations required under the Franchise and Title 10, furnish to the City, a joint performance bond, issued by a bonding company licensed to do business in the state of Washington, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the purpose of guaranteeing the full and faithful performance of each and every requirement of the Franchise and applicable provisions of Subtitle 16A and shall be effective for the term of the Franchise, including any extensions, and thereafter until Franchisee or any successor or assign of Franchisee has liquidated all of its obligations with the City that may have arisen from the acceptance of the Franchise by Franchisee or from its exercise of any privilege herein granted.

B. Neither the provisions of this section nor any performance bond accepted by the City pursuant hereto, nor any damages or other amounts recovered by the City under such performance bond shall be construed to excuse faithful performance by Franchisee or to limit liability of Franchisee under this Franchise either to the full amount of the insurance provided or otherwise.

12.3 Indemnification by Franchisee

A. Franchisee agrees to indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the City, its trustees, elected and appointed officers, agents, and employees, arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the Franchisee, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the Cable System.

B. Franchisee agrees that the covenants and representations relating to the indemnity provided in this Section 12.3. above shall survive the term of its Franchise and continue in full force and effect as to the Franchisee's responsibility to indemnify.

12.4 Franchisee Insurance

A. Franchisee shall maintain, throughout the term of the Franchise, adequate insurance insuring Franchisee, its officers, employees, and agents, to protect the City, its trustees, elected and appointed officers, agents, and employees against claims and damages that may arise as a result of the construction, operation or repair of the Cable System. This obligation shall require Franchisee to maintain insurance at least in the following amounts:

1. Comprehensive General Liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

(a)	Bodily Injury	
	(i) Each Occurrence	\$1,000,000
	(ii) Annual Aggregate	\$3,000,000
(b)	Property Damage	
	(i) Each Occurrence	\$1,000,000
	(ii) Annual Aggregate	\$3,000,000
(c)	Personal Injury	
	(i) Annual Aggregate	\$3,000,000

2. Completed Operations And Products Liability shall be maintained for two (2) years after the termination of the Franchise.

3. Property Damage Liability insurance shall include Coverage for the following hazards: X - explosion; C - collapse; U - underground.

4. Workers' Compensation insurance shall be maintained during the life of this Franchise to comply with statutory limits for all employees, and in the case any work is sublet, Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the contractors' and subcontractors' employees, unless such employees are covered by the protection afforded by the Franchisee. Franchisee shall also maintain during the life of this policy employers liability insurance. The following minimum limits must be maintained:

- (a) Workers' Compensation Statutory
- (b) Employer's Liability \$500,000 per occurrence

5. Comprehensive Auto Liability Coverage shall include owned, hired, and non-owned vehicles.

- (a) Bodily Injury
 - (i) Each Occurrence \$1,000,000
 - (ii) Annual Aggregate \$3,000,000
- (b) Property Damage
 - (i) Each Occurrence \$1,000,000
 - (ii) Annual Aggregate \$3,000,000

B. The required insurance must be obtained and maintained for the entire period the Franchisee has facilities in the Public Rights-of-Way. If the Franchisee, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.

C. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured on the General Liability and Automotive policies described above, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the Franchise, and annually thereafter, and as provided in Section 12.4.E below.

D. The certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least thirty (30) Days' prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Washington. Financial Ratings must be no less than "A" in the latest edition of "Best's Key Rating Guide," published by A.M. Best Guide.

E. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Franchise, then, in that event, the Franchisee shall furnish, at least thirty (30) Days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage

has been or will be obtained prior to any such lapse or termination during the balance of the period of the Franchise.

F. Franchisee must keep insurance in effect in accordance with the minimum insurance limits set forth herein.

SECTION 13. MISCELLANEOUS PROVISIONS

13.1 Posting and Publication

Franchisee shall assume the cost of posting and publication of this Franchise, as such posting and publication is required by law and such is payable upon Franchisee's filing of acceptance of the Franchise.

13.2 Guarantee of Performance

Franchisee shall agree that it enters into the Franchise voluntarily in order to secure, and in consideration of, the grant from the City of a ten-year (10-year) Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by Franchisee.

13.3 Governing Law and Venue

The Franchise shall be governed by and construed in accordance with the laws of the State of Washington, and any action brought relative to any dispute related to a violation of this Franchise shall be initiated in the Superior Court of Pierce County, or in the district court of the United States in which the City is located.

13.4 No Recourse

Without limiting such immunities as the City or other Persons may have under Applicable Law, Franchisee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss or damage arising out of the City's exercising its authority to regulate Franchisee pursuant to the Cable Act.

13.5 Ordinances Terminated

The rights granted to Franchisee pursuant to Substitute Ordinance No. 26323 shall be deemed terminated upon the Effective Date of this Franchise. Provided, however, Franchisee shall remain liable for all acts and omissions under the prior Franchises, and remains obligated to indemnify the City and to protect the City and its citizens against harms arising from the Franchisee's acts and omissions under those prior Franchises.

13.6 Joint and Several Liability

Comcast of Tacoma, Inc., a Washington corporation, and Comcast of Puget Sound, Inc., a Washington corporation, shall be jointly and severally liable for the obligations of Franchisee under the Franchise, Subtitle 16A and Title 10 and other Applicable Law governing Franchisee's operations in Tacoma, for compliance with the provisions, terms and conditions set forth herein, and a default by one shall be deemed a default by both. Notice to Comcast of Tacoma, Inc. shall be deemed notice to both. Termination or revocation of this Franchise as to one shall terminate or revoke this Franchise as to both. The release of one shall not release the other. The failure to enforce against one shall not operate as a waiver or limitation of claims against the other. The City may pursue remedies against either or both companies at its option. A notice to Comcast of Tacoma, Inc. shall be considered notice to both Comcast of Tacoma, Inc., a Washington corporation, and Comcast of Puget Sound, Inc., a Washington corporation.

13.7 Notice

Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the City or Franchisee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by mail, postage prepaid. The notices or responses to the City shall be addressed as follows:

City of Tacoma
Tacoma Municipal Building North
733 Market Street, Room 500
Tacoma, WA 98402-3768
Attn.: Information Technology Director

The notices or responses to Franchisee shall be addressed as follows:

Comcast Cable
15815 25th Avenue West
Lynnwood, WA 98087
Attention: Franchise Department

With non-binding courtesy Copy to:

Comcast Cable
410 Valley Avenue NW, Suite 9
Puyallup, WA 98371
Attn.: General Manager

Executed and accepted by Franchisee this ____ day of _____, 2009.

Comcast of Tacoma, Inc.

By: _____

Its: _____

Date; _____

Comcast of Puget Sound, Inc.

By: _____

Its: _____

Date; _____

EXHIBIT A
ACCEPTANCE

This confirms that, as of this date, _____, we accept the Franchise granted to us by Ordinance _____, adopted _____, 20___. We have carefully read the terms and conditions of this Franchise and unconditionally accept all of the terms and conditions of the Franchise including the limitations established thereunder, and agree to abide by the same. In accepting the Franchise, we have relied upon our own investigation of all relevant facts, and have had the assistance of counsel. We were not induced to accept this Franchise against our will, and voluntarily and knowingly accept it. We understand that and agree that this Franchise represents the entire agreement between Franchisee and the City, and we accept all risks related to the interpretation of this Franchise.

COMCAST OF TACOMA, INC.

BY: _____

ITS: _____

COMCAST OF PUGET SOUND, INC.

BY: _____

ITS: _____

EXHIBIT B

SITES TO WHICH COMPLIMENTARY SUBSCRIBER CABLE TV DROPS ARE TO BE PROVIDED

Complimentary drops are to be maintained at existing locations in buildings listed below that were receiving service as of September 1, 2009. For locations that were not served as of that date, or if the locations listed below require a new service drop due to building renovation or relocation, the drops are to be brought into the building and the outlet located at a point designated by the user, in accordance with Section 4.1.D.

School/Library/Government Building	Address	Zip
Fire Communications Center	415 Tacoma Avenue South	98402
Fire Garage	3401 South Orchard Street	98466
Fire Prevention Bureau (Old Station 17)	3471 South 35th Street	98409
Fire Station No. 1 and Headquarters	901 Fawcett Avenue	98402
Fire Station No. 2	2701 Tacoma Avenue South	98402
Fire Station No. 3	206 Browns Point Blvd.	98422
Fire Station No. 4	1453 South 12th Street	98405
Fire Station No. 5	3301 Ruston Way	98402
Fire Station No. 6	1015 East "F" Street	98445
Fire Station No. 7	5448 South Warner Street	98409
Fire Station No. 8	4911 South Alaska Street	98408
Fire Station No. 9	3502 6th Avenue	98406
Fire Station No. 10	7247 South Park Avenue	98405
Fire Station No. 11	3802 McKinley Avenue	98404
Fire Station No. 12 (Fife)	2316 East 11th Street	98421
Fire Station No. 13	3825 North 25th Street	98406
Fire Station No. 14	4701 North 41st Street	98407
Fire Station No. 15	3510 East 11th Street	98421
Fire Station No. 16	7216 6th Avenue	98406
Fire Station No. 17 (Fircrest)	302 Regents Blvd.	98466
Fire Station No. 18	302 East 11th Street	98421
Fire Training Center	2124 Marshall Avenue	98721
East Substation (Tacoma Police)	3524 McKinley Avenue	98404
Lighthouse Senior Center	5016 "A" Street	98408

School/Library/Government Building	Address	Zip
Municipal Services Center	1224 Martin Luther King Jr.	98408
Law Enforcement Support Agency (LESA)	2415 South 35 th	98409
Tacoma Municipal Building	747 Market Street	98402
Centre at Norpoint	4818 Nassau Avenue NE	98422
Eastside Neighborhood Center	1928 East 60th Street	98424
Manitou Community Center	4806 South 66th Street	98409
Nature Center at Snake Lake	1919 South Tyler	98405
Henry Foss High School	2112 South Tyler Street	98405
Hunt Middle School	6510 South 10th Street	98465
Jason Lee Middle School	602 North Sprague Avenue	98403
Stewart Middle School	5010 Pacific Avenue	98408
Truman Middle School	5801 North 35 th Street	98407
Arlington Elementary School	3002 South 72nd Street	98409
Boze Elementary School	1140 East 65th Street	98443
Browns Point Elementary School	1526 51st Street NE	98422
Bryant Elementary School	717 South Grant Avenue	98405
Crescent Heights Elementary School	4110 Nassau Avenue NE	98422
DeLong Elementary School	4901 South 14th Street	98405
Downing Elementary School	2502 North Orchard Street	98406
Fawcett Elementary School	126 East 60th Street	98443
Franklin Elementary School	1402 South Lawrence Street	98405
Geiger Elementary School	621 South Jackson Ave	98405
Grant Elementary School	1018 North Prospect St.	98406
Hoyt Elementary School	2708 North Union Avenue	98407
Larchmont Elementary School	8601 East "B" Street	98445
Lowell Elementary School	810 North 13th Street	98403
Lyon Elementary School	101 East 46th Street	98443
Manitou Park Elementary School	4330 South 66th Street	98409
McCarver Elementary School	2111 South "J" Street	98405
Northeast Tacoma Elementary School	5412 29th Street NE	98422
Park Avenue Elementary School	6701 Park Avenue	98408
Reed Elementary School	1802 South 36th Street	98408
Skyline Elementary School	2301 North Mildred Street	98406
Stanley Elementary School	1712 South 17th Street	98405

School/Library/Government Building	Address	Zip
Wainwright Elementary School	130 Alameda Avenue	98466
Washington-Hoyt Elem School	3701 North 26th Street	98407
Whittier Elementary School	777 Elm Tree Lane	98466
Central Administration Building	601 South 8th Street	98405
Remann Hall	5501 6th Ave.	98406
Bellarmino Prep School	2300 South Washington Street	98405
Concordia Lutheran Elem. School	202 East 56th Street	98404
Life Christian Elementary School	1717 South Union	98405
Saint Charles Barromeo Elem. School	7112 South 12th Street	98465
Visitation Elementary School	3306 South 58th Street	98409

EXHIBIT C

Non-Disclosure Agreement between City and Franchisee

**CONFIDENTIALITY AGREEMENT
BY AND BETWEEN
CITY OF TACOMA
AND
Comcast of XYZ, Inc.**

THIS AGREEMENT is made as of the date first written below by [Comcast of XYZ, Inc.] (hereinafter "Comcast"), a [State] corporation, and the City of Tacoma, Washington, (hereinafter "City"), pursuant to section 9.4 of the Cable Television Franchise (the "Ordinance").

WHEREAS, the City has requested to perform an audit and recomputing of any amounts due to the City (the "Audit"), and

WHEREAS, conduct of the audit requires the City or its agents to have access to certain information considered by Comcast to be proprietary and confidential, and

WHEREAS, section 9.3 of the Ordinance allows the City or its agents to inspect and audit Comcast's books and records and to recompute any amounts payable as the franchise fee to the City, and

WHEREAS, in connection with the Audit, Comcast may be required to produce documentation notwithstanding any claims of confidentiality by Comcast, and

WHEREAS, the City and Comcast (hereinafter collectively "the Parties") desire to enter into a working relationship which will permit the review of necessary documentation so that the Audit can be completed, while providing reasonable assurances to Comcast that any documentation it produces that is legitimately considered confidential will not be publicly disclosed by the City, to the extent permissible under application law or this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. The purpose of the disclosure hereunder shall be for the sole purpose of permitting City or its agents to perform the Audit. The City agrees to use the Confidential Information (defined below in Section 2) for such purpose and related actions (such as preparation of a report to the City officials, and to enforce the terms of the Ordinance) in accordance with the Ordinance, the terms of the Ordinance, and this Agreement.
2. The term "Confidential Information" shall mean information marked by Comcast as "Confidential" which may include all Comcast confidential or proprietary information, documents, and materials, whether printed or in machine-readable form or otherwise, including, but not limited to, processes, hardware, software, inventions, trade secrets, ideas, designs, research, know-how, business methods, production plans, marketing and branding

plans, merger plans, human resource policies, programs, and procedures relating to and including but not limited to organizational structure, management, marketing and branding strategies, products and services, customer service, merger integration provisions, human resource and employee benefit policies, programs, and services, and internal communication processes and technology tools.

3. Subject to Sections 4 and 5 hereof:

- (i) The City agrees to use the same degree of care and scrutiny as it would use with respect to its own confidential information, but in any case using no less than a reasonable degree of care, to avoid disclosure (including, but not limited to, disclosure to the United States government or any agency or department thereof), publication, dissemination, or use of any or all of the Confidential Information obtained hereunder; and
- (ii) Confidential Information will be kept confidential for a period of three (3) years from the date hereof, and shall not, without the prior written consent of Comcast, be disclosed to a third party, except to the extent required or allowed by law or this Agreement, by City, or any of its representatives in any manner whatsoever, in whole or in part.

4. The City agrees that with respect to Confidential Information City will:

- (i) not use the Confidential Information other than in connection with the audit and related uses contemplated herein;
- (ii) reveal the Confidential Information only to representatives or to the City's attorneys in its Law Department or outside legal counsel who need to know the Confidential Information for the purpose of performing or reviewing the Audit, who are informed of the confidential nature of the Confidential Information, and who shall act in accordance with the terms and conditions of this Agreement; and
- (iii) at Comcast's reasonable request and at Comcast's sole cost, return promptly to Comcast or destroy (and confirm such destruction in writing to Comcast) any and all portions of the Confidential Information disclosed under this Agreement (including copies forwarded to subcontractors and/or agents), together with all copies thereof, that come into the City's possession; and
- (iv) prepare an Audit report to the City in accordance with Section 8 of this Agreement; City may use Confidential Information, as reasonably necessary to defend such report's findings against any challenge by Comcast or a third party, under procedures mutually agreed upon by the Parties to assure confidentiality to the extent permissible under applicable law or this Agreement.

The City shall be responsible for any breach of this Agreement by its representatives under Section 4(ii) above.

5. It is understood, however, that the foregoing provisions in Sections 1, 2, 3, and 4 above shall not apply to any portion of the Confidential Information which:

b. if to Comcast: Attention: Robbin Pepper
Senior Director, Rates & Regulatory
Comcast Cable Communications, LLC
183 Inverness Drive West
Englewood, CO 80112

11. Comcast's waiver of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive its right thereafter to enforce and compel strict compliance with every term and condition hereof.
12. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Washington, without regard to principles of conflicts of law.
13. This Agreement constitutes the complete agreement between the Parties hereto and supersedes and cancels any and all prior communications and agreements between the Parties with respect to the disclosure of Confidential Information related to the purpose described herein and the subject matter hereof.
14. In the event of conflict between the terms and provisions of this Agreement and the terms and provisions of the Ordinance, the Ordinance shall govern.
15. Comcast acknowledges that the City must comply with the requirements of state and federal law and Comcast agrees that any provisions of this Agreement which are in conflict with state and federal law shall not be enforceable against the City or its agents.

The Parties hereby indicate their assent this _____ day of _____ 20__.

ON BEHALF OF [COMCAST OF XYZ, INC.]

By: _____

Title: _____

Date: _____

ON BEHALF OF THE CITY OF TACOMA

By: _____

Title: _____

Date: _____