

After Recording Return To:

Asst. Clerk of the Council
Snohomish County Council
3000 Rockefeller, M/S 609
Everett, WA 98201

Grantor:	Snohomish County
Grantee:	WaveDivision I, LLC D/B/A Astound Broadband
Tax Account No:	Not Assigned
Legal Description:	Unincorporated Snohomish County
Ref. # of Docs. Affected:	AFN# 201302260174
Document Title:	An Ordinance of Snohomish County Council Granting a Nonexclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in Snohomish County, Washington to WaveDivision I, LLC D/B/A Astound Broadband

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 25-073

**GRANTING A NONEXCLUSIVE CABLE FRANCHISE AUTHORIZING
LIMITED USE OF THE PUBLIC ROAD RIGHTS-OF-WAY IN SNOHOMISH
COUNTY, WASHINGTON TO WAVEDIVISION I, LLC D/B/A ASTOUND
BROADBAND**

WHEREAS, the Cable Communications Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (as amended, the “Cable Act”), codified at 47 U.S.C. § 521 *et seq.*, provides local governments with authority to grant non-exclusive franchises authorizing cable operators to use public-rights-of-way for the installation of maintenance of their cable system; and

WHEREAS, Chapter 36.55 of the Revised Code of Washington (“RCW”) and the general grant of police power contained in the Washington State Constitution each authorize Washington counties to grant non-exclusive franchises authorizing use of public rights-of way; and

WHEREAS, Section 9.2 of the Snohomish County Charter and Chapter 13.80 of the Snohomish County Code (the “SCC” or the “County Code”) each authorize Snohomish County (the “County”) to grant non-exclusive franchises authorizing use of public rights-of way; and

WHEREAS, WaveDivision I, LLC D/B/A Astound Broadband, (“Astound”), currently holds the franchisee’s interest in and to that certain cable franchise granted on October 31, 2012, by Ordinance No. 12-080, recorded under auditor’s file No. 201302260174 in, on, across, over, along, under, and/or through public rights-of-way within unincorporated Snohomish County (“Prior Franchise”); and

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WHEREAS, by letter dated May 19, 2017, Astound invoked the cable franchise renewal provisions in Section 626 of the Cable Act 47, U.S.C. § 546, indicating Astound's intention and desire to renew the Astound Franchise; and

WHEREAS, Astound has submitted to the County the franchise application materials required by SCC 13.80.020; and

WHEREAS, the County and Astound have conducted informal franchise renewal negotiations in accordance with 47 U.S.C. § 546(h); and

WHEREAS, throughout the course of those negotiations, Astound's Prior Franchise expired on January 13, 2020, however the parties have agreed to abide by the terms of the Prior Franchise on a month-to-month basis following its expiration; and

WHEREAS, pursuant to those informal negotiations, the County and Astound have reached agreement regarding the terms and conditions of a renewed cable franchise, in the form attached to this ordinance as Attachment A; and

WHEREAS, the Snohomish County Council ("County Council") held a public hearing on December 3, 2025, to solicit comments from the public and to consider whether to grant the requested franchise to Astound; and

WHEREAS, the County Council has considered the Engineer's Report of the Department of Public Works, which report recommends that the subject franchise be granted; and

WHEREAS, the County Council has determined it is in the public interest to grant a renewed cable franchise to Astound; and

WHEREAS, a franchise is a legislative authorization to use public rights-of way and actual construction and maintenance activities in the public rights-of-way will be subject to administratively approved right of way use permits after review of specific plans;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Astound, is granted a cable franchise as set forth in Attachment A, which is attached hereto and incorporated by reference into this ordinance.

Section 2. Within ninety (90) days after the passage and approval of this franchise ordinance by the County Council, Astound may accept this franchise by filing with the Clerk of the County Council an unconditional written acceptance of this franchise, together with the accompaniments specified in Section 3 below. Failure of Astound to so accept the franchise within said period of

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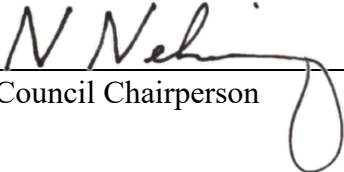
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time shall be deemed a rejection of this franchise by Astound and the rights and privileges granted by the franchise shall automatically, after the expiration of the ninety (90) day period, cease and terminate, unless the time period is extended by motion duly passed for that purpose.

Section 3. The franchise granted by this ordinance shall take effect, if at all, on the date on which each and every one of the following conditions have been met (the "Effective Date"): (i) a minimum of ten (10) days have passed since the County Executive executed this franchise ordinance or this franchise ordinance was otherwise validly enacted; (ii) Astound executes the acceptance page of this franchise ordinance and returns same to the Clerk of the County Council; (iii) Astound presents to the County acceptable evidence of insurance and performance security as required in Sections 9 and 12 of Attachment A; and (iv) Astound pays all applicable fees as set forth in Section 18.4 of Attachment A.


PASSED this 3rd day of December, 2025.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington




Council Chairperson

ATTEST:



Deputy Clerk of the Council

(X) APPROVED
() VETOED
() EMERGENCY



Snohomish County Executive

DATE: December 4, 2025

ATTEST:

Melissa Geraghty

Approved as to Form Only:
Richmond,
Christina
 Digitally signed by Richmond,
Christina
Date: 2025.08.25 11:02:28

Deputy Prosecuting Attorney

Date: _____

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ACCEPTANCE BY FRANCHISEE:

The provisions of the franchise granted by this franchise ordinance are agreed to and hereby accepted. By accepting this franchise, WaveDivision I, LLC doing business as Astound Broadband, covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Charter and Code of the County and by this franchise ordinance.

Dated: _____, 2025.

WaveDivision I, LLC, D/B/A Astound Broadband

By: _____

Name: _____

Title: _____

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) WaveDivision I, LLC, D/B/A Astound Broadband returned a signed copy of this franchise to the county council within the time provided in Section 2 of this franchise ordinance; (2) WaveDivision I, LLC, D/B/A Astound Broadband has presented to the County acceptable evidence of insurance and security as required in Sections 9 and 12 of Attachment A to this franchise ordinance; and (3) WaveDivision I, LLC, D/B/A Astound Broadband has paid all applicable processing costs and fees as set forth in Section 18.4 of Attachment A to this franchise ordinance.

THE EFFECTIVE DATE OF THIS FRANCHISE IS:

By: _____

Name: _____

Title: _____

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ATTACHMENT A

[See attached.]

CABLE FRANCHISE AGREEMENT

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SECTION 1. Definition of Terms

For the purpose of this Franchise, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them herein. The word "shall" is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various educational and governmental agencies, institutions and organizations in the community, including the County and its designees, of Channels on the Cable System designated for such use as permitted under applicable law:

(A) “*Educational Access*” means Access where Schools, including public colleges and universities, are the primary users having editorial control over programming.

(B) “*Governmental Access*” means Access where governmental institutions or their designees are the primary users having editorial control over programming.

(C) “*Educational and Governmental Access*” or “*EG Access*” means the availability for noncommercial use of a Channel or Channels on the Cable System by various governmental and educational agencies including the County and its designees.

1.2 “*Access Channel*” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transport Access programming.

1.3 “*Access Fees*” means a fee for capital costs related to Educational and Government Access or as may be permitted by applicable law remitted to the County by the Grantee in accordance with section 14.5.

1.4 “*Affiliated Entity*” or “*Affiliate*” means when used in connection with Grantee, any corporation, Person who owns or controls, is owned by or controlled by, or is under common ownership or control with Grantee and its successor corporations.

1.5 “*Bad Debt*” means amounts lawfully owed by a Subscriber and accrued as revenue on the books of Grantee, but not collected after reasonable efforts by Grantee.

1.6 “*Basic Service*” means any Cable Service tier which includes the retransmission of local television broadcast signals.

1.7 “*Broadcast Channel*” means a television signal that is transmitted over-the air to a wide geographic audience and is received by the Cable System and re-transmitted to Subscribers, regardless of the means used by Grantee to receive the signal (off-the-air, microwave link, fiber optically, satellite receiver, by other means, etc.).

1.8 “*Cable Act*” means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as amended by the Telecommunications Act of 1996, and any amendments thereto, 47 U.S.C. § 521 *et. seq.*

1.9 “*Cable Operator*” means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise Control (as defined in Section 8.1) or are responsible for, through any arrangement, the management and operation of such a Cable System.

1.10 “*Cable Service(s)*” means (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, 47 U.S.C. § 522(6).

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1.11 “*Cable System*” shall have the meaning specified in the definition of “Cable System” in the Cable Act, 47 U.S.C. § 522 (7). When used herein, the term “Cable System” shall mean Grantee’s Cable System in the Franchise Area.

1.12 “*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, whether delivered in an analog or digital format.

1.13 “*County*” means Snohomish County, Washington, the local franchise authority in this agreement.

1.14 “*Designated Access Provider*” means the entity or entities designated by the County to manage or co-manage Educational or Governmental Access Channels and facilities. The County may be a Designated Access Provider.

1.15 “*Dwelling Units*” means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.

1.16 “*Environmental Law*” means any federal, state or local law, ordinance, regulation, rule, order, guideline or policy relating to the environment, health and safety, hazardous or toxic materials, air and water quality, waste disposal and/or other environmental matters, including, but not limited to, the following: (i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; (ii) the Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (iv) the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; (v) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (vi) the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; (vii) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (viii) the Model Toxics Control Act, chapter 70.105D RCW; (ix) the Hazardous Waste Management Act, chapter 70.105 RCW; (x) the rules and/or regulations of the U.S. Environmental Protection Agency, the Washington Department of Ecology or any other federal or state agency that regulates hazardous or toxic materials; and (xi) the ordinances, rules and regulations of the County.

1.17 “*FCC*” means the Federal Communications Commission or successor governmental entity thereto.

1.18 “*Franchise*” means the authorization granted by this document issued by the County as the franchising authority, whether such authorization is designated as a franchise or by ordinance.

1.19 “*Franchise Area*” means the unincorporated areas within the legal boundaries of the County, as described in RCW 36.04.310, or any subsequent amendments thereto. As of the Effective Date of this Franchise, RCW 36.04.310 defines the County’s legal boundaries as follows:
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Commencing at the southwest corner of Skagit county; thence east along the eighth standard parallel to the summit of the Cascade mountains; thence southerly along the summit of the Cascade mountains to the northeast corner of King county, it being a point due east of the northeast corner of township twenty-six north, range four east; thence due west along the north boundary of King county to Puget Sound; thence northerly along the channel of Puget Sound and Possession Sound to the entrance of Port Susan, including Gedney Island; thence up the main channel of Port Susan to the mouth of the Stillaguamish river; thence northwesterly through the channel of the slough at the head of Camano Island, known as Davis Slough; thence northerly to the place of beginning.

1.20 “*Franchise Fee*” includes any tax, fee or assessment of any kind imposed by the County on the Grantee or Subscribers, or both solely because of their status as such. The term Franchise Fee does not include:

(A) Any tax, fee, or assessment of general applicability, for example a utility tax;

(B) Capital costs which are required by the Franchise to be incurred by the Grantee for Educational and Governmental Access facilities, including the support required in Section 14.5;

(C) Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

(D) Any fee imposed under Title 17, United States Code.

1.21 “*Grantee*” means WaveDivision I, LLC D/B/A Astound Broadband, or their lawful successor, transferee or assignee.

1.22 “*Gross Revenues*” means and shall be construed broadly to include all revenues derived by Grantee and any Affiliated Entity that is the cable operator of the Cable System from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area as set forth herein, and calculated in accordance with generally accepted accounting principles (“GAAP”), or any replacement standard that may be adopted by the Financial Accounting Standards Board (FASB), applicable to Grantee’s treatment of revenues and expenses.

1.22.1 Gross Revenues shall include but shall not be limited to the following, to the extent related to Cable Services:

(A) fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including

revenues, derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on demand Cable Services);

- (B) installation, activation, reconnection, downgrade, termination, upgrade, maintenance, or similar charges associated with changes in Subscriber Cable Service;
- (C) fees paid to Grantee for channels designated for commercial leased access use which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
- (D) converter, remote control, additional outlet and other Cable Service equipment rentals, leases, or sales;
- (E) Advertising Revenues as defined herein;
- (F) late fees, convenience fees, not sufficient fund fees, and administrative fees which are either specifically identified as related to the provision of Cable Service, or in the absence of such allocation, shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Subscriber revenues within the Franchise Area;
- (G) revenues from program guides;
- (H) Franchise Fees;
- (I) FCC user or regulatory fees;
- (J) commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall either be specifically attributed to a service area or in the absence of such specific attribution, shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area; and
- (K) any Cable Service revenues that may develop in the future, whether or not anticipated, and consistent with GAAP.

1.22.2 “*Advertising Revenues*” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System Subscribers via the Cable Services within the Franchise Area and shall either be in the amount specifically attributed to the Franchise Area, or in the absence of such specific attribution shall be allocated on a pro rata basis using Grantee’s Cable System Subscribers within the Franchise Area in relation to the total number of cable subscribers covered under the advertising arrangement. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise Fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., "revenue offsets" and "contra expenses" and "administrative expenses" or similar expenses), or by fees, commissions, or other amounts paid to or retained by affiliated advertising representation firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

1.22.3 Gross Revenues shall not include:

- (A) actual Bad Debt write-offs, except any portion which is subsequently collected, which such amount shall be included in Gross Revenues in the period collected;
- (B) any taxes or fees on Cable Services furnished by Grantee which are imposed on any Subscriber by any municipality, state, or other government unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- (C) other fees imposed by any municipality, state or other governmental unit on Grantee including the Educational and Governmental (EG) Access Fees;
- (D) Any fees or charges collected from Subscribers or other third parties for EG Access Fees.
- (E) launch fees and marketing co-op fees;
- (F) unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues;
- (G) Sales of capital assets or surplus equipment;
- (H) The value of the complimentary services provided by Grantee, if any; and

- (I) revenue not derived from operation of the Cable System to provide Cable Service.

1.22.4 For the purposes of this definition, if the Cable Service is bundled or integrated functionally with other services, capabilities, or applications, the Franchise Fee shall be applied only to the Gross Revenue attributable to the Cable Service. If Grantee bundles, integrates, ties, or combines Cable Services with nonvideo services creating a bundled package, so that Subscribers pay a single fee for more than one service, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue based on the relative undiscounted rate card amount (including all fees) of each element of service provided in the discount bundle.

1.22.5 Grantee reserves the right to change the allocation methodologies set forth in this definition in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item. Any such changes shall be subject to subsection 1.22.6 below.

1.22.6 Resolution of any disputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the FASB, EITF and/or SEC. Notwithstanding the forgoing, the County reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.22.7 For the purposes of determining Gross Revenue under this section 1.22, Grantee shall use the same method of determining revenues as that which Grantee uses in determining revenues for the purpose of reporting to national and state regulatory agencies (e.g. under GAAP or as otherwise established by FASB).

1.23 *"Hazardous Substance"* means any hazardous, dangerous or toxic substance, material or waste regulated under any Environmental Law, including, but not limited to, those substances, materials and wastes (i) categorized by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. pt. 302); (ii) listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. § 172.101), (iii) listed in the Model Toxics Control Act (chapter 70.105D RCW), or (iv) listed in the Hazardous Waste Management Act (chapter 70.105 RCW).

1.24 “*Headend*” means any facility for signal receptions and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for broadcast signals, equipment for the interconnection of the Cable System with adjacent cable systems and interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.25 “*Leased Access Channel*” means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

1.26 “*Locally Scheduled Original Programming*” means Government Access or Educational Access programming that is created by the County or their Designated Access Provider(s) including edited coverage of live programming. Such Locally Scheduled Original Programming shall not be considered as qualifying as such after four (4) cablecasts (initial airing and three (3) repeats).

1.27 “*Noncommercial*” means, in the context of Access Channels, that particular products and services are not promoted or sold. This term shall not be interpreted to prohibit and Access Channel operator or programmer from soliciting and receiving financial support to product and transmit video programming on an Access Channel, or from acknowledging a contribution, in the manner of the Corporation for Public Broadcasting.

1.28 “*Person*” means any natural person or any association, firm, partnership, joint venture, corporation, limited liability company or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the County.

1.29 “*Prior Franchise*” means the cable franchise approved by Snohomish County Council and identified as Ordinance No. 12-080, recorded under Auditor’s File No. 201302260174.

1.30 “*Public Rights-of-Way*” or “*Rights-of-Way*” means the surface of, and the space above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, drive, circle or other public right-of-way, including, but not limited to, utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the County in the Franchise Area, which shall entitle the County and Grantee to the use thereof for the purpose of constructing, installing, operating, repairing, upgrading and maintaining the Cable System. Public Rights-of-Way shall also mean any easement now or hereafter held by the County within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way which allow Grantee to the use thereof for the purposes of constructing, installing, operating, and maintaining Grantee’s Cable System over existing poles and wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the Cable System.

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1.31 “*School*” means any State accredited K-12 educational institution, public or private, but excluding home schools.

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

1.33 “*Subscriber*” or “*Customer*” means a Person who lawfully receives Cable Service over the Cable System with Grantee’s express permission.

SECTION 2. Grant of Franchise

2.1 Grant. The County hereby grants to Grantee a nonexclusive Franchise authorizing Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Rights-of-Way within the Franchise Area, and for that purpose to erect, extend, install, connect, construct, repair, remove, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Rights-of-Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment that constitute the Cable System, and as may be necessary or appurtenant to the Cable System.

2.2 Grant Not Exclusive. The Franchise and the rights granted herein to use and occupy the Rights-of-Way to provide Cable Services shall not be exclusive, and the County reserves the right to grant other franchises for similar uses or for other uses of the Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the Term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System.

2.3 Grant of Authority. Subject to the terms and conditions of this Franchise and the Cable Act, the County hereby grants Grantee the right to own, construct, operate and maintain a Cable System along the Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Franchise.

2.4 Reservation of Authority. Nothing in this Franchise shall (1) abrogate the right of the County to perform any public works or public improvements of any description, (2) be construed as a waiver of any codes or ordinances of general applicability promulgated by the County, (3) be construed as a waiver or release of the rights of the County in and to the Public Rights-of-Way, or (4) be construed to prohibit Grantee from providing any related communications services not prohibited by State or federal law.

2.5 Franchise Subject to Federal, State and Local Law. This franchise is subject to the laws of the United States and the State of Washington, and to the lawful general ordinances of the

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County affecting matters of general County concern and not merely existing contractual rights of Grantee, whether now existing or hereafter enacted.

2.6 Use of Rights of Way for non-Cable Service. This Franchise is an express authorization to provide Cable Services. This Franchise is not a bar to the imposition of any lawful condition on Grantee with respect to non-Cable Services provided by Grantee. This Franchise does not relieve Grantee of any obligation it may have to obtain from the County a lawfully required authorization to provide non-Cable Services, nor relieve Grantee of its obligation to comply with any such authorization(s) that may be lawfully required. However, this Franchise shall not be read as a concession by Grantee that it needs authorization to provide non-Cable Services.

2.7 No Rights by Implication. No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

2.7.1 Any other permit or authorization required for the privilege of transacting and carrying on a business within the County that may be required by the ordinances and laws of the County;

2.7.2 Any permit, agreement or authorization required by the County for Rights-of-Way users in connection with operations on or in Rights-of-Way or public property; or

2.7.3 Any permits or agreements for occupying any other property of the County or private entities to which access is not specifically granted by this Franchise.

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

2.9 No Waiver. The failure of the County on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Cable Act or any other applicable State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.10 Other Ordinances. Grantee agrees to comply with the terms of any lawful, generally applicable local ordinance, including but not limited to Title 13 and 30 of the Snohomish County Code. In the event of a conflict between any ordinance and a specific provision of this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the County.

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2.11 Term of Franchise. The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be ten (10) years (the “Term”) from the Effective Date of this Franchise. Upon commencement of the franchise renewal period described in the Cable Act, the parties will meet to discuss a possible extension of this Franchise.

2.12 Acceptance and Effective Date.

2.12.1 Within ninety (90) days after the passage and approval of this Franchise ordinance by the County Council, Grantee may accept this Franchise by filing with the County an unconditional written acceptance of this Franchise, together with the accompaniments specified in Section 2.12.2(iii) and (iv) below. Failure of Grantee to so accept the Franchise within said period of time shall be deemed a rejection of this Franchise by the Grantee, and the rights and privileges granted by the Franchise shall automatically, after the expiration of the ninety (90) day period, cease and terminate, unless the time period is extended by motion duly passed for that purpose.

2.12.2 The Franchise granted by this ordinance shall take effect on the date on which each and every one of the following conditions have been met (the “Effective Date”): (i) a minimum of ten (10) days have passed since the County’s Executive executed this Franchise ordinance or this Franchise ordinance was otherwise validly enacted; (ii) Grantee executes the acceptance page of this Franchise ordinance and returns same to the County Clerk; (iii) Grantee presents to the County acceptable evidence of insurance and performance security as required in Sections 9 and 12 below; and (iv) Grantee pays all applicable fees as set forth in Section 18.4 below.

2.13 Effect of Acceptance; Prior Franchises.

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

2.13.2 Prior Franchise. Immediately upon the Effective Date of this Franchise, the Prior Franchise shall terminate; provided, however, that such termination of the Prior Franchise shall have no effect on Grantee’s obligations, or the obligations of any of Grantee’s subsidiaries or affiliates, under the Prior Franchise to indemnify or insure the County against acts or omissions occurring during the period that Grantee, or any of Grantee’s subsidiaries or affiliates, was operating under the Prior Franchise, nor shall such termination affect Grantee’s liability, or the liability of Grantee’s subsidiaries or affiliates, to pay all Franchise Fees which were due and owed by Grantee or Grantee’s subsidiaries or affiliates under the Prior Franchise, nor shall such termination affect Grantee’s requirement to keep and provide records as required under the Prior Franchise.

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2.14 Grant of Other Cable Franchises; Competitive Equity. Grantee acknowledges and agrees that the County reserves the right to grant one or more additional franchises subsequent to this Franchise to provide Cable Service within the Franchise Area; provided, the County agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees; insurance; Cable System build-out requirements; security instruments; Access Channel and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization so long as the regulatory and financial burdens on each entity are materially equivalent. If any subsequent franchise or authority to operate is granted to any multichannel video programming distributor by the County, or otherwise permitted by a transfer, extension or renewal of such authority, which, in the reasonable opinion of Grantee, contains materially more favorable or less burdensome terms or conditions than this Franchise, the County agrees that it shall amend this Franchise to include any more materially favorable or less burdensome terms or conditions in a manner mutually agreed upon by the County and Grantee.

2.14.1 In the event an application for a new franchise as described in Section 2.14 is submitted to the County proposing to serve the Franchise Area, in whole or in part, the County shall provide notice and a copy of such application to Grantee in accordance with Section 18.15.

2.14.2 In the event that a wireline multichannel video programming distributor provides video service to the residents of the County under the authority granted by federal or State legislation or other regulatory entity, Grantee shall have a right to request Franchise amendments that relieve Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The County shall not unreasonably withhold consent to Grantee's petition.

2.15 Conditions of Sale. If a renewal or extension of Grantee's Franchise is lawfully denied or the Franchise is lawfully terminated, and the County lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

2.16 Transfer upon Revocation. Grantee and the County agree that in the case of a final determination of a lawful revocation of the Franchise, the County shall give Grantee at least one hundred twenty (120) days to effectuate a transfer of its Cable System to a qualified third party. Furthermore, Grantee shall be authorized to continue to operate pursuant to the terms of its revoked

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Franchise during this period. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the County, Grantee and the County may avail themselves of any rights they may have pursuant to federal or State law. It is further agreed that Grantee's continued operation of the Cable System during the one hundred twenty (120) day period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the County or Grantee.

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

SECTION 3. Construction and Maintenance of the Cable System

3.1 General Obligations. Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe manner using materials that meet or exceed industry standards. All facilities, poles, conduits, cables, and equipment installed by Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise shall be located so as to minimize interference with the designated use of the Public Rights-of-Way at the time of Cable System facilities installation.

3.2 Conditions on Occupancy of Public Rights-of-Way.

3.2.1 Permits Required. The Grantee shall not commence any work within Public Rights-of-Way which requires a permit until a right-of-way use permit authorizing such work has been issued by the County pursuant to Title 13 SCC. In addition to any standards of performance imposed by this Franchise, any and all work performed by Grantee pursuant to this Franchise shall be performed in accordance with all current County standards applicable to such work, including the County approved plans and specifications for the work, and the terms and conditions of any right-of-way use permit and/or other permits and/or approvals required under Title 13 SCC in order to accomplish the work (e.g., lane closure or road detour permits). Grantee understands and acknowledges that some or all of Grantee's activities may require additional project permits, construction and maintenance security, and approvals under County land use, right of way codes, and development regulations, and Grantee accepts full responsibility for obtaining and complying with same.

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3.2.2 Criteria for Issuing Right-of-Way Use Permits. In addition to any criteria set forth in Title 13 SCC, the County's Engineering Design and Development Standards (EDDS), and the County's utility accommodation policies, in reviewing the Grantee's application for any right-of-way use permit pursuant to this Franchise, the County Engineer may apply the following criteria in reviewing proposed utility routes and in the issuance, conditioning, or denial of such permit:

- (A) the capacity of the Public Rights-of-Way at issue to accommodate the proposed Grantee facilities;
- (B) the capacity of the Public Rights-of-Way at issue to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;
- (C) the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;
- (D) the public interest in minimizing the cost and disruption of construction within the Public Rights-of-Way at issue, including, but not limited to, coordination with future utility installation or County projects;
- (E) recent and/or proposed construction and/or improvements to the Public Rights-of-Way at issue;
- (F) the availability of alternate routes, locations, and/or methods of construction or installation for the proposed Grantee facilities, including, but not limited to, whether other routes are preferred; and
- (G) whether the Grantee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Grantee.

3.2.3 Relocation at Request of the County. Except as provided herein, upon no less than ninety (90) days prior written notice to Grantee, the County shall have the right to require Grantee to relocate any part of Grantee's Cable System within the Public Rights-of-Way when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. The County is not required to provide ninety (90) days advance written notice in the event of an emergency, as determined by the County Engineer in his or her professional judgment, but shall provide as much advance notification as possible in such an event. Should Grantee fail to remove or relocate any such facilities by the date established by the County, the County may remove or relocate such facilities, and the expense thereof shall be paid by Grantee. If the County requires Grantee to relocate its facilities located within the Public Rights-of-Way, the County shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights-

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of-Way. This Section 3.2.3 does not apply to overhead facilities that are converted to underground facilities, consistent with Section 3.4. If public funds are available to any Person, including Grantee, using such Public Rights-of-Way for the purpose of defraying the cost of relocation of Grantee's facilities, the County shall upon written request of Grantee make application for such funds on behalf of Grantee. Any relocation requested in accordance with this Section shall be made by the County in a reasonable, uniform and non-discriminatory manner.

3.2.4 Locate Facilities at Request of the County. Upon the request of the County and in order to facilitate County improvements to Public Rights-of-Way, the Grantee agrees to locate and, if reasonably determined necessary by the County, to excavate and expose, at its sole cost and expense, portions of the Grantee facilities for inspection so that the location of the facilities may be taken into account in the improvement design.

3.2.5 Temporary Relocation at Request of Third Party. Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the County to move any structure, temporarily move its facilities to permit the moving of such structure; provided (i) Grantee may impose a reasonable charge on any Person for the actual cost to move its facilities, and such charge may be required to be paid in advance of the movement of its wires or cables; (ii) Grantee is granted a permit for such work by the County if a permit is needed; and (iii) Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.6 Restoration of Rights-of-Way. Whenever Grantee disturbs the surface of any Rights-of-Way for any purpose, Grantee shall promptly restore the Rights-of-Way to a condition reasonably comparable to the condition of the Rights-of-Way immediately prior to such disturbance. When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way, Grantee shall promptly refill the opening and restore the surface as required by its permit. If Grantee fails to promptly restore the Rights-of-Way, the County may, after providing reasonable notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-Way, and the actual expense thereof shall be paid by Grantee. The County may, after providing reasonable notice to Grantee, repair any work done by Grantee that, in the determination of the County, does not conform to applicable County standards. The actual cost thereof, including the costs of inspection and supervision, shall be paid by Grantee.

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

3.4 Aerial and Underground Construction. Where electric distribution/service, telecommunication, and other wireline utility lines, not including electric transmission lines, are underground at the time of Cable System construction, or when all such lines are subsequently placed underground, all of Grantee's Cable System lines shall also be placed underground with other wireline services at no expense to the County. Related Cable System equipment, such as pedestals, must be placed in accordance with the County's applicable code requirements and rules. In areas where electric or telecommunication distribution or service lines are aerial, Grantee may install aerial lines, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. If funds for underground installation of cable facilities exist, and are set aside for such purpose, or provided by a third party, Grantee shall be entitled to seek reimbursement for its share of funds to offset the cost of placing its facilities underground. Any such funds controlled or administered by the County will be distributed in a reasonable, uniform and non-discriminatory manner to similarly situated entities.

3.4.1 The County shall not be required to obtain easements for Grantee. Grantee shall, to the extent economically feasible, participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where utilities are being converted to underground facilities.

3.4.2 Nothing in this Section shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

3.4.3 In the event of a County or government driven facilities relocation project that requires conversion of overhead facilities to underground for purposes of health, safety or public welfare, Grantee agrees to bear the costs of converting Grantee's Cable System from an overhead system to an underground system. Grantee shall pay for all of its direct costs for such relocation and its proportional share of any of the shared costs associated with the relocation with the County and any other utilities participating in the relocation project.

3.4.4 In the event of a Local Improvement District (LID) project that requires relocation of Grantee's facilities, Grantee shall be reimbursed by the LID funding for all expenses incurred as a result of the project.

3.4.5 In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all time and material costs associated with the conditioned underground conversion of cable facilities.

3.4.6 Grantee shall utilize existing poles and conduit wherever possible.

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3.5 Work of Contractors and Subcontractors. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the County's Ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and applicable law. Grantee shall be jointly and severally liable for all property and personal damages and for correcting all damage caused by any contractor or subcontractor working on Grantee's behalf.

3.6 Construction and Maintenance.

3.6.1 Subject to applicable laws and this Franchise, Grantee shall perform all maintenance, construction, repair and upgrades necessary for the operation of its Cable System in the Rights-of-Way. All work regarding Grantee's Cable System shall, regardless of who performs the work, be and remain Grantee's responsibility.

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

3.6.3 Grantee shall provide and use any equipment necessary to control and carry Grantee's signals so as to prevent damage to the County's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities and equipment to keep them in good repair and in a safe and presentable condition.

3.6.4 Grantee's Cable System shall be located, erected and maintained so as not to endanger the lives of Persons, or to unnecessarily hinder or obstruct County maintenance activities and the free use of Rights-of-Way or other public property.

3.6.5 Grantee shall give reasonable notice to private property owners of construction work in adjacent Rights-of-Way.

3.6.6 Should any part of the Grantee's Cable System in the Public Rights-of-Way break or become damaged such that an immediate danger to the property, life, health or safety of any individual is presented, or should any site upon which the Grantee is engaged in construction or maintenance activities pursuant to this Franchise for any reason be in such a condition that an immediate danger to the property, life, health or safety of any individual is presented by Grantee's activities, equipment, or facilities, the Grantee shall immediately take such measures as are reasonably necessary to repair the Grantee facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect the property, life, health or safety of individuals. In the event

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that emergency repairs are necessary, Grantee shall notify the County of the repairs made on the next business day. However, the emergency provisions contained in this Section 3.6.6 shall not relieve the Grantee from its obligation to obtain any permits necessary for the corrective actions taken. Grantee shall apply for appropriate permits within two (2) business days after discovery of the emergency, or as soon as is reasonably possible after the occurrence of the emergency.

3.7 One Call Notification. Prior to doing any work in the Rights-of-Way, Grantee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes. Grantee shall also comply with generally applicable ordinances and permitting requirements before digging in the Rights-of-Way.

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

3.9 Standards. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. Grantee must comply with all federal, State and local safety requirements, rules, regulations, laws and practices, and deploy all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee must comply with the applicable National Electrical Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards in effect at the time of the work being performed.

3.9.1 Grantee shall ensure that all cable drops are properly bonded and grounded at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by Grantee as necessary.

3.9.2 Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable.

3.9.3 All installations of equipment, lines and facilities shall be installed in accordance with good engineering practices and of sufficient height to comply with all federal, State and local regulations, ordinances and laws.

3.9.4 Any opening or obstruction in the Rights-of-Way or other public places made by Grantee in the course of its operations shall be guarded and protected at all times by the

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placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible at night.

3.9.5 Grantee and the County agree that nothing in this Franchise shall give Grantee the right to construct new poles without prior County approval. Furthermore, nothing contained in this Franchise gives Grantee a right of pole attachment to County facilities or facilities owned by third parties.

3.10 Stop Work. On written notice from the County that any work is being conducted contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as reasonably determined by the County, or in material violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the County. The stop work order shall:

3.10.1 Be in writing;

3.10.2 Be delivered to the Grantee or Person doing the work in accordance with Section 18.15 and be posted on the work site;

3.10.3 Indicate the nature of the alleged violation or unsafe condition; and

3.10.4 Establish conditions under which work may be resumed.

3.11 Joint Trenching/Boring. To the extent it is technically and economically feasible, Grantee shall joint trench or share bores or cuts and work with other providers (such as, but not limited to, telecommunications, gas and electric companies), licensees, permittees and franchisees so as to reduce the number of Rights-of-Way cuts within the County.

3.12 GIS Mapping. Upon thirty (30) days written request by the County, Grantee shall provide a route map of the Cable System that are located within the Public Rights-of-Way in a standard geographic information system ("GIS") format or such other format as may be agreed upon by the County and Grantee. The data shall indicate overhead cables, underground cables, and associated appurtenances.

3.13 Trimming of Trees and Shrubbery. The Grantee shall take necessary steps to maintain a reasonably clear area around all Grantee's facilities installed above ground within Public Rights-of-Way. A minimum of five (5) feet of clearance will be maintained around each such object and a flexible marker, meeting American Public Works Association (APWA) uniform color code requirements, shall be placed so as to provide clear visibility of Grantee's above ground facilities from the roadway for County operations and maintenance. The County shall not be held liable for damage to Grantee's facilities, should they not be visible during the County's trimming operations and maintenance activities. Grantee shall have the authority to trim trees or other natural growth interfering with, damaging, or restricting access to any of its Cable System facilities in the

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Rights-of-Way. All such trimming shall be done at Grantee's sole cost and expense. Grantee shall be responsible for any damage caused by such trimming and shall make every attempt to trim such trees and shrubbery in a fashion that maintains their aesthetic appeal. Prior to using any chemical sprays within the Public Rights-of-Way to control or kill weeds and brush, the Grantee must obtain the County's permission. The County may limit or restrict the types, amounts, and timing of applications provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance. Grantee shall comply with all local laws and regulations with respect to trimming of trees and shrubbery and with all generally applicable landscaping regulations.

3.14 Reservation of Rights-of-Way. Nothing in this Franchise shall prevent the County or public utilities from constructing any public work or improvement in the Public Rights-of-Way. All such work shall be done insofar as practicable so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

3.15 Inspection of Facilities. Upon reasonable notice, the County may inspect any of Grantee's Cable System facilities or equipment within the Rights-of-Way and on other public property. If an unsafe condition is found to exist, the County, in addition to taking any other action permitted under applicable law, may order Grantee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the County establishes. The County has the right to access, inspect, repair, and correct the unsafe condition if Grantee fails to do so, and to charge Grantee for the actual cost therefor.

3.16 Hazardous Substances.

3.16.1 In using and occupying the Public Rights-of-Way for its Cable System pursuant to this Franchise, Grantee shall at all times conduct its activities in full compliance with all applicable Environmental Laws. Grantee shall not use, store, discharge, dispose of or otherwise release any Hazardous Substance in, on, under, around or about any portion of the Public Rights-of-Way, or any property adjacent to Public Rights-of-Way, except in full compliance with all applicable Environmental Laws.

3.16.2 Grantee shall promptly notify the County of the suspected or confirmed presence in violation of any applicable Environmental Law of any Hazardous Substance in, on, under, around or about any portion of the Public Rights-of-Way or property adjacent thereto.

3.16.3 Should, as a result of the acts or omissions of Grantee (or Grantee's officers, directors, agents, employees, contractors or licensees), any Hazardous Substance be released, spilled or discharged into, onto, under, around or about any portion of the Public Rights-of-Way in violation of any applicable Environmental Law, Grantee shall, at its sole cost and expense, promptly act to remediate same and comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities having jurisdiction, related to the

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treatment, disposal, storage, control, removal, cleanup or other remediation of such Hazardous Substances. Should Grantee fail to promptly and effectively respond to any such release of Hazardous Substances, the County, following written notice to Grantee and a reasonable cure period, may perform the necessary remediation itself and charge all costs and expenses to Grantee.

SECTION 4. Service Obligations

4.1 General Service Obligation.

4.1.1 Extension into Low Density Areas. In any portions of the Franchise Area in which Grantee's Cable System is located at any time during the Term, Grantee shall make Cable Service available to every residential dwelling unit within such portions of the Franchise Area where the minimum density is at least twenty-five (25) Dwelling Units per strand mile in areas served by overhead facilities and sixty (60) Dwelling Units per underground mile in areas served by underground facilities. Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards.

4.1.2 Connections to Customer Dwelling Units. Subject to the requirements of Section 4.1.1 above, Grantee shall offer Cable Services at standard installation rates to all new Dwelling Units or previously unserved Dwelling Units located within one hundred twenty-five (125) aerial feet or sixty (60) underground trench feet of Grantee's distribution cable. Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a line extension or a drop in excess of the above standards. Any such additional charge shall be the fully allocated cost of the installation that exceeds the standards set forth above.

4.2 Complimentary Cable Service. Historically, Grantee has not provided complimentary Cable Service to governmental buildings, fire stations, police stations, Schools and libraries throughout the Franchise Area. The Cable Service described herein is a service the Grantee agrees to perform throughout the Term of the Franchise on the following conditions. Within ninety (90) days of written request of the County, Grantee will provide without charge, for service or installation, one outlet of Basic Service to those buildings that are owned or leased by the County for administrative purposes, fire and police stations, Schools and libraries, provided that they are located within 125 aerial feet (a Standard Installation) of its Cable System. Grantee shall not be required to provide complimentary Cable Service to those buildings or portions of buildings that are not owned or leased by the County, that are not occupied and used by and for governmental administrative or educational purposes (i.e. utility offices, storage facilities, etc.) or where it would normally enter into a commercial contract to provide Cable Service, such as a prison/jail or a golf course. In instances where the County is leasing or occupying a building, the County shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building's owner. If the County wishes to discontinue its use of complimentary Cable Service at any location, it is responsible for the return of any and

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all equipment to the Grantee. The County and /or its designees are responsible for all Grantee's on premises equipment.

4.2.1 Any complimentary Cable Service provided in accordance with this subsection shall not be distributed beyond the originally installed outlet without authorization from Grantee. If additional outlets are requested, the building owner and/or occupant shall be required to pay the usual installation fees associated therewith, including reoccurring monthly fees. Outlets of Cable Service provided in accordance with this Section 4.2.1 may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes consistent with Grantee's regular service practices. In the event that there is another wireline service provide (or providers) providing complimentary Cable Service within the Franchise Area, the decision of which service provider will provide the complimentary service shall be decided on a case-by-case basis in an effort to maintain equitable burdens on each provider.

4.2.2 Any complimentary Cable Service provided herein shall not be used for commercial purposes and the County shall take reasonable steps to limit display in public areas. In addition, the County shall take reasonable precautions to prevent any inappropriate used of the Cable Service or the Cable System that could result in damage to the Cable System.

4.2.3 The cost of any complimentary Cable Service provided in accordance with this Section 4.2 may be offset against Franchise Fees in accordance with applicable law.

4.3 Obscenity. Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming that is obscene under applicable federal, State or local laws.

4.4 Services for the Disabled. Grantee shall comply with the Americans with Disabilities Act and any amendments or successor legislation thereto.

4.5 Parental Control Device. Upon request by any Subscriber, Grantee shall make available at no charge a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

4.6 No Discrimination. Neither Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination in violation of federal or State law between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the

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Cable System so long as such Person's financial, and other business obligations to Grantee are satisfied. Grantee shall not however be required to continue service to a Subscriber who cannot meet their financial obligations to Grantee or who is verbally or physically abusive, harassing, or threatening to Grantee or any of its employees, agents, representatives, contractors, subcontractors, or consultants. Nothing contained herein shall prohibit Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

SECTION 5. Rates and Fees

5.1 Rate Regulation and Change Notification. All of Grantee's rates and charges related to Cable Services shall be subject to regulation by the County to the full extent authorized by applicable federal, State and local laws. Grantee shall notify both the County and its Customers of any changes to its rates in conformance with federal law.

5.2 No Rate Discrimination. All rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory for all Persons of similar classes, under similar circumstances and conditions and without regard to neighborhood or income. Nothing herein shall be construed to prohibit:

5.2.1 The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;

5.2.2 The offering of reasonable discounts to similarly situated Persons;

5.2.3 The offering of bulk discounts for multiple Dwelling Units.

5.3 Low Income Discount. Grantee may elect to offer a discount to Subscribers who are low income and are aged 65 years or older or disabled to its Basic Cable Service (provided they are not already receiving a package discount and provided further they are the legal owner or lessee/tenant of the Dwelling Unit). Grantee is encouraged to offer a discount to these individuals as a voluntary initiative. For purposes of this discount, Subscribers are considered low income if their combined disposable income from all sources does not exceed the Housing and Urban Development Standards for the Seattle/Everett Area for the current and preceding calendar year.

5.4 Leased Access Channel Rates. Grantee shall offer Leased Access Channel capacity on such terms and conditions and rates as may be negotiated with each lessee, subject to the requirements of Section 612 of the Cable Act. Upon receipt of a bona fide request, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels or portions of such Channels to the County.

5.5 Late Fees. For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with State law and GAAP.

SECTION 6. Customer Service

6.1 Customer Service Standards. Grantee shall comply with the minimum customer service standards set forth in 47 CFR § 76.309 (Customer service obligations), 47 CFR § 76.1602 (Customer service-general information), 47 CFR § 76.1603 (Rate and service charges) and 47 CFR § 76.1619 (Information on subscriber bills), including any subsequent amendments thereto.

6.2 Privacy Protection. Grantee shall comply with all applicable federal and State privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 7. Oversight and Regulation

7.1 Franchise Fees. Grantee shall pay to the County a Franchise Fee in an amount equal to five percent (5%) of Gross Revenues derived from the operation of the Cable System to provide Cable Service in the Franchise Area ("Franchise Fee"). Grantee shall not be compelled to pay any higher percentage of Franchise Fees than any other Cable Operator providing Cable Service in the Franchise Area. If during the Term of this Franchise the FCC, federal or State government, or courts change the amount a local franchising authority such as the County may collect for franchise fees, this Franchise shall be amended provided that such change shall also be imposed on all similarly situated Cable Operators operating in the Franchise Area.

7.2 Payments. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Grantee shall be allowed to submit or correct any payments that were inadvertently omitted, provided such correction is made within sixty (60) days following the close of the calendar quarter for which such payments were applicable, without incurring any interest expenses. At the County's option, if there are overpayments of Franchise Fees, the County may choose to either refund any such overpayments to Grantee, or Grantee shall withhold future Franchise Fee payments until such time as said overpayment is recovered. If the County chooses the option to refund such overpayments, then no interest shall accrue on such overpayments provided the County refunds the overpayments within seventy-five (75) days from the date on which the County and Grantee reach agreement on the amount of the overpayment. Notwithstanding the foregoing, the parties may agree on a different timeframe or terms of repayment.

7.3 Additional Compensation. In the event that Franchise Fees are prohibited by any law or regulation, Grantee shall pay to the County that amount, if any, which is required in accordance with applicable law.

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7.4 Quarterly Reports. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Grantee showing the basis for the computation of the Franchise Fees paid during that period.

7.5 Interest Charge on Late Payments. Late payments, including any underpayments, for any Franchise Fees due pursuant to this Section 7, Access Fees due pursuant to Section 14.5 and liquidated damages due pursuant to Section 16 shall be subject to interest at the then-current maximum rate set forth in RCW 19.52.020, which as of the date of execution of this Franchise is twelve percent (12%) per annum from the date that such payment is due.

7.6 No Release. The County's acceptance of payment shall not be construed as an agreement that the amount paid was correct, nor shall acceptance be construed as a release of any claim which the County may have for additional sums due under this Franchise. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by Grantee was due.

7.7 No Limitation on Taxing Authority. Nothing in this Franchise shall be construed to limit any authority of the County to impose any tax, fee, or assessment of general applicability. Nothing in this Franchise is intended to preclude Grantee from exercising any right it may have to challenge the lawfulness of any tax, fee, or assessment imposed by the County or any State or federal agency or authority, or intended to waive any rights the Grantee may have under 47 U.S.C. § 542.

7.8 Additional Commitments Not Franchise Fees. The EG Access Fees or other capital contributions pursuant to Section 14.5, as well as any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations, but excluding complimentary services provided as included in Section 4.2.3) shall not be offset against Franchise Fees. Furthermore, the County and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with applicable law, and both parties reserve all rights they have under applicable law.

7.8.1 Notice of Offset. Should Grantee elect to offset the items set forth herein, or other franchise commitments against the Franchise Fees in accordance with applicable law, including any Orders resulting from the FCC, Grantee shall provide the County one hundred-twenty (120) days advance written notice of its intent to make an offset and the estimated amount of such offset. The County may elect to modify such obligation by amendment of this Franchise. If the County does not accept such offset or the parties do not act to amend this Franchise within

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one hundred-twenty (120) days of receipt of Grantee's notice, Grantee shall not be precluded from following through on its notice to the County.

7.9 Franchise Fee Audit

7.9.1 Upon thirty (30) days prior written notice, but not more often than once each calendar year, the County shall have the right to inspect Grantee's financial records necessary to enforce the provisions of the Franchise, subject to reasonable confidentiality requirements consistent with state and federal law, and to calculate any amounts determined to be payable pursuant to this Franchise. Provided Grantee cooperates in making all relevant records available upon request, the County will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous three (3) years, unless the County has information relating to previous years beyond the three (3) years which, in its reasonable judgment, raises doubt as to the accuracy of payments made under this or previous franchises, in which case an additional three (3) years may be audited. If the audit shows that there has been an underpayment of Franchise Fees by five percent (5%) or more in a calendar year, then Grantee shall pay the cost of the audit, such amount not to exceed Twenty Thousand Dollars (\$20,000).

7.9.2 Upon the completion of any such audit by the County, the County shall provide to Grantee a final report setting forth the County's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, Grantee shall have thirty (30) days from the receipt of the report to provide the County with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall seek to agree upon a Final Settled Amount. For purposes of this Section, the term "Final Settled Amount(s)" shall mean the agreed upon underpayment, if any, by Grantee to the County. If the parties cannot agree on a Final Settled Amount, either party may bring an action to have the disputed amount determined by a court of law.

7.9.3 Any Final Settled Amount(s) due to the County as a result of such audit shall be paid to the County by Grantee within sixty (60) days from the date the parties agree upon the Final Settled Amount. Once the parties agree upon a Final Settled Amount and such amount is paid by Grantee, the County shall have no further rights to audit or challenge the payment for that period. If it was found that there was an underpayment of Franchise Fees pursuant to this Section, Grantee shall pay, in addition to the amount due, interest, calculated from the date the underpayment was originally due until the date payment is made by Grantee.

7.9.4 In the event the Final Settled Amount(s) is an overpayment by Grantee, the County shall either reimburse Grantee within sixty (60) days of the date the parties agree upon the Final Settled Amount or, upon Grantee's approval, the County may choose to have Grantee withhold future Franchise Fee payments until such time as said overpayment is recovered. If the County fails to refund the overpayment to Grantee within sixty (60) days, then interest at the rate

specified in Section 7.5 shall accrue beginning on the sixty-first (61st) day following the determination of the Final Settled Amount.

7.10 Maintenance of Books, Records, and Files.

7.10.1 Books and Records. Throughout the Term of this Franchise, and subject to limitations on proprietary and confidential information in subsection 7.10.3, Grantee agrees that the County, upon reasonable prior written notice to Grantee, may review Grantee's books and records necessary to determine compliance with the terms of this Franchise. The review of such books and records shall occur at Grantee's business office (unless a substitute location is otherwise agreed upon), during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by Grantee pursuant to the rules and regulations of the FCC. The County may, in writing, request copies of any such records or books, and Grantee shall provide such copies within sixty (60) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to the County at the sole expense of Grantee. All such documents pertaining to financial matters that may be the subject of an inspection by the County shall be retained by Grantee for a minimum period of six (6) years.

7.10.2 File for Public Inspection. Throughout the Term of this Franchise, Grantee shall maintain a file available for public inspection which shall include all documents required pursuant to the FCC's rules and regulations. The public inspection file shall be maintained at Grantee's business office (or may be made available online) and will be available to the public during normal business hours.

7.10.3 Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The County agrees to treat any information disclosed by Grantee as confidential and only to disclose it to those employees, representatives, and agents of the County that have a need to know in order to enforce this Franchise and who agree to maintain the confidentiality of all such information. Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law. For purposes of this Section 7.10, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, Customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by Grantee to be competitively sensitive. If the Grantee considers any portion of its records provided to the County, whether in electronic or hard copy form, to be protected from disclosure under law, the Grantee shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Public Records Act, Chapter 42.56 RCW, to inspect or copy the information so identified by the Grantee and the County determines that release of the information is required by the Public Records Act, the County shall promptly notify the Grantee (a) of the request and (b) of

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the date that such information will be released to the requester (shall be no less than 10 business days from the date of such notice) unless the Grantee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Grantee fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this Section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Public Records Act, however, the County may assert such exemption if the County itself believes in good faith that an exemption applies to the requested records. The County shall not be liable to the Grantee for releasing records not clearly identified by the Grantee as confidential or proprietary. The County shall not be liable to the Grantee for any records that the County releases in compliance with the Public Records Act or in compliance with an order of a court of competent jurisdiction.

7.10.4 Records Required. Upon written request, but no more frequently than once a year, the County may request a report which may include any or all of the following:

- (A) Records of all written complaints received by Grantee for a period of up to three (3) years. The term “complaint” as used herein refers to escalated concerns about any aspect of the Cable System or Grantee’s cable operations;
- (B) Records of outages for the previous year, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;
- (C) Records of service calls for repair and maintenance for the previous year, indicating the date and time service was required, the date of acknowledgment, the date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;
- (D) Records of installation/reconnection and requests for service extension for the previous year, indicating the date of request, date of acknowledgment, and the date and time service was extended;
- (E) The most recent annual report Grantee filed with the FCC.
- (F) The number of Subscribers within the County for each tier of service; and
- (G) Such other reports with respect to its local operation as are necessary to monitor compliance with this Franchise.

7.11 Performance Evaluations. Upon written notification, the County may hold performance evaluation sessions no more than once every twelve months to ensure proper performance of the provisions of this Franchise.

7.11.1 All evaluation sessions shall be open to the public.

7.11.2 Topics which may be discussed at any evaluation session include, but are not limited to, Franchise compliance, Subscriber figures for each classification of service, construction issues, Cable Service rate structures, Franchise Fee payments, liquidated damages, free or discounted Cable Service, application of new technologies, Cable System performance, Cable Services currently provided and programming offered, future plans of Grantee for new services or programs, Subscriber complaints, privacy, modifications to this Franchise, judicial and FCC rulings, line extension policies and the County's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term of provision therein and further provided that this Section 7.11 need not be followed before pursuing other legal or equitable remedies within this Franchise.

7.11.3 During evaluations under this Section 7.11, Grantee shall fully cooperate with the County and shall provide such information and documents as the County may reasonably require to perform the evaluation.

SECTION 8. Transfer or Renewal of Franchise

8.1 Franchise Transfer or Change of Control. Subject to Section 617 of the Cable Act, the Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation or indirect or direct change of Control; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person (collectively both a transfer and a change in Control shall be defined herein as a "Transfer of the Franchise") without the prior written consent of the County, which consent shall not be unreasonably withheld. The word "Control" as used in this agreement is not limited to majority stock ownership but includes actual working control in whatever manner exercised.

8.1.1 Grantee shall promptly notify the County of any actual or proposed Transfer of the Franchise. Every Transfer of the Franchise, except as otherwise described in this Section 8.1.7, shall make this Franchise subject to cancellation unless and until the County shall have consented in writing thereto.

8.1.2 The parties to the Transfer of the Franchise shall make a written request to the County for its approval of the Transfer of the Franchise and shall furnish all information required by law.

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8.1.3 In seeking the County's consent for any Transfer of the Franchise, the proposed transferee or controlling party shall indicate whether, as applicable, it:

- (A) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law, or is currently under an indictment, investigation or complaint charging such acts;
- (B) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against it by any court of competent jurisdiction;
- (C) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable System;
- (D) Is financially solvent, by submitting financial data, including financial information as required by FCC Form 394; and
- (E) Has the legal, financial and technical capability to enable it to maintain and operate the Cable System for the remaining Term of the Franchise.

8.1.4 In reviewing a request for the Transfer of the Franchise, the County may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the County in so inquiring. The County may condition said Transfer of the Franchise upon such terms and conditions as it deems reasonably appropriate and as are consistent with federal law. Additionally, Grantee shall effect changes as promptly as practicable in the operation of the Cable System, if any changes are necessary to cure any violations or defaults presently in effect or ongoing.

8.1.5 The County shall act by motion on the request within one hundred twenty (120) days of the request, provided it has received all information required by law, such as a completed FCC Form 394 in accordance with 47 CFR § 76.502. The County and Grantee may by mutual agreement extend the 120-day period. If the County fails to act on the request for the Transfer of the Franchise within the 120-day period or the period of any agreed upon extension, it shall be deemed granted.

8.1.6 Within sixty (60) days of closing of any Transfer of the Franchise or change of Control, if approved or deemed granted by the County, Grantee shall file with the County a copy of the bill of sale, notice of consummation, or other written instrument(s) evidencing such Transfer of the Franchise, certified and sworn to as correct by Grantee and the transferee or new controlling entity. If the Grantee itself is changing due to the Transfer of the Franchise, the transferee or the new controlling entity shall upon request by the County file its written acceptance

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agreeing to be bound by all of the provisions of this Franchise. In the event that the Transfer of the Franchise is a change in Control of the Grantee, the Grantee will continue to be bound by all provisions of the Franchise.

8.1.7 Notwithstanding anything to the contrary in this Section 8.1, the prior approval of the County shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an Affiliate; provided that the proposed assignee or transferee agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System and the ownership or equity interests of Grantee for the purpose of financing without the consent of the County; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

8.1.8 The consent or approval of the County to any Transfer of the Franchise shall not constitute a waiver or release of any rights of the County.

8.2 Renewal of Franchise.

8.2.1 The County and Grantee agree that any proceedings undertaken relative to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

8.2.2 In addition to the procedures set forth in Section 626 of the Cable Act, the County shall notify Grantee of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Grantee under the current Franchise Term. The County further agrees that such assessments shall be provided to Grantee promptly so that Grantee has adequate time to submit a proposal under Section 626 of the Cable Act and pursue a renewal of the Franchise prior to the expiration of the Term.

8.2.3 Notwithstanding anything to the contrary, Grantee and the County further agree that at any time during the Term of the current Franchise, while affording the public appropriate notice and opportunity to comment, the County and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the Franchise and the County may grant a renewal thereof.

SECTION 9. Insurance

9.1 Insurance Requirements.

9.1.1 Insurance Required. By the date of execution of this Franchise, the Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance

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of work hereunder by the Grantee, its agents, representatives, employees and/or contractors /subcontractors. The Grantee or contractor/subcontractor shall pay the costs of such insurance.

The Grantee is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Grantee, its agents, employees, officers, contractor/subcontractors to comply with the insurance requirements stated herein shall constitute a material breach of this Franchise.

Each insurance policy shall be written on an “occurrence” form; except that insurance on a “claims made” form may be acceptable with prior County approval. If coverage is approved and purchased on a “claims made” basis, the Grantee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than one (1) year from the date of Franchise termination, and/or conversion from a “claims made” form to an “occurrence” coverage form.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Franchise.

9.1.2 Risk Assessment by Grantee. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Grantee under this Franchise, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Grantee. The Grantee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

9.1.3 Minimum Scope and limits of Insurance. Coverage shall be at least as broad as and with limits not less than the following:

- (A) General Liability. Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY including XCU coverage: \$5,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$5,000,000 aggregate limit.
- (B) Automobile Liability. Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 “any auto”; or the appropriate coverage provided by symbols 2, 7, 8, or 9; \$5,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.
- (C) Workers’ Compensation. Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington,

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as well as any similar coverage required for this work by applicable federal or “Other States” state law: Statutory requirements of the state of residency.

- (D) Stop Gap/Employers Liability. Coverage shall be at least as broad as the indemnification, protection provided by the Workers’ Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy: \$1,000,000.

Coverage requirements and limits may be satisfied through Grantee’s excess or umbrella liability insurance, Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieve the overall required limits.

9.1.4 Minimum Limits of Insurance - Construction Period. Prior to commencement of any construction work and until construction work is complete and approved by the Grantee and the County, the Grantee shall cause Grantee’s contractors, subcontractors, and related professionals (“Construction Contractor”) to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Franchise. The Grantee and the County shall be named as additional insureds on liability policies except Workers Compensation and Professional Liability. The cost of such insurance shall be paid by the Grantee and/or any of the Grantee’s Construction Contractors. The Construction Contractors shall maintain limits no less than the following:

- (A) Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$5,000,000 in the aggregate.
- (B) Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
- (C) Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
- (D) Workers Compensation: Statutory requirements of the State of residency.
- (E) Stop Gap or Employers Liability Coverage: \$1,000,000.

9.1.5 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Grantee’s liability to the County and shall be the sole responsibility of the Grantee.

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9.1.6 Other Insurance Provisions. The insurance policies required in this Franchise are to contain, or be endorsed to contain, the following provisions:

(A) All Liability Policies except Professional and Workers Compensation:

1. The County, its officers, officials, employees, and agents are to be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Grantee/contractor in connection with this Franchise. Such coverage shall include Products-Completed Operations.
2. To the extent of the Grantee's/contractor's negligence, the Grantee's/contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the Grantee's insurance or benefit the Grantee in any way.
3. The Grantee's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) All Policies:

Coverage shall not be suspended, voided, or canceled, until after thirty (30) days' prior written notice has been given to the County. In the event of said cancellation or intent not to renew, the Grantee shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date. Failure to provide proof of insurance could result in suspension of the Franchise.

9.1.7 Acceptability of Insurers. Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A-VII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by the County.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Grantee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

9.1.8 Verification of Coverage. The Grantee shall furnish the County with certificates of insurance and endorsements required by this Franchise. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Franchise. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

9.1.9 Subcontractors. If the Grantee is relying on the insurance coverage provided by subcontractors as evidence of compliance with the insurance requirements of this Franchise, then such requirements and documentation shall be subject to all of the requirements stated herein.

9.1.10 Insurance Review. In consideration of the duration of this Franchise, the parties agree that the Insurance section herein, at the discretion of the County's Risk Manager, may be reviewed and adjusted with each amendment and within ninety (90) days of the end of the first five (5) year period of the term of this Franchise and the end of each successive five (5) year period thereafter. Any adjustments made as determined by the County's Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Grantee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

9.2 Grantee shall furnish the County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Grantee before commencement of the work.

9.3 In satisfaction of the insurance requirements set forth in this Section 9, Grantee may self-insure against such risks in such amounts as are consistent with good utility practice. Grantee shall provide the County with reasonable written evidence that Grantee is maintaining such self-insurance.

SECTION 10. Indemnification

10.1 General Indemnification. Grantee agrees to indemnify, defend if brought by a Third Party, and hold harmless the County, its elected and appointed officials, employees, authorized agents, and authorized volunteers (collectively, the “County Parties”) from and against any and all claims, demands, liability, suits, and judgments, including costs of defense thereof as related to Third Party claims, for bodily injury to persons, death, or property damage arising out of the acts or omissions of Grantee or authorized agents, employees, and contractors (collectively, “the Grantee Parties”). This covenant of indemnification shall include, but not be limited to, any and all claims, demands, liability, suits, and judgments arising out of, or by reason of, any construction, excavation, erection, placement, operation, maintenance, repair or reconstruction of Grantee’s Cable System, or any other act done within the Franchise Area under this Franchise. Grantee shall cooperate with the County while conducting its defense of the County. Said indemnification obligations shall extend to any settlement made by Grantee. For purposes of this Section 10, “Third Party” means any party, including but not limited to an individual or entity, that is not the County or the Grantee.

10.2 Indemnification for Relocation. Grantee shall indemnify, defend and hold harmless the County Parties for any damages, claims, additional costs, or expenses payable by the County related to, arising out of, or resulting from Grantee’s failure to timely remove, adjust or relocate any of its facilities in the Rights-of-Way in accordance with any relocation required under this Franchise. Pursuant to Section 10.1, the provisions of this Section 10.2 may include, but are not limited to, claims for delay, damages, and/or additional costs asserted by any contractor performing public work for or on behalf of the County.

10.3 Indemnification for Hazardous Substances. Grantee shall indemnify, defend if brought by a Third Party, and hold harmless the County Parties from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, cleanup costs, remedial actions, or other costs and expenses (including, without limitation, attorneys’ and other professional fees and disbursements) that may be imposed on, incurred or paid by, or asserted against the County by reason of, or in connection with the acts or omissions of Grantee Parties resulting in the release, spill or discharge in violation of any applicable Environmental Law of any Hazardous Substance in, on, under, above or around any portion of any Public Rights-of-Way.

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

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

10.6 Duty of Defense. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this Section 10.

10.7 Duty to Give Notice. The County shall give Grantee prompt written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section 10. The County's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the obligation and duty to defend any claims arising thereunder, and the County shall cooperate fully therein.

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

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

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

Grantee by any of its employees or other third party. The obligations of Grantee under this Section 10.10 have been mutually negotiated by the parties hereto.

10.11 Concurrent Negligence. In the event that a particular activity conducted under this Franchise is subject to RCW 4.24.115, this Section 10.11 shall apply. Liability for damages arising out of bodily injury to persons, death, or damages to property caused by or resulting from the concurrent negligence of the Grantee Parties and the County Parties, Grantee's liability shall be only to the extent of Grantee Parties' negligence.

10.12 Inspection. The County's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Grantee Parties in connection with work authorized on Grantee's Cable System, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 10.

10.13 Cost Recovery. In the event the County incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 10 against the Grantee, all such fees, expenses, and costs shall be recoverable from Grantee if ordered by final adjudication of a court of competent jurisdiction or Grantee agrees that it is obligated under the indemnification.

10.14 Survival. The indemnification, defense and hold harmless obligations contained in this Section 10 for those acts and omissions occurring during the period this Franchise is in effect shall survive the expiration, abandonment or termination of this Franchise.

10.15 Damage to Grantee Facilities. Notwithstanding any other provisions of this Section 10, Grantee assumes the risk of damage to its Cable System facilities located in or upon the Public Rights-of-Way from activities conducted by the County Parties, and agrees to release and waive any and all such claims against the County except to the extent any such damage or destruction is caused by or arises from the sole negligence, intentional misconduct, or criminal actions of the County Parties. In no event shall the County be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with the County Parties' acts or omissions in accordance with this Section 10.15. Grantee further agrees to indemnify, hold harmless and defend the County against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or on behalf of users of Grantee's Cable System as the result of any interruption of service due to damage or destruction of Grantee's Cable System facilities caused by or arising out of activities conducted by the County Parties.

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SECTION 11. Limitation of County Liability

Administration of this Franchise shall not be construed to create the basis for any liability on the part of the County, its elected and appointed officials, officers, employees, and agents for any injury or damage from the failure of the Grantee to comply with the provisions of this Franchise; by reason of any plan, schedule or specification review, inspection, notice and order, permission, or other approval or consent by the County; for any action or inaction thereof authorized or done in connection with the County's implementation or enforcement of the Franchise; or for the accuracy of plans submitted to the County.

SECTION 12. Security

12.1 Franchise Bond

12.1.1 Grantee shall provide a Franchise Bond ("Franchise Bond") in the amount of twenty-five thousand dollars (\$25,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore the Public Rights-of-Way and other property. The Franchise Bond shall be in a standard industry form. Grantee shall pay all premiums or costs associated with maintaining the Franchise Bond and any other construction or maintenance bonds required by the County, and shall keep the same in full force and effect at all times. Except as expressly provided herein, Grantee shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence.

12.1.2 If there is an uncured breach by Grantee of a material provision of this Franchise, for which the Franchise Bond does not satisfy the damages, or a pattern of repeated violations of any provision(s) of this Franchise, then the County may request and Grantee shall establish and provide within thirty (30) days from receiving notice from the County, to the County, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the County in the amount of twenty-five thousand dollars (\$25,000).

12.1.3 After giving notice to Grantee and the expiration of any applicable cure period, the County may draw upon the Franchise Bond for purposes including, but not limited to, the following:

- (1) Failure of Grantee to pay the County sums due under the terms of this Franchise;
- (2) Reimbursement of costs borne by the County to correct Franchise violations not corrected by Grantee;

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(3) Liquidated damages assessed against Grantee as provided in this Franchise.

12.1.4 The County shall give Grantee written notice of any withdrawal from the Franchise Bond. Within sixty (60) days following notice that a withdrawal has occurred from the Franchise Bond, Grantee shall restore the Franchise Bond to the full amount required under this Franchise. Grantee's maintenance of the Franchise Bond shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the Franchise Bond or otherwise limit the County's recourse to any other remedy available at law or in equity.

12.1.5 Grantee shall have the right of judicial appeal if Grantee believes the Franchise Bond has not been properly drawn upon in accordance with this Franchise. Any funds the County erroneously or wrongfully withdraws from the Franchise Bond, as determined by a court of competent jurisdiction, shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in The Wall Street Journal as of the date of such decision.

SECTION 13. Cable System Description and Cable System Facilities

13.1 Cable System Description. Prior to the Effective Date of this Franchise, Grantee undertook a voluntary upgrade of its Cable System to a hybrid fiber-coaxial (HFC) fiber-to-the-node system architecture, with fiber optic cable deployed from its Headend to nodes and tying into a coaxial system serving Subscribers. Upon the Effective Date, the Cable System provides a system capacity of between 550 and 750 MHz and is capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted.

13.2 Technological Improvements. Throughout the Term of this Franchise, Grantee shall provide additional Cable System facilities and equipment, expand Cable System Channel capacity and otherwise upgrade or rebuild its Cable System as required to incorporate improvements in technology as necessary to reasonably meet the needs and interests of the community, in light of the cost thereof.

13.3 Technical Requirement. Grantee shall operate, maintain and construct the Cable System so as to continue the provision of high quality signals and reliable delivery of Cable Services. The Cable System shall meet or exceed any and all technical performance standards of the FCC as published in subpart K of 47 C.F.R. §76, the National Electrical Safety Code, the National Electrical Code and any other applicable federal law and the laws of the State of Washington as amended.

13.4 Cable System Performance Testing. Grantee shall maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered in the County for a period of one (1) year, and make such information available to the County upon

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request consistent with Section 7.10 above, but no more than once per year. Further, Grantee shall maintain records of all results of its Cable System tests performed by or for Grantee. Copies of such test results will be provided to the County upon request and consistent with Section 7.10 above, but no more than once per year. If the tests reveal that Grantee's Cable System has poor technical performance or signal quality then, Grantee shall promptly take such measures as are necessary to correct any performance deficiencies identified as part of the technical testing. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

13.5 Additional Tests. Where there exists a pattern of poor technical performance or signal quality, the County may upon thirty (30) days prior written notice, require Grantee to conduct performance testing on other test points located within the County. Grantee shall fully cooperate with the County in performing such testing and shall prepare the results and a report if requested, within thirty (30) days after such testing. This report shall include the following information:

13.5.1 The nature of the inquiry, complaint or problem which precipitated the special tests;

13.5.2 The Cable System component tested;

13.5.3 The equipment used and procedures employed in testing;

13.5.4 The method, if any, in which such complaint or problem was resolved; and

13.5.5 Any other information pertinent to said tests and analysis which may be required.

13.6 Standby Power. Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing continuous emergency operation. Grantee shall maintain standby power supplies that supply back-up power for at least three (3) hours duration at all nodes and hubs with backup generators deployed thereafter. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the County upon request.

13.7 Emergency Alert System. The Grantee shall provide an operating Emergency Alert System in accordance with the provisions of State and federal laws, including FCC regulations.

SECTION 14. Educational and Governmental Access

14.1 Access Channels

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14.1.1 Grantee shall make available throughout the term of this Franchise, two (2) Downstream EG Access Channels for use by the County, which are capable of cable-casting both live and recorded programming within the Franchise Area, as provided for in this Section 14.

14.1.2 High Definition (“HD”) Digital Access Channels.

(A) After one hundred twenty (120) days written notice to the Grantee and no sooner than the first (1st) anniversary of the Effective Date of this Franchise, Grantee shall activate one (1) high definition (“HD”) Access Channel, for which the County may provide Access Channel signal in HD format to the demarcation point. After one hundred twenty (120) days written notice to the Grantee and no sooner than the (3rd) anniversary of the Effective Date of this Franchise, the County may request, and Grantee shall provide on its Cable System, one (1) additional activated downstream Channel for EG Access use in a HD digital format (“HD Access Channel or Channels”). Activation of such HD Access Channels shall only occur after the following conditions are satisfied:

(1) The County shall, in its written notice to Grantee as provided for in this Section 14, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing, and will produce programming in an HD format for the newly activated HD Access Channel; and,

(2) There will be a minimum of five (5) hours per-day, five (5) days per-week of HD EG programming available for the HD Access Channel. For the purposes of this subsection, character-generated programming (i.e., community bulletin boards) shall not satisfy, in whole or in part, this programming requirement, unless the character generated programming includes a video window with EG full motion video/audio content playing.

(B) The County or Designated Access Provider shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at 3000 Rockefeller Ave, Everett, WA for the HD Access Channel(s). For purposes of this Franchise, demarcation point shall mean up to and including the transmitter where the County signal is transmitted over a fiber-optic connection to Grantee, and an HD signal refers to a television signal delivering picture resolution of 720p or 1080i, or such other HD resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System.

(C) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against the HD Access Channel(s) with respect to accessibility, functionality, and to the application of any applicable FCC rules & regulations, including, without limitation, Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry the HD Access Channel(s) in a higher quality

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format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signal provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the programming. Upon reasonable written request by the County, Grantee shall verify signal delivery to Subscribers with the County, consistent with the requirements of subsection 14.1.2.

(D) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which the HD Channels are made available. Grantee is not required to provide free HD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(E) The County or Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(F) Grantee shall provide all necessary equipment on its side of the demarcation point, at its Headend and throughout its distribution system to deliver the Access Channel(s) in the HD format to Subscribers.

(G) At such time as Grantee determines that all Channels on the Cable System shall be delivered only in an HD format, with respect to any Access Channels simulcast in standard definition (SD) and HD, there shall be no further obligations to provide those Access Channels in SD.

14.1.3 Standard Definition (“SD”) Digital Access Channels.

(A) Grantee shall provide two (2) activated downstream Channels for the simulcast of EG Access Channel(s) in a standard definition (“SD”) digital format, on the same timeline provided for under section 14.1.2 above. Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the programming. Grantee shall transport and distribute the SD Access Channels signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility and functionality, and to the application of any applicable FCC rules & regulations, including, without limitation, the Channel signal technical standards published in title 47 C.F.R. §76, subpart K.

(B) With respect to signal quality, Grantee shall not be required to carry a SD Access Channel in a higher quality format than that of other similar non-sport, non-movie programming channels on the Cable System, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider,

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Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of subsection 14.1.3.

(C) SD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which SD channels are made available. Grantee is not required to provide free SD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

14.1.4 Grantee shall simultaneously carry the two (2) HD Access Channels provided for in subsection 14.1.2 in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the two (2) SD Access Channels provided pursuant to subsection 14.1.3.

14.1.5 There shall be no restriction on Grantee's technology used to deploy and deliver HD or SD signals so long as the requirements of the Franchise are otherwise met. Grantee 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 objectively comparable and functionally equivalent to similar commercial HD and SD channels carried on the Cable System. In the event the County believes that Grantee fails to meet this standard, County will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

14.1.6 All SD Access Channels under this Franchise shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

14.1.7 Triggers for Additional Access Channel. Upon written request, the County may require Grantee to make available within six (6) months one (1) additional activated downstream HD and SD Channel for Access programming purposes when any of the Access Channels required by subsections 14.1.2 and 14.1.3 are used for Locally Scheduled Original Programming twenty-four (24) hours per week between 10:00 A.M. and 10:00 P.M., Monday through Friday during any consecutive ten (10) week period.

14.2 Change in Cable System Technology. In the event Grantee makes any change in the Cable System technology, which affects the signal quality or transmission of any Access Channel programming, Grantee shall take all necessary technical steps to ensure the delivery of Access programming is not diminished or adversely affected Grantee shall maintain all Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise and all other applicable laws, rules, and regulations for Cable Systems.

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14.3 Management and Control of Access Channels. County acknowledges Grantee does not have any editorial control over the Access Channel programming. The County may authorize Designated Access Providers to control, operate, and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of the Access Channels. The County or its designee may formulate rules for the operation of the Access Channels. Nothing herein shall prohibit the County from authorizing itself to be a Designated Access Provider. Grantee shall cooperate with County and Designated Access Providers in the use of the Cable System for the provision of Access Channels.

14.4 Access Channel Location. Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall provide to the County a minimum of sixty (60) days' notice, and use its best efforts to provide ninety (90) days' notice, prior to any relocation of its Access Channels, unless the change is required by federal law, in which case Grantee shall give the County the maximum notice possible. In the event of Access Channel relocation, Grantee shall provide notice to Subscribers in the same manner as notice is provided for any other Channel relocation. Grantee shall reimburse the County up to one thousand dollars (\$1,000) for the necessary cost of replacing printed materials in the event that the Access Channel is moved.

14.5 Support for Access Capital Costs.

14.5.1 No later than sixty (60) days from the Effective Date of this Franchise Grantee shall begin to collect from Subscribers an amount of thirty-six cents (\$0.36) per Subscriber per month ("Access Fee"). The Access Fee may be decreased or waived by the County following sixty (60) days written notice to the Grantee. Grantee shall have no obligation to collect an Access Fee unless and until all other wireline multichannel video programming distributor providing service to subscribers in the County are required to collect an Access Fee and in no event shall Grantee have an obligation to collect an Access Fee in an amount greater than any other wireline multichannel video programming distributors providing service to subscribers in the County. Grantee shall remit the Access Fee at the same time as quarterly Franchise Fee payments.

14.5.2 Grantee shall not be responsible for paying the Access Fees with respect to gratis or Bad Debt accounts. The County can inquire as to the status of any such accounts, and Grantee agrees to meet with the County, upon request, to discuss such matters as necessary.

14.5.3 The County shall have the discretion to allocate the Access Fees in accordance with applicable law, and shall submit a summary of capital expenditures from the Access Fees to Grantee, upon Grantee's request, within sixty (60) days of the end of each calendar year. The summary shall include financial information showing all Access Fees received, Access expenses used for Access purposes and the ending balance.

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14.5.4 To the extent the County makes Access capital investments using County funds prior to receiving the Access Fees, the County is entitled to apply the Access Fee payments from Grantee toward such capital investments necessary for the programming of Access Channels. The County and Grantee agree that any Access Fees shall be referred to on Subscribers' bills as an "Access Fee," or language substantially similar thereto.

14.6 Return Connectivity.

14.6.1 Historically, Grantee has not constructed or maintained any fiber optic return lines of connections related to the County's Access Channel origination sites. However, the County shall have the right, at any time during the Term of this Franchise, to require Grantee to construct and maintain, at Grantee's sole cost and expense, a fiber optic return line from the County's origination site to Grantee's Headend at 3000 Rockefeller Ave, Everett. Additionally the County may require Grantee to construct and maintain one additional origination site at 2000 Tower St, Everett (maximum of 1,500 feet from Grantee's existing network), at Grantee's sole cost and expense, for the purpose of delivering Access programming. The County shall make all requests for construction of an additional origination site in writing, and costs associated with constructing fiber optic return lines to the additional origination site, shall be paid by the County. Grantee shall expeditiously complete all construction of an additional origination sites within eighteen (18) months following the County's acceptance of Grantee's estimated cost, provided Grantee is able to obtain necessary permits in time to complete construction. Grantee may require that a reasonable deposit of the estimated project cost be paid in advance. The parties agree that the County can use the Access Fees to pay for the costs of constructing the fiber optic return lines for additional origination site.

14.6.2 After satisfactory completion of work requested by the County for which the County is to reimburse Grantee and upon submission by Grantee of a proper invoice for payment of the cost incurred and accompanied by such evidence in support thereof, the County agrees to make payment for the actual cost reasonably incurred for the work; provided, however, that all payments shall be subject to adjustment for any amount found upon audit or otherwise to have been improperly invoiced. All work shall be performed in a cost-effective manner to minimize the costs to the County.

14.7 Interconnection. Should the County at any time desire to discuss the possibility of interconnecting the Access Channels of Grantee's Cable System with any other geographically adjacent cable system not owned or operated by Grantee, the County shall so notify Grantee. Grantee agrees to enter into good faith negotiations with the County and the owner of the other cable system(s) regarding any such potential interconnections. Such negotiations may include discussion of potential cost sharing alternatives pursuant to which an interconnection could be performed in an equitable and cost effective manner. Interconnections shall be located at the County's origination site or at another location mutually agreed upon by the County and Grantee.

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14.8 Access Programming Information in Programming Guides. Grantee agrees that if it utilizes any navigation interfaces under its control on its Cable System for all Channels, the EG Channels shall be treated in a non-discriminatory fashion consistent with applicable laws so that Subscribers will have ready access to EG Channels. Grantee will facilitate the ability of the County to place EG Channel programming information on the interactive Channel guide via the electronic programming guide (“EPG”) vendor (“EPG provider”) that Grantee utilizes to provide the guide service. Grantee will be responsible for obtaining and implementing the designations and instructions necessary for the EG Channels to appear on the EPG. All costs and operational requirements of the EPG provider shall be the responsibility of the County. The County acknowledges that the EPG may not be technically possible for all EG programming.

14.8.1 EG Monitoring. Grantee shall provide the capability for County representatives to monitor and verify the audio and visual quality of EG Channels received by Subscribers.

SECTION 15. Enforcement of Franchise

15.1 Procedure for Remedying Franchise Violations. If the County reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the County shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged Franchise violation in a “Notice of Franchise Violation”. Grantee shall have thirty (30) days from the receipt of such notice to:

15.1.1 respond to the County, contesting the County's assertion that a violation has occurred and requesting a meeting;

15.1.2 cure the violation; or

15.1.3 notify the County that Grantee cannot cure the violation within the thirty (30) days because of the nature of the violation. In the event the violation cannot be cured within thirty (30) days, Grantee shall promptly take reasonable steps to cure the violation and notify the County in writing and in detail as to the exact steps that will be taken and the projected completion date, if any. In such case, the County may set a meeting to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

15.2 If Grantee does not cure the alleged violation within the cure period stated above or by the projected completion date under subsection 15.1.3, or denies the violation and requests a meeting in accordance with subsection 15.1.1, or following a meeting in accordance with subsection 15.1.3, the County determines the Grantee’s proposed completion schedule and steps

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to cure the violation are unreasonable, the County and Grantee agree to utilize the franchise dispute resolution process in SCC 13.80.125, in effect as of the Effective Date of this Franchise. In the event of a conflict between this Franchise and SCC 13.80.125, the provisions of this Franchise shall govern and the Snohomish County Hearing Examiner (“Hearing Examiner”) shall have the authority to resolve any discrepancies, provided that any such interpretation may be subject to review by a court of competent jurisdiction.

15.3 Subsequent to the process outlined in Sections 15.1 and 15.2 above, the County Engineer may issue a written order to comply with the terms of the Franchise, which Grantee may appeal to the Hearing Examiner within thirty (30) days of the date of service of that order to comply with the terms of the Franchise. The hearing shall be recorded and the Grantee shall have the opportunity to be heard and to present witnesses and other evidence in its defense.

15.4 The Hearing Examiner shall issue a decision with written findings of fact and conclusions of law within the Hearing Examiner’s jurisdiction, and the decision may include an assessment of liquidated damages in accordance with this Franchise. If the Hearing Examiner determines that a violation exists, or in the event the Grantee does not appeal the County Engineer’s written order to comply with the Franchise after thirty (30) days from the date of service, the Grantee shall correct or remedy the violation within fifteen (15) days or other such reasonable timeframe as determined by the County (Hearing Examiner or County Engineer, as applicable). In the event Grantee does not cure within such time to the County's reasonable satisfaction, the County may:

15.4.1 Withdraw an amount, based on liquidated damages, from the Franchise Bond as monetary damages;

15.4.2 If a material violation, recommend the revocation of this Franchise pursuant to the procedures in section 17; or,

15.4.3 Pursue any other legal or equitable remedy available under this Franchise or any applicable laws.

15.5 The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the County, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under applicable law.

SECTION 16. Liquidated Damages

16.1 Liquidated Damages. The County and Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the County

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as a result of Grantee's breach of certain provisions of this Franchise. Accordingly, instead of requiring such proof, the County and Grantee agree that Grantee shall pay to the County, the sums set forth below for each day or part thereof that Grantee shall be in breach of specific provisions of this Franchise. Such amounts are agreed to by both parties as a reasonable estimate of the actual damages the County would suffer in the event of Grantee's breach of such provisions of this Franchise.

16.1.1 Following a Notice of Franchise Violation to Grantee and subject to the timeline as described in Section 15 above, the County may assess against Grantee liquidated damages as follows: two hundred dollars (\$200.00) per day for failure to provide the Access Channel(s); one hundred fifty dollars (\$150.00) per day for material violation of the Customer Service Standards; fifty dollars (\$50.00) per day for failure to provide reports or notices as required by this Franchise; and up to two hundred fifty dollars (\$250.00) per day for any other material breaches of the Franchise.

16.1.2 Liquidated damages may be assessed for no more than one hundred twenty (120) calendar days for any individual incident, and in no event shall exceed fifteen thousand dollars (\$15,000) per calendar year.

16.1.3 In the event Grantee fails to cure a Franchise Violation within the cure period specified by Section 15.1, or any agreed upon extensions thereof, liquidated damages accrue from the date the County notifies Grantee that there has been a violation.

16.2 Recovery of Amounts. The recovery of amounts under Section 12 and/or Section 16.1 shall not be construed as an excuse of unfaithful performance of any obligation of Grantee. Similarly, the imposition of liquidated damages are not intended to be punitive, but rather, for County cost recovery purposes. The assessment of liquidated damages does not constitute a waiver by the County of any other right or remedy it may have under the Franchise or applicable law.

SECTION 17. Revocation of Franchise

17.1 Revocation. This Franchise may be revoked and all rights and privileges rescinded if:

17.1.1 There is an uncured material violation of this Franchise;

17.1.2 Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the County or Subscribers;

17.1.3 Grantee makes a material misrepresentation of fact in the negotiation of this Franchise;

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17.1.4 There is a foreclosure or involuntary sale of the Cable System;

17.1.5 Grantee willfully fails to provide Cable Services as specified in this Franchise for three (3) consecutive days;

17.1.6 Grantee becomes insolvent or if there is an assignment for the benefit of Grantee's creditors; or

17.1.7 There is a pattern or practice of material violation of any requirement of this Franchise.

17.2 Grantee Without Fault. None of the foregoing in 17.1 shall constitute a material violation or breach if Grantee is without fault or if the violation or breach occurs as a result of circumstances beyond Grantee's reasonable control as described in Section 18.12. Grantee shall bear the burden of proof in establishing the existence of such circumstances.

17.3 Revocation Process. Should the County seek to revoke this Franchise, the procedures set forth in this Section 17 and SCC 13.80.130 in effect as of the Effective Date of this Franchise shall apply. In the event of a conflict between this Franchise and section SCC 13.80.130, the provisions of this Franchise shall govern and the Snohomish County Hearing Examiner ("Hearing Examiner") shall have the authority to resolve any discrepancies, provided that any such interpretation shall be subject to review by a court of competent jurisdiction at the request of either party.

17.4 Notice of Revocation. The County shall give written notice to Grantee of its intent to revoke this Franchise (the "Revocation Notice"), which shall set forth the specific basis for the revocation. The Revocation Notice is in addition to and after the Notice of Franchise Violation pursuant to Section 15.1 if the County seeks to revoke this Franchise pursuant to Sections 17.1.1, 17.1.2 or 17.1.7, Grantee shall have thirty (30) days from the date of service of the Notice of Revocation to:

17.4.1 cure the noncompliance identified in the Revocation Notice;

17.4.2 submit a written request to the County for additional time to cure the noncompliance; or

17.4.3 contest the Notice of Revocation by appealing the Notice of Revocation to the Hearing Examiner.

17.5 Revocation Hearing. If Grantee files a timely notice of appeal of the Revocation Notice, the Hearing Examiner shall conduct a revocation hearing on the record. Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the

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testimony of Persons as permitted by law, and to question and cross examine witnesses. Following the revocation hearing, the Hearing Examiner shall make a recommendation to the County Council for final action.

17.6 Action by Council. The County Council shall consider the Hearing Examiner's recommendation, or the Notice of Revocation if not appealed to the Hearing Examiner, at a public meeting. Grantee shall be provided thirty (30) days' notice of the date of the public meeting and an opportunity to be heard at the public meeting. If the County Council decides to revoke the Franchise, Council's action shall be through the adoption of an ordinance, which shall include findings of fact and conclusions derived from those facts. The final action of the County Council to revoke the Franchise shall be subject to appeal to a court of competent jurisdiction within thirty (30) days of the adoption date of the ordinance. Grantee shall be entitled to such relief as the court may deem appropriate

SECTION 18. Miscellaneous Provisions

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

18.2 Amendments. No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument in writing, duly executed by the County and Grantee, which amendment shall be authorized on behalf of the County through the adoption of an appropriate ordinance by the County, as required by applicable law. If any change of law occurs which modifies the rights and obligations of either the County or Grantee under this Franchise, the parties agree to negotiate in good faith to reform or modify this Franchise that brings this Franchise into compliance with applicable laws.

18.3 Actions of Parties. In any action by the County or Grantee that is mandated or permitted under the terms of this Franchise, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under this Franchise, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

18.4 Application Fee. As provided in chapters 13.80 and 13.110 of the Snohomish County Code, Grantee shall pay the County certain franchise application and processing fees in amounts sufficient to cover the County's reasonable costs in drafting, reviewing and processing this Franchise, including the costs described in Section 18.8 below. If the Franchise is approved by the County and accepted by Grantee, Grantee shall also pay to the County the costs of recording the Franchise, as required by RCW 36.55.080. Grantee may recover or offset this amount, in accordance with federal law.

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

18.6 Binding Acceptance. This Franchise shall bind and benefit the parties hereto and their respective successors and assigns.

18.7 Captions. The captions and headings of Sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

18.8 Costs to be Borne by Grantee. Grantee shall pay all costs of publication of this Franchise and any and all notices prior to any public meeting or hearing in connection with this Franchise.

18.9 Cumulative Rights. Subject to applicable law, all rights and remedies given to the County by this Franchise or retained by the County herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the County, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the County and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

18.10 Charter Rights. The County reserves those rights set forth in Section 9.20 of the Snohomish County Charter to the extent applicable to this Franchise.

18.11 Entire Franchise. This Franchise embodies the entire understanding and agreement of the County and Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

18.12 Force Majeure. If Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, epidemic, or sabotage, to the extent such event prevents performance by Grantee and such event is beyond Grantee's control, Grantee shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to get a substitute for such obligation to the satisfaction of the County. If Grantee claims a force majeure event, Grantee shall give prompt written notice of the same to the County and shall set forth its plan of action to meet the obligations of this Franchise once the force majeure event no longer prevents Grantee's performance.

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18.13 Equal Employment Opportunity. Grantee shall comply with all applicable federal, State, and local laws affording nondiscrimination in employment to all individuals regardless of their race, color, religion, age, sex, national origin, sexual orientation or physical disability.

18.14 No Joint Venture. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

18.15 Notices. All notices shall be in writing and shall be sufficiently given and served upon the other party by one of the following methods:

18.15.1 Personal service; or

18.15.2 Service by mailing 2 copies, postage prepaid, one by ordinary first class mail and the other by certified mail, return receipt requested and addressed as provided below. Service by mail shall be presumed effective upon the third business day following the day upon which the notice was placed in the mail.

To the County:

Snohomish County Department of Public Works
3000 Rockefeller Avenue M/S 607
Everett, WA 98201
Attn: Right-of-Way Coordinator

To the Grantee:

WaveDivision I, LLC D/B/A Astound Broadband
4786 1st Ave. S.
Seattle, WA 98134
Attn: Jared Sonne, GM/SVP

WaveDivision I, LLC D/B/A Astound Broadband
650 College Road East, Suite 3100
Princeton, NJ 08540
Attn: Legal

18.16 No Third-Party Beneficiaries. Nothing in this Franchise is or was intended to confer third-party beneficiary status on any Person or any member of the public to enforce the terms of this Franchise.

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18.17 Reservation of Rights. Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, Grantee or County may have under Federal or State law unless such waiver is expressly stated herein.

18.18 Severability. If any Section or subsection, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in this Franchise.

18.19 Jurisdiction and Venue. This Franchise shall be governed, construed, and enforced in accordance with the laws of the State of Washington and federal law. The venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or the Snohomish County Superior Court.

18.20 Waiver. The failure of either party at any time to require performance by the other of any provision hereof shall in no way be a waiver of this Franchise unless specifically waived in writing. Nor shall the waiver by either party of any breach of any provision of this Franchise be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

18.21 Independent Review. The County and Grantee each acknowledge that they have had opportunity to receive independent legal advice in entering into this Franchise and that both the County and Grantee understand and fully agree to each and every provision of this Franchise.

Section 19. Title VI Assurances and Non-Discrimination.

19.1 The following assurances are required by the Washington State Department of Transportation (WSDOT) Local Agency Guidelines Manual (Publication Number M 36-63) as a condition to Snohomish County's receipt of Federal financial assistance from the U.S. Department of Transportation (USDOT), through WSDOT. The text of Standard Assurance Appendix D, Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program, comes from the USDOT Standard Title VI/Non-Discrimination Assurances (WSDOT Form APP28.94) with minor revisions for clarity.

19.2 Within this Section 19, the following statutory and regulatory authorities are referred to as the "Acts" and "Regulations": (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); (ii) 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964); and (iii) 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964).

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19.3 The Grantee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Public Rights-of-Way as that term is defined in this Franchise, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Grantee will use the Public Rights-of-Way in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

19.4 In the event of breach of any of the above Non-discrimination covenants, the County will have the right to terminate the Franchise in accordance with the provisions of this Franchise.

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