



Legislation Passed August 29, 2023

The Tacoma City Council, at its regular City Council meeting of August 29, 2023, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

Resolution No. 41264

A resolution appointing, reappointing, and reassigning individuals to the Transportation Commission.

[Nicole Emery, City Clerk; Bill Fosbre, City Attorney]

Resolution No. 41265

A resolution awarding a contract to Olson Brothers Excavating, Inc., in the amount of \$6,579,277.00, plus applicable taxes, plus a 15 percent contingency, budgeted from various departmental funds, for a shared-use path in the Brewery District between South 21st and South 25th Streets along Hood Street, for a projected contract total of \$7,566,168.56 - Specification No. PW23-0060F.

[Darius Thompson, Project Manager; Josh Diekmann, P.E. PTOE, Interim Director, Public Works; Michael P. Slevin III, P.E., Director, Environmental Services]

Ordinance No. 28900

An ordinance granting a non-exclusive ten-year telecommunications franchise agreement to Comcast Cable Communications Management, LLC, a Washington limited liability company, to construct, operate, maintain, and provide cable television services in the City.

[Jeff Lueders, Division Manager; Amy Clancy, Director, Media and Communications Office]



RESOLUTION NO. 41264

1 BY REQUEST OF DEPUTY MAYOR WALKER AND COUNCIL MEMBERS
2 BUSHNELL AND HINES

3 A RESOLUTION relating to committees, boards, and commissions; appointing,
4 reappointing, and reassigning individuals to the Transportation Commission.

5 WHEREAS vacancies exist on the Transportation Commission, and

6 WHEREAS, at its meeting of August 23, 2023, the Infrastructure, Planning,
7 and Sustainability Committee conducted interviews and recommended the
8 appointment, reappointment, and reassignment of individuals to said commission,
9 and

10 WHEREAS, pursuant to City Charter Section 2.4, the persons named on
11 Exhibit "A" have been nominated to serve on the Transportation Commission; Now,
12 Therefore,

13 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

14 That those nominees to the Transportation Commission, listed on
15 Exhibit "A," are hereby confirmed and appointed, reappointed, or reassigned as
16 members of such commission for such terms as are set forth on the attached
17 Exhibit "A."
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19 Adopted _____
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21 _____
22 Mayor

23 Attest:
24 _____
25 City Clerk

26 Approved as to form:

City Attorney



EXHIBIT "A"

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TRANSPORTATION COMMISSION

Reassigning **Troy Serad** from the "At-Large No. 3" position to the "Council District No. 4" position to a three-year term, effective September 1, 2023, to expire August 31, 2026.

Reappointing **Bruce Morris** to the "At-Large No. 2" position to a three-year term, effective September 1, 2023, to expire August 31, 2026.

Appointing **James Hill** to the "At-Large No. 3" position to fill an unexpired term, to expire August 31, 2024.



RESOLUTION NO. 41265

1 A RESOLUTION related to the purchase of materials, supplies or equipment, and
2 the furnishing of services; authorizing the execution of a contract with Olson
3 Brothers Excavating, Inc., in the amount of \$6,579,277.00, plus applicable
4 taxes, plus a 15 percent contingency, budgeted from various departmental
5 funds, for a shared-use path in Tacoma's Brewery District between South
6 21st and South 25th Streets along Hood Street, for a projected contract total
7 of \$7,566,168.56, pursuant to Specification No. PW23-0060F.

8 WHEREAS the City has complied with all applicable laws and processes
9 governing the acquisition of those supplies, and/or the procurement of those
10 services, inclusive of public works, as is shown by the attached Exhibit "A,"
11 incorporated herein as though fully set forth, and

12 WHEREAS the Board of Contracts and Awards has concurred with the
13 recommendation for award as set forth in the attached Exhibit "A"; Now, Therefore,

14 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

15 Section 1. That the Council of the City of Tacoma concurs with the Board of
16 Contracts and Awards to adopt the recommendation for award as set forth in the
17 attached Exhibit "A."
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Section 2. That the proper officers of the City are hereby authorized to enter into a contract with Olson Brothers Excavating, Inc., in the amount of \$6,579,277.00, plus applicable taxes, plus a 15 percent contingency, budgeted from various departmental funds, for a shared-use path in Tacoma's Brewery District between South 21st and South 25th Streets along Hood Street, for a projected contract total of \$7,566,168.56, pursuant to Specification No. PW23-0060F, consistent with Exhibit "A."

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney



ORDINANCE NO. 28900

1 AN ORDINANCE relating to cable television; granting a non-exclusive 10-year
2 franchise agreement to Comcast Cable Communications Management,
3 LLC, a Washington limited liability company, to construct, operate, maintain
4 and provide cable television services in the City of Tacoma, setting forth
5 provisions, terms, and conditions of the grant of franchise; specifically
6 making such grant subject to the Tacoma Municipal Code, as well as the
7 Tacoma City Charter; providing for City regulation of the system and
8 services; and prescribing remedies for violation of franchise provisions in
9 addition to those specified pursuant to the Tacoma Municipal Code and the
10 Tacoma City Charter.

11 WHEREAS, pursuant to Subtitle 16A of the Tacoma Municipal Code
12 (“TMC”) and in accordance with Section 546 of the Cable Communications
13 Policy Act of 1984, as amended, (Pub. L. No. 98 549, 98 Stat. 2779 (codified at
14 47 U.S.C. § 521 et seq., hereinafter “Cable Act”), Comcast Cable
15 Communications Management, LLC, a Washington limited liability company
16 (“Franchisee”), seeks a Franchise renewal in the City, and

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

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

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

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

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

7 WHEREAS the City and Franchisee have reached agreement on the
 8 terms and conditions set forth herein and the parties have agreed to be bound
 9 by those terms and conditions, and

10 WHEREAS, in consideration of this request for a Franchise renewal,
 11 Franchisee hereby agrees to comply with the provisions of this Franchise and
 12 Subtitle 16A of the Tacoma Municipal Code, and

13 WHEREAS the City Council has determined to grant such a franchise to
 14 Comcast Cable Communications Management, LLC upon those certain terms
 15 and conditions which the City Council deems necessary as set forth herein, and

16 WHEREAS this City of Tacoma Cable Television Franchise Ordinance No. 28900
 17 contains the following sections:

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21 **Section 1. Definitions 3**

22 **Section 2. Franchise..... 11**

23 **Section 3. Operation in Streets and Rights-of-Way..... 26**

24 **Section 4. System Design and Capacity..... 32**

25 **Section 5. Programming Services..... 37**

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1 singular number include the plural number, and the use of any gender shall be
2 applicable to all genders whenever the sense requires. The words “shall” and
3
4 “will” are mandatory and the word “may” is permissive. A reference to Subtitle
5 16A, Chapter 10.22, the City Code or to the City’s Charter refers to the same,
6 as amended from time to time. References to governmental entities (whether
7 Persons or entities) refer to those entities or their successors in authority. If
8 specific provisions of law referred to herein are renumbered, then the reference
9 shall be read to refer to the renumbered provision. References to laws,
10 ordinances, or regulations shall be interpreted broadly to cover government
11 actions, however nominated, and include laws, ordinances, and regulations
12 now in force or hereinafter enacted or amended.
13

14 1.1 “Access” refers to the availability of the Cable System for Education
15 or Government Use by various agencies, institutions, organizations, and
16 groups, including the City and its Designated Access Providers, to acquire,
17 create, and distribute programming not under Franchisee’s editorial control,
18 including, but not limited to:
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20 A. “Education Access” or “Education Use” means Access where
21 accredited educational institutions are the primary or designated
22 programmers or users having editorial control over their programming; and
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24 B. “Government Access” or “Government Use” means Access
25 where government institutions or their designees are the primary or
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designated programmers or users having editorial control over their programming.

1.2 "Access Channel" means a Channel set aside for EG Use.

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

1.4 "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.

1.5 "Basic Service" means any service tier that includes the retransmission of local television broadcast signals.

1.6 "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.

1.7 "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.



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1.8 "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 (1) 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

1.9 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television



channel (as television channel is defined by the Federal Communications
1 Commission by regulation).

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6 1.10 "City" means the City of Tacoma, a first class city of the state of
7 Washington, existing pursuant to its Charter, the Washington State Constitution,
8 and the laws of the state of Washington.

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10 1.11 "Code" means the City of Tacoma, Washington, Municipal Code as
11 may from time to time be amended.

12 1.12 "Commercial Use," as applicable to Access Facilities, shall mean
13 the use of such Access Facilities where the primary purpose is generating
14 profit, and includes, by way of example, the selling of air time, and any
15 programming or use which, in whole or in part, depicts, demonstrates, or
16 discusses products, services, or businesses for the primary purpose of
17 benefiting or enhancing a profit making enterprise.

18
19 Commercial Use does not include, by way of example, (a) programming
20 and the identification of financial supporters similar to what is provided on
21 public broadcasting channels; (b) the solicitation of financial support for the
22 provision of EG Access by Designated Access Providers and for charitable,
23 educational, or governmental purposes; or (c) programming offered by
24 accredited public educational institutions which may offer tele courses over an
25 educational EG Channel.
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1.13 "Day," unless otherwise specified, shall mean a calendar day.

1.14 "Downstream" means the direction of signal transmission from the headend to Subscriber terminals

1.15 "Effective Date" means October 1, 2023.

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

1.17 "Expanded Basic Service" refers to the next tier of service above the Basic Service tier, excluding premium or pay per view services.

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

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

1.20 "Franchisee" means Comcast Cable Communications Management, LLC, a Washington corporation and permitted successors and assigns.

1.21 "Gross Revenues" means any and all revenue derived directly or indirectly by 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



1 Cable Services including Basic Service, any expanded tiers of Cable Service,
2 optional Premium Services; pay per view services; installation, disconnection,
3 reconnection and change in service fees, Leased Access Channel fees, all Cable
4 Service lease payments from the Cable System to provide Cable Services in the
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6 City, late fees and administrative fees, payments or other consideration received
7 by Franchisee from programmers for carriage of programming on the Cable
8 System and accounted for as revenue under GAAP; revenues from rentals or sales
9 of converters or other Cable System equipment; advertising sales revenues
10 booked in accordance with Applicable Law and GAAP; revenues from program
11 guides and electronic guides, additional outlet fees, Franchise fees required by
12 Section 12.1 of this Franchise, revenue from interactive services to the extent they
13 are considered Cable Services under Applicable Law; revenue from the sale or
14 carriage of other Cable Services, and revenues from home shopping, and other
15 revenue sharing arrangements. Gross Revenues shall include revenue received
16 by any entity other than Franchisee where necessary to prevent evasion or
17 avoidance of the obligation under this Franchise to pay the Franchise fees. Gross
18 Revenues shall not include (a) to the extent consistent with GAAP, bad debt,
19 provided, however, that all or part of any such bad debt that is written off but
20 subsequently collected shall be included in Gross Revenues in the period
21 collected; (b) the Capital Fee specified in Section 6.3 of this Franchise; or (c) any
22 taxes on services furnished by Franchisee which are imposed directly on any
23 Subscriber or user by the state, City, or other governmental unit and which are
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collected by Franchisee on behalf of said governmental unit. The Franchise fee is
1 not such a tax.

2 The parties intend for the definition of Gross Revenues to be as inclusive
3 as possible consistent with existing Applicable Law. However, the definition of
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6 Gross Revenue does not include Internet access services. If there is a change
7 in federal law subsequent to the Effective Date of this Franchise, such change
8 shall not impact this Gross Revenues definition unless the change specifically
9 preempts the affected portion of the definition above or modifies the definition
10 of what is considered a Cable Service under the Cable Act.
11

12 1.22 INTENTIONALLY DELETED.

13 1.23 "Leased Access" means the use of Channel capacity designated
14 for Commercial Use by Persons unaffiliated with Franchisee as defined in
15 Section 532 of the Cable Act (47 U.S.C. § 532).
16

17 1.24 "Master Control Center" refers to the designated site located at
18 1224 S. Martin Luther King Jr. Way, where EG programming may be originated,
19 produced, collected, switched, managed, processed and retransmitted by the City
20 to Franchisee's headend or other location.

21 1.25 "Pay Service" or "Premium Service" refers to a Cable Service (such
22 as movie Channels or pay per view programs) offered to Subscribers on a per
23 Channel, per program or per event basis.
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25 1.26 "Person" includes any individual, corporation, partnership, association,
26 joint stock company, trust, or any other legal entity, but not the City.



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1.27 "Rights of Way" or "Public Rights of Way" shall have the meaning set forth in Subtitle 16A, Section 16A.01.030.

1.28 "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).

1.29 "Section 621 Order" means the Third Report and Order in MB Docket No. 05-311 adopted by the FCC on August 1, 2019, as modified by any court of competent jurisdiction or subsequent FCC order.

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

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

1.32 "System" means Franchisee's Cable System.

1.33 "Subtitle 16A" refers to Subtitle 16A of the Tacoma Municipal Code, as amended from time to time.

1.34 "Title 10" refers to Title 10 of the Tacoma Municipal Code, as amended from time to time.

1.35 "Upstream" means the direction of signal transmission from Master Control Center toward the headend.



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

1.37 "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 and 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. Unless this Franchise has expired pursuant to Section 2.9 herein or this Franchise is otherwise terminated pursuant to Section 8.5 herein, this Franchise shall constitute both a right and an obligation to provide Cable Service within the City.

B. Subject to the requirements of the TMC 16A.01.090 A.2, nothing in this Franchise shall be construed to prohibit Franchisee from: (1) providing



1 services other than Cable Services to the extent not prohibited by Applicable
2 Law; or (2) challenging any exercise of the City's legislative or regulatory
3 authority in an appropriate forum. The City hereby reserves all of its rights to
4 regulate such other services to the extent not prohibited by Applicable Law and
5 no provision herein shall be construed to limit or give up any right to regulate.

6
7 C. No Public Rights of Way shall be used by Franchisee if the City
8 determines that such use is inconsistent with the terms, conditions, or
9 provisions by which such Public Rights of Way were created or dedicated, or
10 presently used under Applicable Laws.

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

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

18 2. Any permit, agreement, or authorization generally required
19 under the Code in connection with operations on or in public streets or
20 property, including, by way of example and not limitation, street cut
21 permits; or
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23 3. Any permits or agreements for occupying any other property of
24 the City or private entities to which access is not specifically granted by
25 this Franchise including, without limitation, permits and agreements for
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1 placing devices on or in poles, conduits, other structures, or railroad
2 easements, whether owned by the City, including the Tacoma Department
3 of Public Utilities, or a private entity.

4 E. By way of further example, and without limiting the foregoing, this
5 Franchise shall not be read to diminish, or in any way affect, the authority of
6
7 the Tacoma Department of Public Utilities to control and charge for the use of
8 the Light, Water, and Belt Line Divisions' real estate, fixtures, or personal
9 property. Therefore, if Franchisee desires to use such property, it must obtain
10 necessary agreements or consents for that purpose, as may be required by
11 the City.
12

13 2.2 Acceptance of Franchise.

14 A. On or before August 2, 2023, Franchisee shall execute and return to
15 the City either one (1) electronically signed Franchise or three (3) original
16 countersigned copies of this Franchise. Franchisee shall provide all required
17 documents and payments as set forth in this Section 2.2 upon the Effective
18 Date of this Franchise, including the required evidence of insurance; a payment
19 for publication costs; billable work order deposit, if one is not already in place;
20 letter of credit; or any required security deposit. In the event Franchisee fails to
21 provide the required documents and payments, within the time limits set forth in
22 this section, the grant of the Franchise shall be null and void.
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25 B. By this acceptance, Franchisee does not waive its rights to challenge
26 the lawfulness or enforceability of any provision of Applicable Law.



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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.

A. 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. 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 in Section 2.3 B 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.



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B. This Franchise shall not constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time the Franchise is issued or thereafter be obtained. 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.

C. 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 written agreement of the Grantee and the City Council 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



1 use of public property. Nothing in this Franchise shall affect the right of the City to
2 grant to any other Person a similar franchise or right to occupy and use the Public
3 Rights of Way or any part thereof for the erection, installation, construction,
4 reconstruction, operation, maintenance, dismantling, testing, repair, or use of a
5 Cable System within the City. Additionally, Franchisee shall respect the rights and
6 property of the City and other authorized users of Public Rights of Way. Disputes
7 between Franchisee and other parties over the use, pursuant to this Franchise, of
8
9 the Public Rights of Way shall be submitted to the City for resolution consistent
10 with the requirements of the Code.
11

12 2.6 Competitive Equity.

13 A. The City has the authority to grant franchises that allow entities to
14 construct and operate facilities in the Rights-of-Way that may be used to provide
15 Video Services to residences that compete with Franchisee's services. If City
16 grants such a future franchise to an entity that provides competitive Video Services
17 to residences that contains material terms and conditions that differ from
18 Franchisee's material obligations under this Franchise, then the parties agree that
19 the processes and provisions of this section will apply.
20

21 B. If City grants a future franchise to an entity that provides competitive
22 Video Services to residences that contains material terms and conditions that
23 differ from Franchisee's material obligations under this Franchise, the City and
24 Franchisee will either negotiate the terms of this Franchise to include any
25 material terms or conditions that the City imposes upon the new entrant, or
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1 negotiate amendments to the Franchise to insure that the regulatory and financial
2 burdens on each Franchisee are materially equivalent. "Material terms and
3 conditions" include franchise provisions related to: Franchise fees and Gross
4 Revenues; operation in Rights-of-Way, number of Education and Government
5 Access Channels and their funding; customer service standards; required reports
6 and related record keeping; and liquidated damages. The parties agree that this
7 provision shall not require an identical franchise or authorization for a competitive
8
9 entity so long as the regulatory and financial burdens in their entirety on each
10 entity are materially equivalent.
11

12 C. Exemptions. The following are exempt from this section:

13 1. Video Services delivered over wireless networks, unless the
14 state or FCC has determined that these are subject to City franchising
15 authority;

16 2. Video Services delivered via means over systems that are not
17 subject to the City's franchising authority or upon which the City may not
18 impose similar requirements, under state or federal law, including a
19 system described in 47 U.S.C. § 651(a)(2);
20

21 3. telecommunication services;

22 4. interstate information services;

23 5. any new franchise that is issued for less than 10% of the territory
24 of the City.
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26 D. Limits on Relief. The parties agree that:



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1. Franchisee may not withhold, delay or enjoin any performance or otherwise refuse to comply with its obligations whether or not it believes it is entitled to relief under this section;

2. Any relief shall be prospective only, and limited to the relief agreed upon, or the modifications obtained through any renewal of this Franchise;

3. City will not be liable for any damages to Franchisee for any breach of this provision; and

4. Franchisee may not obtain any relief from non-franchise obligations it may have under settlements or other contracts with the City via this provision.

E. Modification Process, Initiation. The modification process provided for herein shall only be initiated by written notice provided by Franchisee to City regarding specified franchise obligations. Franchisee's notice must: (1) identify the specific terms or conditions in the competitive cable services franchise which are materially different from Franchisee's obligations under this Franchise; (2) identify the Franchise terms and conditions for which Franchisee is seeking amendments; (3) provide text for any proposed Franchise amendments to the City with a written explanation of why the proposed amendments are necessary and consistent; and (4) confirm whether Franchisee is willing to accept any



1 additional obligations that may be contained within the modified franchise that
2 are not contained within its franchise.

3 F. Negotiation. Upon receipt of Franchisee's written notice as provided
4 under subsection (E) above, City and Franchisee agree that they will use best
5 efforts in good faith to negotiate the proposed Franchise modifications to achieve
6 competitive equity of regulatory and financial burdens, and that such negotiation
7 will proceed and conclude within a one hundred and eighty (180) day period,
8 unless that time period is reduced or extended by mutual agreement of the
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10 parties. If City and Franchisee reach agreement on the Franchise modifications
11 pursuant to such negotiations, then City shall amend this Franchise to include the
12 modifications insofar as permitted under City law. If the City and Franchisee fail
13 to reach agreement in such negotiations, Franchisee may elect to shorten the
14 remaining term of this Franchise to not more than thirty-six (36) months, and
15 Franchisee may pursue non-monetary equitable relief it deems necessary to
16 enforce its rights under this section. If Franchisee elects to shorten the term of
17 this Franchise pursuant to this section, Franchisee shall be deemed to have
18 timely invoked the formal renewal rights and procedures set forth in Section 626
19 of the Federal Cable Act.
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22 G. Actual Providers. Notwithstanding anything contained herein to the
23 contrary, City shall not be obligated to amend this Franchise unless the new
24 entrant is actually providing Video Services under a new franchise granted by
25 the City.
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2.7 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, 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.

2.8 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 Franchisee under this Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or



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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. § 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 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 (60) Day period.



1 E. In addition to the exceptions noted in Subtitle 16A, Section 16A.03.060.F,
2 the requirements of this section shall not be deemed to prohibit the use of
3 Franchisee's property as collateral for security in financing the construction or
4 acquisition of all or part of the Cable System franchised hereunder. However, no
5 such arrangement may be made if it would in any respect under any condition
6 prevent Franchisee or any successor from complying with the Franchise and
7 Applicable Law, nor may any such arrangement permit a third (3rd) party to
8 succeed to the interest of the Franchisee, or to own or control the Cable System,
9 without the prior consent of the City. No consent shall be required for intra-
10 corporate reorganizations between or among entities or affiliates wholly owned and
11 wholly controlled by Franchisee's parent company to the extent such transaction
12 does not involve a change in the management or control of Franchisee. However,
13 in such case Grantee will notify the City within thirty (30) days after receiving notice
14 of such a transaction. Any mortgage, pledge, or lease shall be subject to and
15 subordinate to the rights of the City under this Franchise, and other Applicable Law.
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19 F. Franchisee shall promptly notify the City of any proposed change in,
20 transfer of, or acquisition by any other Person of an ownership interest in
21 Franchisee that results in a change in control of Franchisee within the meaning
22 of Section 2.8.A. However, if the proposed change in control merely results in
23 a transfer from Franchisee to another entity that is one hundred percent (100%)
24 owned by Franchisee's parent, and such parent provides any City mandated
25 guaranty of performance of the Franchisee Affiliate's performance after the
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1 transfer, then such transfer shall not require the prior approval of the City, so
2 long as all the conditions on Affiliate transfers set forth in Subtitle 16A, Section
3 16A.03.060.F are satisfied.

4 2.9 Continuity of Service.

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

2.10 Right to Require Removal of Property/Right to Remove Property.

A. Absent any other lawful authorization to occupy the Rights of Way, 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 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



1 shall Franchisee be provided less than twelve (12) months to remove its
2 facilities, measured from the date Franchisee is ordered to remove its facilities.

3 C. Any order by the City issued pursuant to this Section 2.10 to remove
4 the Cable System, in whole or in part, shall be sent by registered or certified
5 mail to Franchisee not later than twenty four (24) months following the date of
6 Franchise termination, or, if later, the final resolution of any appeal of the
7 termination.

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

18 E. Nothing herein shall affect the City's authority to require Franchisee
19 to remove its Cable System upon Franchise termination, as provided in this
20 Section 2.10 and Title 10, Section 10.22.190, nor does it affect the City's right
21 to assume ownership of any portion of the Cable System that is abandoned.
22 Within sixty (60) Days of a request by the City, Franchisee shall execute such
23 documents as may be required to convey such abandoned property to the City
24 free and clear of all encumbrances.
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1 2.11 Subscribers Right to Obtain Service. It shall be the right of all
2 Subscribers to receive all available services insofar as their financial and other
3 obligations to Franchisee are honored during the term of the Franchise or any
4 continuation period. In addition to the obligations established under the other
5 provisions of this Franchise, in the event that Franchisee elects to rebuild, modify,
6 or sell the Cable System, Franchisee shall make its best effort to ensure that all
7 Subscribers receive continuous uninterrupted service, regardless of the
8 circumstance.

9 2.12 Responsibility for Costs. Except as expressly provided otherwise, any
10 act that Franchisee is required to perform under this Franchise shall be performed
11 at its cost. If Franchisee fails to perform work that it is required to perform within
12 the time provided for performance, the City may perform the work and bill
13 Franchisee for documented costs. Franchisee shall pay the amounts billed within
14 thirty (30) Days. The parties agree that any amounts paid pursuant to this section
15 or Subtitle 16A are not Franchise fees and fall within one (1) or more of the
16 exceptions to the definition of Franchise fee under federal law. Nothing in this
17 section is intended to affect, in any way (by expansion or contraction), Franchisee's
18 rights under Applicable Law governing rates.

19 2.13 Work of Contractors and Subcontractors. Work by contractors and
20 subcontractors is subject to the same restrictions, limitations, and conditions as if
21 the work were performed by Franchisee. Franchisee shall be responsible for all
22 work performed by its contractors and subcontractors, and others performing



1 work on its behalf as if the work were performed by it and shall ensure that all
2 such work is performed in compliance with this Franchise, Subtitle 16A, Title 10
3 and other Applicable Law, and shall be jointly and severally liable for all damages
4 and correcting all damage caused by them. It is Franchisee's responsibility to
5 ensure that contractors, subcontractors, or other Persons performing work on
6 Franchisee's behalf are familiar with the requirements of the Franchise, Subtitle
7 16A, Title 10 and other Applicable Laws governing the work performed by them.

8 2.14 Survival of Terms. Upon the termination or forfeiture of the
9 Franchise, Franchisee shall no longer have the right to occupy the Public Rights
10 of Way for the purpose of providing Cable Service. However, Franchisee's
11 obligations to the City (other than the obligation to provide service to Subscribers)
12 shall survive according to their terms. By way of illustration and not limitation,
13 Sections 2.10, 2.11, 2.12 and 2.13 of this Franchise shall continue in effect as to
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16 Franchisee notwithstanding any expiration, forfeiture, or revocation of the
17 Franchise, except to the extent that a City approved transfer of the Cable System
18 is completed, and another entity has assumed full and complete responsibility for
19 the Cable System or for the relevant acts or omissions.

21 Section 3. Operation in Streets and Rights-of-Way.

22 3.1 Use of Public Rights of Way. Franchisee may, subject to the terms of
23 this Franchise and Subtitle 16A and other Applicable Laws, construct, operate,
24 and maintain a Cable System and provide Cable Services in Public Rights of
25 Way. Without limiting the foregoing, Franchisee expressly agrees that it will
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1 construct, operate, and maintain its System in compliance with, and subject to,
2 the requirements of Subtitle 16A and Title 10 of the Code, including, by way of
3 example and not limitation, those governing the placement of its Cable System,
4 and with other applicable City Codes and will obtain and maintain all bonds and
5 permits required by the same.

6 3.2 Construction, Operation or Repair.

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

10 1. Franchisee shall, by a time specified by the City after ninety (90)
11 Days written notice, protect, support, temporarily disconnect, relocate, or
12 remove any of its property when required by the City by reason of traffic
13 conditions; public safety; Public Rights of Way construction; Public Rights
14 of Way repair (including resurfacing or widening); change of Public Rights
15 of Way grade; construction, installation or repair of sewers, drains, water
16 pipes, power lines, signal lines, tracks, or any other type of government
17 owned communications system, public work, public facility, improvement,
18 or any government owned utility; Public Rights of Way vacation; or for any
19 other purpose where the work involved would be aided by the removal or
20 relocation of the Cable System. Collectively, such matters are referred to
21 below as the "public work." Notwithstanding any other requirements of this
22 Section 3.2, Franchisee's responsibility for the costs of moving its wires on
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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.



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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.



1 C. Except in cases of emergency repairs, Franchisee's construction,
2 operation, or repair of its Cable System shall not commence until all required
3 permits have been properly filed for and obtained from the proper City officials
4 and all required permits and associated fees paid. In case of emergency
5 repairs, appropriate permits shall be obtained no later than the third (3rd)
6 business day following commencement of work.

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

22 E. In accordance with Title 10, Section 10.22.150.C.9 and applicable
23 state law, Franchisee agrees that, as a condition of a permit for installation of
24 conduit, the City may require it to install conduit in excess of its reasonably
25 foreseeable requirements for the purpose of accommodating the City where the
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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. 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.

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

2. 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.



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H. 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.

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

J. 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.

K. 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



1 them. These devices should enable the Subscriber to block the video and audio
2 portion of any Channel or Channels.

3 D. Franchisee shall continue to provide certain complimentary services
4 (Basic Service or digital starter package) to the schools, libraries and municipal
5 buildings listed in Exhibit "A" herein that are active. For all other non-active
6 sites listed, Franchisee will voluntarily continue to provide this complimentary
7 service, provided that for non-active sites where a connection is not already in
8 place, the facilities are within one hundred twenty (125) aerial service feet or
9 sixty (60) underground trench feet (a Standard Installation) of Franchisee's
10 Cable System or until it elects to discontinue, the provision of complimentary
11 services.

12 E. As may be permitted by the Section 621 Order, at such time as the
13 Franchisee elects to offset the value of the services set forth in this Section 4.1.D
14 against Franchise fees payable to the City, Franchisee agrees that it will do so
15 only after providing City with a minimum of one hundred twenty (120) Days' prior
16 written notice pursuant to the Section 621 Order. Upon written notice from
17 Franchisee, the City shall be given ample time to review the list of outlets
18 receiving such complimentary service and shall have the right to suspend or
19 discontinue receipt of all or a portion of the outlets receiving such complimentary
20 service provided by Franchisee in the event Franchisee elects to offset the value
21 of complimentary services as set forth in the preceding sentence.
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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. To the extent required by Applicable Law, and at all times during the term of this Franchise, Franchisee’s Cable System shall be capable of delivering high quality signals that meet or exceed applicable FCC technical quality standards. To the extent required by Applicable Law, 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. Franchisee shall install and maintain an Emergency Alert System (“EAS”) meeting all requirements of Applicable Law.



1 Franchisee shall test the EAS as required by the FCC and Applicable Law. Upon
2 Request, City shall be permitted to participate in and/or witness the EAS testing
3 up to twice a year on a schedule formed in consultation with City. If the test
4 indicates that the EAS is not performing properly, Franchisee shall make any
5 necessary adjustments to the EAS, and the EAS shall be retested in accordance
6 with Applicable Law.

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

14 4.4 Technical Standards. Franchisee shall be responsible for ensuring
15 that the Cable System is designed, installed, maintained, repaired, and operated
16 in a manner that fully complies with FCC rules.

17 4.5 Performance Testing.

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

21 B. To the extent required by Applicable Law, Franchisee shall perform all
22 System tests at the intervals required by FCC Rules and Regulations, (Technical
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Standards). Upon request by the City, Franchisee shall provide copies of any completed FCC reports within seven (7) working days of the request.

C. In addition to the rights to inspect provided for in Subtitle 16A, 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 retested following correction.

E. It shall be the responsibility of the Franchisee to document that the System and its operation are in compliance with all applicable 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 Franchisee compliance involves specific electronic testing of the System in addition to tests required by the FCC, Franchisee shall, upon written notice by the City, perform such



1 testing, give the City an opportunity to witness the testing and provide the City with
2 documentation of the testing results. If the test results indicate that Franchisee is
3 not in compliance with this Franchise or other Applicable Law, the City shall have all
4 enforcement remedies available under this Franchise.

5 4.6 Franchisee agrees that any EG Access programming routed to the
6 Master Control Center via Franchisee's System, or otherwise, may be processed
7 there and distributed to any destination for EG Access.

8 Section 5. Programming Services.

9 5.1 Changes in Video Programming Services. No broad category of
10 Video Programming may be deleted by Franchisee without written notification
11 to the City as required by Applicable Law, subject to any rights Franchisee may
12 have to modify the requirements under 47 U.S.C. § 545. The City reserves the
13 right to regulate to the fullest extent permitted by law to ensure that the mix,
14 level, and quality of service are maintained or increased, as permitted in
15 47 U.S.C. §545m (a).
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21 5.2 Obscenity and Program Control. Subject to Applicable Law,
22 Franchisee shall not transmit over the Cable System programming which is
23 obscene or otherwise unprotected by the Constitution of the United States;
24 provided, however, Franchisee shall in no way be responsible for or exercise
25 control over EG Access programming.
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Section 6. EG Use of the System.

6.1 Franchisee Responsibilities.

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A. Franchisee shall dedicate three (3) Channels for educational and governmental use by the City. Use of the EG Channels shall be determined in City's sole discretion. Upon the Effective Date of this Franchise, Franchisee shall carry two (2) of the EG Channels in high-definition ("HD") format and one (1) channel in standard-definition ("SD") format.

B. No later than sixty (60) Days from the Effective Date of this Franchise, the Franchise shall carry the third (3rd) EG Channel in HD format.

C. In addition to the three (3) EG Channels specified in Subsection 6.1A above, Franchisee agrees to make available to Subscribers in the City on the Cable System Channel line-up, two (2) regional Channels: 1) the Pierce County TV government access Channel; and 2) the College Vision educational Channel, in both HD and SD format, so long as Channels remain available to Franchisee.

D. Franchisee shall ensure that any EG Channels carried in HD format pursuant to Subsection A can also be viewed in standard definition (non-HD) format by Subscribers who do not receive HD service or do not have HD equipment, with the same quality and functionality as commercial channels of the same format, whether through simulcasting the programming in SD and HD,



1 or by means of another technical solution used by Franchisee for other
2 commercial programmers carried on the channel lineup offered on the Cable
3 System.

4 E. The City shall be responsible for providing the HD Access Channel
5 signal in an HD digital format to the demarcation point for the HD Access
6 Channel(s). For purposes of this Franchise, an HD signal refers to a television
7 signal delivering picture resolution of 720p or 1080i, or such other resolution in
8 the same range that Franchisee utilizes for other similar non-sport, non-movie
9 programming channels on the Cable System whichever resolution is greater.
10

11 F. HD Access Channels may require Subscribers to buy or lease special
12 equipment, available to all Subscribers, and subscribe to those tiers of Cable
13 Service, upon which the HD Channels are made available. Franchisee is not
14 required to provide free HD equipment to Subscribers, nor modify its equipment
15 or pricing policies in any manner.
16

17 G. At such time as Franchisee determines that all Channels on the Cable
18 System shall be delivered only in an HD format, with respect to any Access
19 Channels simulcast in SD and HD, there shall be no further obligations to provide
20 those Access Channels in SD. For any Access Channel that may at such time
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24 only be in SD, Franchisee shall provide an additional Channel in HD in order that
25 the content may continue to be available on the Cable System.
26



1 H. Franchisee shall maintain the existing fiber connection, which will in
2 no way degrade the technical quality of the EG Access Channels, from the City's
3 Master Control Center, currently located at the Municipal Services Center, 1224
4 Martin Luther King Jr. Way (or another mutually agreed upon alternate location)
5 to Franchisee's headend on which all EG Access Channels shall be transported
6 for distribution on Franchisee's Subscriber Network ("EG Return Path"). To the
7 maximum extent permitted by Applicable Law, Franchisee shall provide the
8 existing EG Return Path to the City without charge, with no transport costs,
9 offsets or other fees imposed. If the City determines to relocate Master Control
10 Center and constructs its own return line to Franchisee's headend, Franchisee
11 will accept the signal and will cover all costs associated with bringing the signal
12 into Franchisee's headend facility. Consistent with Applicable Law, Franchisee
13 shall not impose any other costs or ongoing fees nor impose any offsets to the
14 City related to this obligation.
15

16
17 I. All EG Access Channels may be delivered by City to Franchisee in a
18 digital format, such as SDI or HD-SDI. Any and all costs associated with any
19 modification of the EG Access Channels or signals after the EG Access
20 Channels/signals leave the City's Master Control Center shall be provided
21 without charge, with no transport costs, offsets or other fees imposed, to the
22 City and borne by Franchisee.
23

24
25 J. All EG Channels required under this Franchise shall be carried by
26 Franchisee on the most highly penetrated tier of Cable Service (commonly



referred to as the Basic Service tier) and in a manner consistent with Applicable
1 Law, without special expense, except by separate agreement between the parties.

2 K. Franchisee shall not cause any programming to override EG Access
3 Channels programming on any EG Access Channel, except by oral or written
4 permission from the City, with the exception of EAS signals.
5

6 L. Franchisee will maintain the location of TV Tacoma in SD format on
7 Channel 12 unless a local broadcast must carry issue requires a change or
8 other channel location as agreed to by the City.
9

10 M. The EG Access Channels will be located reasonably close in proximity
11 to other local broadcast Channels and/or other commercial video Channels,
12 excluding Pay Service programming offered by Franchisee in the City.
13 Franchisee agrees that EG Access Channels located immediately below Channel
14 #1 are not considered in reasonably close proximity. Franchisee agrees not to
15 encrypt the EG Access Channels any differently than other commercial Channels
16 available on the System. In conjunction with any occurrence of EG Access
17 Channel(s) relocation, Franchisee shall provide a minimum of nine thousand
18 dollars (\$9,000.00) of in kind air time on advertiser supported Channels (e.g.
19 USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the
20 purpose of airing the City's pre produced thirty (30) second announcement
21 explaining the change.
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25 N. Franchisee agrees that if it utilizes a visual interface under its control on
26 its Cable System for all Channels, the EG Channels shall be treated in a non



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discriminatory fashion consistent with Applicable Law so that Subscribers will have ready access to EG Access Channels. This shall not be construed to require Franchisee to pay any third (3rd) party fees that may result from this obligation. To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital channel guide, Franchisee will make available to City the ability to place EG Access Channel programming information on the interactive Channel guide via the electronic programming guide (“EPG”) vendor (“EPG provider”) that Franchisee utilizes to provide the guide service. Franchisee will be responsible for providing the designations and instructions necessary for the EG Access Channels to appear on the EPG. All costs and operational requirements for the EPG provider shall be the responsibility of the City. Franchisee is not responsible for operations of the EPG provider. Franchisee shall, to the maximum extent possible, make available to the City any price discounts Franchisee may have in place with third (3rd) party vendors that offer such programming guide services. The City’s cost of this guide service may be funded from the EG capital fee set forth in Section 6.3 of this Franchise unless prohibited by Applicable Law.

O. Franchisee shall continue to provide, without charge, with no transport costs, offsets or other fees imposed, the capability of City representatives at the current dedicated points of origination:

- 1) the City’s Master Control Center, currently located at the Municipal Services Center, 1224 Martin Luther King Jr. Way;



2) the City Council Chambers;

3) the Study Session location (TMBN 16); and

4) the Tacoma Public Utilities Auditorium Control Room;

to monitor and verify the audio and visual quality of EG Channels received by
Subscribers. At a minimum to review HD signals, each of these locations shall
be provided a converter box (if necessary), free of charge, and the video /audio
feed of the EG Channels provided by the City under this Franchise.

6.2 City Responsibilities.

A. The City shall ensure EG 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. The City shall not allow Commercial Use or lease of EG Access
Channels without the express written permission of Franchisee.

C. Franchisee shall operate and maintain its Cable System to insure the
uninterrupted operation of EG Access Channels.

6.3 Financial Support for EG 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 EG capital support provided by Franchisee for the capital costs,
pursuant to Applicable Law.



1 B. Should Franchisee continue to provide Cable Service after the scheduled
2 expiration of the Franchise, until and unless this Franchise is superseded by a
3 renewed Franchise in accordance with Applicable Law, Franchisee shall continue
4 to make monthly capital support payments for, and in support of EG Access
5 Facilities as specified hereinabove.

6 C. Any EG Access capital support amounts owing pursuant to this
7 Franchise which remain unpaid more than twenty five (25) Days after the date
8 the payment is due shall be delinquent and shall thereafter accrue interest at
9 twelve percent (12%) per annum or the prime lending rate published by the
10 Wall Street Journal on the day the payment was due, whichever is greater.
11

12 D. Franchisee agrees that support for EG Access required by the
13 Franchise is not intended to be a Franchise fee within the meaning of 47 U.S.C. §
14 542(g) and falls within one (1) or more of the exceptions thereto. To the extent
15 consistent with Applicable Law, Franchisee agrees that it will not offset or reduce
16 its payment of past, present, or future Franchise fees required pursuant to
17 Section 12.1 of this Franchise, as a result of its obligation to remit the EG
18 contribution required by Section 6.3 of this Franchise.
19

20 E. EG Reports. Consistent with Washington state law governing open
21 records, Franchisee may review records of the City regarding the use of
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25 Channels and capital funds provided to verify that the requirements of this
26 section are being satisfied.



6.4 Technical Quality.

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A. Franchisee shall not be required to carry a EG Channel in a higher quality format than that of the Channel signal delivered to Franchisee, but Franchisee shall not implement a change in the method of delivery of EG Channels that results in a material degradation of signal quality or impairment of viewer reception of EG Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering EG Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements.

B. There shall be no restriction on Franchisee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Franchisee may implement HD carriage of the EG Channel(s) in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial non-sport, non-movie HD channels carried on the Cable System. There shall be no material difference in the viewing experience of a Subscriber selecting an EG Channel as compared to other commercial channels offered by Franchisee on the Basic Service tier. There shall be no significant deterioration in signal from the



1 point of origination Upstream to the point of reception Downstream. All processing
2 equipment used by Franchisee for processing EG signals will be of similar quality
3 to the processing equipment used for other commercial Channels.

4 C. Within twenty-four (24) hours of a written request from the City to
5 Franchisee identifying a technical problem and requesting assistance, Franchisee
6 will provide technical assistance or diagnostic services to determine whether or
7 not a problem with an EG signal is the result of matters for which Franchisee is
8 responsible, and, if so, Franchisee will take prompt corrective action. If the
9 problem persists and there is a dispute about the cause, then the parties shall
10 meet with engineering representation from Franchisee and the City in order to
11 determine the course of action to remedy the problem prior to resorting to the
12 Franchise enforcement remedies set forth in this Franchise.

14 6.5 Change in Technology. In the event Franchisee makes any change
15 in the Cable System and related equipment and facilities or in its signal delivery
16 technology, which requires the City to obtain new equipment in order to be
17 compatible with such change, Franchisee shall, at its own expense, purchase
18 such equipment as may be necessary.

20 6.6 [Reserved]

22 6.7 Treatment of Negotiated Provisions and Pass through of EG Access
23 Capital Support. The City recognizes that the capital support for EG Access
24 required in Section 6.3.A above may be passed through to Subscribers and
25 itemized on Subscriber bills.

26



Section 7. [Reserved]

Section 8. Regulatory Provisions.

8.1 Intent. The City shall have the right to administer and regulate activities of 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, 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. Discrimination Prohibited.

1. Franchisee agrees that it will not unlawfully discriminate in hiring, in contracting, or in the provision of Cable Services 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.



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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 the 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 the 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



1 projected completion date. Upon five (5) Days' prior written notice, either
2 the City or Franchisee may call an informal meeting to discuss the alleged
3 default. In such case, if matters are not resolved at such meeting, the City
4 may set a hearing in accordance with paragraph B below.

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

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

10 (b) if Franchisee does not provide the EG Channels or the
11 EG capital support to the City, in accordance with Section 6.3.A.

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

7 C. Subject to any appeal that may be filed by Franchisee and any
8 injunctive relief that may be granted by a court, if, after the hearing, the City
9 determines that a default still exists, the City shall order Franchisee to correct or
10 remedy the default or breach within fourteen (14) Days of City notification or
11 within such other reasonable timeframe as the City shall determine. In the event
12 Franchisee does not cure within such time to the City's reasonable satisfaction,
13 the City may:

14
15 1. Assess and collect monetary damages in accordance with this
16 Franchise;

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18 2. Revoke this Franchise in accordance with Section 8.5 herein; or

19
20 3. Pursue any other legal or equitable remedy available under
21 this Franchise or Applicable Law.

22 D. The City specifically does not, by any provision of this Franchise, waive
23 any right, immunity, limitation, or protection (including complete damage immunity)
24 otherwise available to the City, its officers, officials, boards, commissions, agents, or
25 employees under federal, state, or local law, including, by example, Section 635A of
26



1 the Cable Act. Franchisee shall not have any monetary recourse against the City,
2 or its officers, officials, boards, commissions, authorized agents or employees for
3 any loss, costs, expenses or damages arising out of any provision, requirement of
4 this Franchise or the enforcement thereof, subject to Applicable Law.

5 8.4 Assessment of Liquidated Damages and Letter of Credit.

6 A. Franchisee shall maintain an irrevocable and unconditional letter of
7 credit, in a form and substance acceptable to the City, from a national or state
8 bank subject to reasonable approval by the City, in the amount of fifty thousand
9 dollars (\$50,000.00).
10

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

15 C. In addition to the recovery of any monies owed by Franchisee to the
16 City, the City, in its sole discretion, may, after notice and opportunity to cure as
17 provided in Section 8.3, charge to and collect from the letter of credit the following
18 liquidated damages.
19

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



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E. The City may not assess any liquidated damage if 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.

F. 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.

G. The City and 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 Franchisee's breach of this Franchise. Accordingly, instead of requiring such proof of actual loss, the City and Franchisee agree that Franchisee shall pay to the City the sums set forth above for each Day that 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 Franchisee's breach of such provisions of this Franchise.



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H. The letter of credit, referred to in Section 8.4A, 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.

I. 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.

J. 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.

K. 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



1 breach of this Franchise once the one hundred twenty (120) Day period has
2 expired.

3 L. Franchisee's maintenance of the letter of credit required herein shall not
4 be construed to excuse unfaithful performance by Franchisee of this Franchise, to
5 limit liability of Franchisee to the amount of the security, or to otherwise limit the
6 City's recourse to any other remedy available at law.

7 8.5 Revocation.

8 A. This Franchise may be revoked and all rights and privileges rescinded
9 if a material breach of the Franchise is not cured, pursuant to Section 8.3, or in
10 the event that:
11

12 1. Franchisee attempts to evade any material provision of this
13 Franchise or to practice any fraud or deceit upon the City or Subscribers;

14 2. Franchisee makes a material misrepresentation of fact in the
15 negotiation of this Franchise;

16 3. Franchisee abandons the Cable System, or terminates the
17 Cable System's operations;

18 4. Franchisee fails to restore service to the Cable System after
19 three (3) consecutive Days of an outage or interruption in service; except
20 in the case of an emergency or during a force majeure occurrence, or
21 when approval of such outage or interruption is obtained from the City, it
22 being the intent that there shall be continuous operation of the Cable
23 System); or
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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 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 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, the 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 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



1 enforce shall not constitute a waiver of rights or acquiescence in Franchisee's
2 conduct.

3 8.7 Force Majeure. Franchisee shall not be deemed in default with
4 provisions of its Franchise where performance was rendered impossible by war or
5 riots, civil disturbances, floods, or other natural catastrophes beyond Franchisee's
6 control; the unforeseeable unavailability of labor or materials; labor stoppages or
7 slowdowns or power outages exceeding back up power supplies. The acts or
8 omissions of Affiliates are not beyond Franchisee's control, and the knowledge of
9 Affiliates shall be imputed to Franchisee. The Franchise shall not be revoked or
10 Franchisee penalized for such noncompliance, provided that Franchisee takes
11 immediate and diligent steps to bring itself back into compliance and to comply as
12 soon as practicable under the circumstances with its Franchise without unduly
13 endangering the health, safety, and integrity of Franchisee's employees or
14 property, or the health, safety, and integrity of the public, Public Rights of Way,
15 public property, or private property.
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18 8.8 Alternative Remedies. Where the City elects to pursue liquidated
19 damages pursuant to Section 8.4, that election shall constitute the City's sole and
20 exclusive remedy for one hundred twenty (120) Days. Thereafter, the City shall
21 have available any other remedy under this section. For those violations where
22 the City elects not to pursue liquidated damages, no provision of this Franchise
23 shall be deemed to bar the right of the City to seek or obtain judicial relief from a
24 violation of any provision of Title 10 or any rule, regulation, requirement, or
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1 directive promulgated thereunder. Neither the existence of other remedies
2 identified in this Franchise nor the exercise thereof shall be deemed to bar or
3 otherwise limit the right of the City to recover monetary damages for such
4 violation by Franchisee, once the one hundred twenty (120) Days has expired
5 where the remedy of liquidated damages has been exercised, or to seek and
6 obtain judicial enforcement of Franchisee's obligations by means of specific
7 performance, injunctive relief or mandate, or any other judicial remedy available
8 at law or in equity.

9 Section 9. Reporting Requirements.

10 9.1 Monthly and Annual Reports.

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

18 B. Franchisee shall provide written annual reports no later than one
19 hundred twenty (120) Days after the end of its fiscal year, being January 1 –
20 December 31, containing such information as may be required by the City, as
21 follows, unless the City waives the requirement:
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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 report showing, for each cable customer service standard in force, 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, Franchisee will describe the corrective actions it is taking to assure future compliance.

C. Within one hundred twenty (120) Days of a written request by the City, Franchisee shall also provide the City with written reports containing such information, as may be required by the City, as follows:

1. A summary of the number of service calls (calls requiring a truck roll), received by type;

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



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

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

5. An organizational chart showing all corporations or partnerships with more than a ten percent (10%) interest ownership in 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;

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

7. 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;

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



D. Franchisee shall at all times maintain:

1 1. Records of all complaints received with information sufficient to
2 allow Franchisee to prepare the reports required in this Section 9.1. The
3 term “complaints” as used herein and throughout this Franchise refers to
4 complaints about any aspect of the Cable System or Franchisee’s
5 operations, including, without limitation, complaints requiring service calls,
6 and complaints about employee courtesy, billing, prices, programming,
7 outages and signal quality;
8

9 2. Records of outages known to Franchisee, with information
10 sufficient to allow Franchisee to prepare the reports required in this
11 Section 9.1.
12

13 3. Records of service calls for repair and maintenance indicating
14 the date and time service was requested; the date of acknowledgment;
15 date and time service was scheduled, if it was scheduled; the date and
16 time service was provided; and, if different, the date and time the
17 problem was solved; and
18

19 4. Records of installation/reconnection and requests for service
20 extension, indicating date of request, date of acknowledgment, and the
21 date and time service was extended.
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23 9.2 Other Reports and Records.

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



1 federal, state, or local law such documents have been determined to be
2 confidential by a court of competent jurisdiction, or a federal or state agency.

3 With respect to all other reports, documents and notifications provided to any
4 federal, state, or local regulatory agency as a routine matter in the due course
5 of operating Franchisee's Cable System within the Franchise Area, Franchisee
6 shall make such documents available to City upon City's written request.

7 9.3 Franchisee's Records.

8 A. Throughout the term of this Franchise, Franchisee agrees that the City,
9 upon thirty (30) days prior written notice to Franchisee, may review, during normal
10 business hours, such of Franchisee's books and records regarding the operation of
11 the Cable System and the provision of Cable Service in the Franchise Area which
12 are reasonably necessary to monitor and enforce Franchisee's compliance with the
13 provisions of this Franchise. All such documents pertaining to financial matters that
14 may be the subject of an inspection by the City shall be retained by Franchisee for a
15 minimum period of six (6) years. Franchisee shall not deny the City access to any
16 of Franchisee's records on the basis that Franchisee's records are under the control
17 of any parent corporation, affiliated entity, or a third (3rd) party. The City may
18 request, in writing, copies of any such records or books that are reasonably
19 necessary, and Franchisee shall provide such copies within thirty (30) Days of the
20 receipt of such request. One copy of all reports and records required under this or
21 any other section shall be furnished to the City at the sole expense of Franchisee. If
22 the requested books and records are too voluminous, or for security reasons cannot
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1 be copied or removed, then Franchisee may request, in writing within ten (10) Days
2 of receipt of such request, that the City inspect them at the Franchisee's local
3 offices or at one of Franchisee's offices more convenient to City or its duly
4 authorized agent. If any books or records of Franchisee are not kept in such office
5 and not made available in copies to the City upon written request as set forth above,
6 and if the City determines that an examination of such records is necessary for the
7 enforcement of this Franchise, then all reasonable travel expenses incurred in
8 making such examination shall be paid by Franchisee.

9
10 B. Throughout the term of this Franchise, Franchisee shall maintain at its
11 business office, in a file available for public inspection during normal business
12 hours, those documents required pursuant to the FCC's rules and regulations.

13 9.4 Preservation of Confidential Information. Franchisee may choose to
14 provide any confidential books and records that it is obligated to make available to
15 the City pursuant to this Franchise, by allowing the City, or its designated
16 representative(s), to view the books and records at a mutually agreeable location
17 and without City obtaining its own copies of such books and records. Alternatively,
18 confidential or proprietary information may be disclosed pursuant to a reasonable
19 non disclosure agreement, to the extent permitted under Applicable Law, whereby
20 the information required to be disclosed under this Franchise will be provided only
21 to City's representative(s). The intent of the parties is to work cooperatively to
22 ensure that all books and records reasonably necessary for the City's monitoring
23 and enforcement of Franchise obligations are provided to City. To the extent that
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Franchisee insists that records must be reviewed on site, and the 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, the 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 Applicable Law. If the City receives a demand from any Person for disclosure of any information designated by Franchisee as confidential, the 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.



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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, 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



1 material policy changes, information regarding the changes will be provided to
2 Subscribers. No provision of the customer service agreement shall be valid or
3 enforceable to the extent that it is inconsistent with this Franchise or Applicable
4 Law; provision of service may not be conditioned on waiver of rights by any
5 Subscriber. Copies of the customer service manuals and the contract, and any
6 updates, provided to Subscribers shall be provided to the City upon request.

7 Section 11. Line Extension Policy.

8 11.1 Standard Installation.

9 A. Service shall be provided to any potential Subscriber upon request.

10 Franchisee shall make service available at standard installation rates and
11 standard service rates, for every potential Subscriber:
12

13 1. Whose dwelling is one of a minimum of twenty (20) dwelling
14 units per one (1) aerial cable mile or a minimum of forty (40) dwelling
15 units per one (1) underground cable mile, or five (5) dwelling units per
16 one quarter (1/4) aerial mile, or ten (10) dwelling units per one quarter
17 (1/4) underground cable mile measured from the nearest existing point
18 on the Cable System from which service could be extended; or
19

20 2. Whose dwelling is situated such that cable constructed from the
21 nearest point on the Cable System from which service could be extended
22 would pass or is projected to pass (in the case of a development) an
23 average of twenty (20) dwelling units per one (1) aerial cable mile, or an
24 average of forty (40) dwelling units per one (1) underground cable mile; or
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1 Where connection to the potential Subscriber's dwelling from cable plant
2 constructed as required under this Franchise requires no more than a one
3 hundred twenty five (125) foot aerial drop or a sixty (60) foot underground
4 drop (whichever would be required in order to comply with the applicable
5 City Code) measured from the nearest cable plant or the Public Rights of
6 Way, whichever is closer.

7 B. Upon receiving a request for service where Franchisee proposes to
8 require the potential Subscriber to pay for the cost of extension, Franchisee
9 shall promptly prepare an estimate of the cost of extension, and the amount the
10 potential Subscriber would be required to pay under this section.
11

12 11.2 Isolated Areas.

13 A. Potential Subscribers requesting service but requiring service extended
14 beyond the standard installation and service provisions under Section 11.1 shall
15 be provided service under the following provisions:
16

17 1. In any case where the standard in Section 11.1.A.2 is not
18 satisfied, the potential Subscriber may be required to pay the additional
19 cost of constructing a drop beyond one hundred twenty five (125) feet
20 aerial or sixty (60) feet underground from the nearest point on the Cable
21 System or the nearest point on the Public Rights of Way, whichever is
22 closer.
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24 2. Where a potential Subscriber and Franchisee reach an
25 independent agreement for the provision of service, so long as the agreement does
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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.

A. 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:

1. 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; or

2. 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, subject to the line extension and installation requirements in Section 11.

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



1 Franchise and any extensions, Franchisee shall pay City five percent (5%) of its
2 Gross Revenues as a Franchise fee. In the event Franchisee bundles or
3 combines Cable Services (which are subject to the Franchise fee) with non
4 Cable Services (which are not subject to the Franchise fee) so that Subscribers
5 pay a single fee for more than one class of service resulting in a discount on
6 Cable Services, Franchisee agrees that for the purpose of calculation of the
7 Franchise fee, it shall allocate to Cable Service revenue no less than a pro rata
8 share of the revenue received for the bundled or combined services. The pro
9 rata share shall be computed on the basis of the published charge for each
10 service in the bundled or combined classes of services when purchased
11 separately.
12

13 B. Franchise Fee No Limitation. The payment by Franchisee of a
14 Franchise fee, as required under Section 12.1.A, shall not alter Franchisee's
15 obligation to continue to pay the City's generally applicable business and
16 occupation tax levied pursuant to Tacoma City ordinances, subject to Applicable
17 Law. By way of example and not limitation, no deductions, including current nor
18 previously paid Franchise fees, shall be subtracted from the Gross Revenue
19 amount upon which Franchise fees are calculated and due for any period, nor
20 shall copyright fees or other license or Franchise fees paid by Franchisee be
21 subtracted from Gross Revenues for purposes of calculating Franchise fees.
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24 C. Manner of Payment. Franchise fees shall be paid monthly and to the
25 City Treasurer or to such bank account of the City, as may be designated by the
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1 City Treasurer. Franchisee shall file with the City a written statement the form of
2 which shall be approved by the City and signed by an officer or authorized
3 representative of Franchisee, which identifies in detail the sources and amounts
4 of each category of Gross Revenues collected by Franchisee during the previous
5 month for which payment is made, and any allowable deductions and showing
6 the manner in which the Franchise fee is calculated. Franchisee agrees that no
7 acceptance of any payment shall be construed as an accord that the amount paid
8 is, in fact the correct amount, nor shall such acceptance of payment be construed
9 as a release of any claim which the City may have for further or additional sums
10 payable under the provisions of this section.
11

12 D. Late Payments. Franchise fees shall be due within twenty five (25)
13 Days of the end of each calendar month. Franchisee shall remit payment no
14 later than forty five (45) Days from the end of each calendar month before it
15 shall be subject to interest for late payment. If the Franchise fee is paid later
16 than forty five (45) Days, interest shall thereafter accrue interest at twelve
17 percent (12%) per annum or the prime lending rate published daily in the Wall
18 Street Journal, on the day the payment is due but unpaid, whichever is greater.
19

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

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

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16 12.2 Performance Bond.

17 A. Prior to the Effective Date of the Franchise, Franchisee shall, in
18 addition to any other bond or security fund obligations required under the
19 Franchise and Title 10, furnish to the City a joint performance bond, issued by a
20 bonding company licensed to do business in the state of Washington, in the
21 amount of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00), for
22 the purpose of guaranteeing the full and faithful performance of each and every
23 requirement of the Franchise and applicable provisions of Subtitle 16A and
24 shall be effective for the term of the Franchise, including any extensions, and
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1 thereafter until Franchisee or any successor or assign of Franchisee has
2 liquidated all of its obligations with the City that may have arisen from the
3 acceptance of the Franchise by Franchisee or from its exercise of any privilege
4 herein granted.

5 B. Neither the provisions of this section nor any performance bond
6 accepted by the City pursuant hereto, nor any damages or other amounts
7 recovered by the City under such performance bond shall be construed to excuse
8 faithful performance by Franchisee or to limit liability of Franchisee under this
9 Franchise either to the full amount of the insurance provided or otherwise.
10

11 12.3 Indemnification by Franchisee.

12 A. Franchisee agrees to release the City from and against any and all
13 liability and responsibility in or arising out of the construction, operation, or
14 maintenance of the facilities and further agrees not to sue or seek any money
15 or damages from the City in connection with the above-mentioned matters.
16

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

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

7 12.4 Franchisee Insurance.

8 A. During the course and performance of the services herein specified,
9 Franchisee shall at all times comply with the insurance requirements in the City
10 Code, including Title 16A, as may be amended from time to time.

11 B. Failure by the City to identify a deficiency in the insurance
12 documentation provided by Franchisee or failure of the City to demand
13 verification of coverage or compliance by Franchisee with these insurance
14 requirements shall not be construed as a waiver of Franchisee's obligation to
15 maintain such insurance.
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18 C. Franchisee shall maintain, throughout the term of the Franchise,
19 adequate insurance insuring Franchisee, its officers, employees, and agents, to
20 protect the City, its trustees, elected and appointed officers, agents, and
21 employees against claims and damages that may arise as a result of the
22 construction, operation or repair of the Cable System.
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24 Section 13. Miscellaneous Provisions.
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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 (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 Ordinance No. 27845 shall be deemed terminated upon the Effective Date of this Franchise. Provided, however, nothing herein shall serve to waive any rights the parties may have under Ordinance No. 27845 and Franchisee shall remain liable for all acts and



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omissions under Ordinance No. 27845, and Franchisee 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 Ordinance No. 27845.

13.6 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 Municipal Services Center
1224 MLK JR WAY
Tacoma, WA 98405
Attn.: MCO – Franchise Services Manager

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

Comcast Cable
900 132nd Street SW
Everett, WA 9824
Attention: Franchise Department

With non binding courtesy Copy to:

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

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than



1 one address, and the address must be within the City, except by mutual
2 agreement.

3 13.7 Responsibility for Cost of Franchise Requirements. Unless otherwise
4 specified in this Franchise, Franchisee shall bear the cost of meeting the
5 requirements of the Franchise. Franchisee shall be permitted to pass through to
6 Subscribers such costs of meeting Franchise requirements as are among those
7 permitted to be passed through under federal law and regulation, in accordance
8 with applicable federal regulations.
9

10 13.8 Third Party Beneficiary. Nothing in this Franchise shall be construed
11 to confer third (3rd) party beneficiary status on any other Person or member of
12 the public to enforce the terms of this Franchise.
13

14 13.9 In-Kind Cable-Related Contributions.

15 A. At any time after this Franchise is approved by the City the Franchisee
16 may, if Franchisee so chooses, provide the City with a written list of “in-kind
17 cable-related contributions” (as that term is defined by the FCC in the Section
18 621 Order) that the Franchise requires Franchisee to provide (including but not
19 limited to the complimentary service requirements in Section 4.1(D) and any PEG
20 Transport required by Section 6.1.O). Within one hundred and twenty (120) days
21 of receiving the aforementioned list, the City will notify the Franchisee whether,
22 with respect to each identified in-kind cable-related contribution, the Franchisee
23 is relieved, or temporarily relieved, of its obligations or is required to comply,
24 subject either to the Franchisee taking an offset to the Franchise fee payments
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1 payable under Section 12.1 as may be permitted by the Section 621 Order or to
2 the Franchisee and the City agreeing to a non-discriminatory charge payable by
3 the City to the Franchisee.

4 B. In the event the Section 621 Order is stayed or overturned in whole
5 or in part by action of the FCC or through judicial review, the City and the
6 Franchisee will meet promptly to discuss what impact such action has on the
7 provision of the in-kind cable-related contributions to which this section applies.
8 Nothing herein waives the City's right to enforce Franchisee's compliance with
9 all lawful obligations contained in this Franchise.

10 13.10 Counterparts. This Franchise may be executed in counterparts, each
11 of which is deemed an original, but all of which together are deemed to be one and
12 the same agreement. A signed copy of this Franchise delivered by e-mail or other
13 means of electronic transmission is deemed to have the same legal effect as
14 delivery of an original signed copy of this Franchise.

15 13.11 Effective Date. This Ordinance No. 28900 shall be effective on
16 the Effective Date. Provided, however, that if Franchisee does not accept this
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1 Franchise pursuant to Section 2.2 and comply with all conditions for such
2 acceptance set forth therein, the grant of the Franchise to Franchisee shall be
3 null and void.

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5 Passed _____

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Mayor

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Attest:

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City Clerk

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Approved as to form:

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Deputy City Attorney

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Comcast Cable Communications Management, LLC

AGREEMENT AND ACCEPTANCE

This confirms that we accept the Franchise granted to us by Ordinance 28900. 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 Cable Communications Management, LLC

BY: _____

ITS: _____

Dated: _____, 2023



EXHIBIT "A"

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

Complimentary cable drops are to be provided to each of the buildings listed on this exhibit upon written request. The drops are to be brought into the building and the outlet located at a point designated by the user.

CURRENT ACTIVE LOCATIONS:

School/Library/Government Building	Address	Zip	Phone
Fire Communications Center (Old Command Center)	415 Tacoma Avenue South	98402	
Municipal Services Center	1224 Martin Luther King Jr.	98405	(253) 591-5727
Pierce County Annex LESA	2401 South 35th Street	98409	(253) 591-5400
Tacoma Municipal Building - 2 active accounts	747 Market Street	98402	(253) 591-5291
Tacoma Municipal Building North - 2 active accounts	733 Market Street	98402	(253) 591-5291
Lincoln High School	701 South 37th Street	98408	(253) 571-6700
Stadium High School	111 North "E" Street	98403	(253) 571-3100
Wilson High School	1202 North Orchard	98406	(253) 571-6162
Baker Middle School	8320 South "I" Street	98408	(253) 571-5000
Giaudrone Middle School	4902 South Alaska Street	98408	(253) 571-5811
Mason Middle School	2812 North Madison Street	98407	(253) 571-7000
First Creek Middle School	1801 East 56th Street	98404	(253) 571-2700
Meeker Middle School	4402 Nassau Avenue NE	98422	(253) 571-6500
Birney School Elementary School	1202 South 76th Street	98408	(253) 571-4600
Edison Elementary School	5830 South Pine Street	98409	(253) 571-1700
Fern Hill Elementary School	8442 South Park Avenue	98444	(253) 571-3888
Jefferson Elementary School	4302 North 13th Street	98406	(253) 571-2261
Mann Elementary School	5211 South "K" Street	98408	(253) 571-6300
Point Defiance Elementary School	4330 North Visscher St.	98407	(253) 571-2265
Roosevelt Elementary School	3550 East Roosevelt Avenue	98404	(253) 571-4400
Sheridan Elementary School	5317 McKinley Avenue	98404	(253) 571-2076
Sherman Elementary School	North 38th & Cheyenne	98407	(253) 571-2255
Whitman Elementary School	1120 South 39th Street	98408	(253) 571-2077
Madison/Transportation	3110 South 43rd Street	98409	(253) 571-1000
Bates Technical College (Downtown Campus)	1101 South Yakima	98405	(253) 680-7000
Bates Technical College (Mohler Campus)	2320 South 19th Street	98405	(253) 680-7700
Evergreen State College (Tacoma Campus)	South 12th Street and MLKing Jr. Way	98405	(253) 680-3000



NON-ACTIVE SITES

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School/Library/Government Building	Address	Zip	Phone
Main Library	1102 Tacoma Avenue South	98402	(253) 591-5666
Police Headquarters	3701 South Pine St.	98409	5513
Police Harrison Range	101 McMurray Road	98422	5513
Police/Fleet Warehouse	3639 South Pine Street	98409	5513
Norpoint (Northeast) Substation	4731 Norpoint Way NE	98422	5513
North Substation	5136 N. 26th Street	98406	5513
Central Substation	1524 MLK Jr. Way	98405	5513
South Substation	1501 So. 72nd Street	98408	5513
Stewart Heights Substation	400 East 56th Street	98404	5513
Beacon Senior Center	415 South 13th Street	98402	(253) 591-5083
Cheney Stadium	2526 Bantz Blvd.	98405	(253) 752-7707
Solid Waste Management	3510 South Mullen Street	98409	(253) 593-7728
Street Maint. Asphalt Plant/Concrete Bldg.	3210 Center Street	98405	
Streets and Grounds	2324 South "C" Street	98402	
Streets and Grounds	2324 South "D" Street	98402	
Tacoma Dome	2727 East D Street	98421	(253) 272-3663
Park District Headquarters	4702 South 19th Street	98405	(253) 305-1083
Peoples Community Center	1602 Martin Luther King Jr. Way	98405	(253) 591-5321
Portland Avenue Community Center	3513 Portland Ave East	98404	(253) 591-5321
South End Neighborhood Center	7802 South L Street	98408	(253) 591-5321
South Park Community Center	4851 South Tacoma Way	98409	(253) 591-5299
Mount Tahoma High School	6229 South Tyler Street	98409	(253) 571-3800
Gray Middle School	3109 South 60th Street	98408	(253) 571-5200
Lister Elementary School	2106 East 44th Street	98443	(253) 571-2900
McKinley Elementary School	3702 McKinley Avenue	98404	(253) 571-2070
Stafford Elementary School	1615 South 92nd Street	98444	(253) 571-4300
Central Administration Building Annex	708 South G Street	98405	(253) 571-4270
Pearl Street Center	815 South Pearl Street	98465	(253) 396-5800
Union Street Site (B&G, Purchasing, Food Service, P&C)	3321 South Union Avenue	98409	
Bates Technical College (South Campus)	2201 South 78th Street	98409	(253) 680-7400
Tacoma Community College (Main Campus)	6510 South 19th Street	98466	(253) 566-5000
Tacoma School of the Arts (SOTA)	1950 Pacific Avenue	98402	(253) 571-7900
University of Washington (Tacoma Campus)	1900 Pacific Avenue	98402	
University of Puget Sound	1500 North Warner Street	98416	