

After Recording Return To:

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

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**ORDINANCE** Rec: \$355.50  
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SNOHOMISH COUNTY, WA

<b>Grantor:</b>	Snohomish County
<b>Grantee:</b>	ZiPLY Fiber Northwest, LLC D/B/A ZiPLY Fiber
<b>Tax Account No:</b>	Not Assigned
<b>Legal Description:</b>	Unincorporated Snohomish County
<b>Ref. # of Docs. Affected:</b>	AFN# 200809090396 and AFN # 202308140141 (Recorded Telecom)
<b>Document Title:</b>	An Ordinance of Snohomish County Council Granting a Nonexclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in Snohomish County, Washington to ZiPLY Fiber Northwest, LLC D/B/A ZiPLY Fiber

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

ORDINANCE NO. 24-034

GRANTING A NONEXCLUSIVE CABLE FRANCHISE AUTHORIZING LIMITED USE OF THE PUBLIC ROAD RIGHTS-OF-WAY IN SNOHOMISH COUNTY, WASHINGTON TO ZIPLY FIBER NORTHWEST, LLC D/B/A ZIPLY FIBER

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, ZiPLY Fiber Northwest, LLC D/B/A ZiPLY Fiber, (“ZiPLY Fiber”), currently holds the franchisee’s interest in and to that certain cable franchise granted on August 27, 2008, by Ordinance No. 08-102, recorded under Auditor’s File No. 200809090396 in, on, across, over, along, under, and/or through public rights-of-way within unincorporated Snohomish County (“Prior Franchise”); and

ORDINANCE NO. 24-034  
GRANTING A NONEXCLUSIVE CABLE FRANCHISE AUTHORIZING LIMITED USE OF THE PUBLIC ROAD RIGHTS-OF-WAY IN SNOHOMISH COUNTY, WASHINGTON TO ZIPLY FIBER NORTHWEST, LLC D/B/A ZIPLY FIBER

WHEREAS, by letter dated September 7, 2018, Ziplly Fiber invoked the cable franchise renewal provisions in Section 626 of the Cable Act 47, U.S.C. § 546, indicating Ziplly Fiber's intention and desire to renew the Ziplly Fiber Franchise; and

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

WHEREAS, the Ziplly Fiber Prior Franchise expired on September 5, 2021, however the parties have agreed to abide by the terms of the Prior Franchise on a month-to-month basis until such time as the parties enter into a renewed cable franchise; and

WHEREAS, Ziplly Fiber provides Cable Services over its Telecommunications Network; and

WHEREAS, Ziplly Fiber's use of public rights-of-way for its Telecommunications Network is subject to the telecommunications franchise granted on July 12, 2023 by Ordinance No. 23-059, recorded under Auditor File No. 202308140141("Telecommunications Franchise"); and

WHEREAS, activities related to the construction and maintenance of Ziplly Fiber's Telecommunications Network facilities that provide Cable Service are subject to the terms and conditions of its Telecommunications Franchise; and

WHEREAS, the County and Ziplly Fiber have conducted informal negotiations for a renewed cable franchise in accordance with 47 U.S.C. § 546(h); and

WHEREAS, pursuant to those informal negotiations, the County and Ziplly Fiber 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 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 Snohomish County Council held a public hearing on June 5, 2024, to solicit comments from the public and to consider whether to grant the requested franchise to Ziplly Fiber; and

WHEREAS, the County Council has determined it is in the public interest to grant a renewed cable franchise to Ziplly Fiber; 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. Ziplly Fiber 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, Ziplly Fiber may accept this franchise by filing with the Clerk of the County Council an unconditional written acceptance of this franchise. Failure of Ziplly Fiber to so accept the franchise within said period of time shall be deemed a rejection of this franchise by Ziplly Fiber 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) Ziplly Fiber executes the acceptance page of this franchise ordinance and returns same to the Clerk of the County Council; (iii) Ziplly Fiber presents to the County acceptable evidence of insurance and performance security as required in Sections 9 and 12 of Attachment A; and (iv) Ziplly Fiber pays all applicable fees as set forth in Section 18.4 of Attachment A.

*[The remainder of this page is intentionally left blank.]*

PASSED this 5<sup>th</sup> day of June, 2024.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

Jared Mead  
Council Chairperson

ATTEST:

M. G. ...  
Deputy Clerk of the Council

- APPROVED
- VETOED
- EMERGENCY

[Signature]  
Snohomish County Executive

DATE: June 10, 2024

ATTEST:

Melissa Geraghty

Approved as to Form Only:

[Signature]  
Deputy Prosecuting Attorney

Date: 03/14/2024


*[The remainder of this page is intentionally left blank.]*

**ACCEPTANCE BY FRANCHISEE:**

The provisions of the franchise granted by this franchise ordinance are agreed to and hereby accepted. By accepting this franchise, Ziplly Fiber Northwest, LLC D/B/A Ziplly Fiber, 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: JUNE 12, 2024

Ziplly Fiber Northwest, LLC D/B/A Ziplly Fiber

By: 

Name: GEORGE BAKER THOMSON, JR


Title: VP, ASSOCIATE GENERAL COUNSEL

**CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:**

I certify that I have received confirmation that: (1) Ziplly Fiber Northwest, LLC D/B/A Ziplly Fiber returned a signed copy of this franchise to the county council within the time provided in Section 2 of this franchise ordinance; (2) Ziplly Fiber Northwest, LLC D/B/A Ziplly Fiber 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) Ziplly Fiber Northwest, LLC D/B/A Ziplly Fiber 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:**

August 13, 2024

By: 

Name: Elena Lao

Title: Deputy Clerk of the Council

# **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 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 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 Grantee’s cable communications system and retransmitted 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).

1.11 “*Cable System*” means Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and that is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Rights-of-Way; (3) a facility of a common carrier that is subject, in whole



or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. § 201 *et seq.*), except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with § 653 of the Cable Act; or (5) any facilities of any electric utility used solely for operating its electric utility systems, 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 this document and any amendments or modifications hereto, as allowed in Section 18.2.

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:

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 lawfully imposed tax, fee, or assessment of general applicability, for example a utility tax imposed on telephone business as permitted by statute;

(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 Ziplly Fiber Northwest, LLC D/B/A Ziplly Fiber 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 calculated in accordance with generally accepted accounting principles (“GAAP”).

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

(a) fees charged for Basic Service;

- (b) fees charged to Subscribers for any Cable Service tier other than Basic Service;
- (c) fees charged for premium Channels, e.g., HBO, Cinemax or Showtime;
- (d) fees charged to Subscribers for any optional, per-channel or per-program services;
- (e) charges for installation, additional outlets, disconnection, reconnection, and change-in-Cable Service fees for video or audio programming;
- (f) fees for downgrading any level of Cable Service programming;
- (g) fees for service calls;
- (h) fees for leasing of Channels for video programming;
- (i) rental of customer equipment, including converters (e.g., set top boxes, high definition converters and digital video recorders) and remote control devices;
- (j) Advertising Revenue as defined below;
- (k) revenue from the sale or lease of Channels or Channel capacity for video programming;
- (l) revenue from the sale or rental of Subscriber lists;
- (m) revenue or commissions received from the carriage of home shopping channels;
- (n) fees for any all music services that are deemed to be a Cable Service over a Cable System;
- (o) revenue from the sale of program guides;
- (p) late fees, convenience fees, not sufficient fund fees, and administrative fees;
- (q) foregone revenue for Cable Services that Franchisee chooses not to receive in exchange for trades, barter, services or other items of value;
- (r) revenue received from programmers as payment for programming content cablecast on the Cable System;
- (s) FCC user or regulatory fees specific to Cable Service;

(t) any Cable Service revenues that may develop in the future, whether or not anticipated, and consistent with GAAP; and

(u) Franchise Fees hereunder.

1.22.2 “*Advertising Revenues*” shall mean revenues received by Grantee derived from sales of advertising that are made available to Grantee’s Cable Service Subscribers within the Franchise Area and shall be allocated on a pro rata basis using Grantee’s Cable Service Subscribers within the Franchise Area in relation to the total number of Cable Subscribers covered under the advertising arrangement

1.22.3 Gross Revenues shall not include:

- (A) actual Bad Debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Subscriber revenues within the Franchise Area;
- (B) any taxes or fees on services furnished by Grantee imposed by any municipality, state, or other government unit, provided that Franchise Fees and FCC regulatory fee specific to Cable Service 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) launch fees and marketing co-op fees;
- (E) unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues;
- (F) Refunds, rebates or discounts made to Subscribers or other third parties; and
- (G) Any foregone revenue which Grantee chooses not to receive in exchange for provision of free or reduced cost cable to any Person, including without limitation, employees of Franchisee and public or other institutions designed in this Franchise.

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 class of service or receive a discount on video services, Gross Revenues shall be determined based on an equal allocation of the package discount, that is, the total price of the individual classes of service at advertised rates compared to the package price, among all classes of service comprising the package. If Grantee does not offer any component of the bundled package separately, Grantee shall declare a stated retail value for each component based on reasonable comparable prices for the product or service for the purpose of determining Franchise Fees based on the package discount described above. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value.

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 will explain and document the required changes to the County within three (3) months of making such changes, and as part of any audit or review of Franchise Fee payments, and 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 Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“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 under GAAP as that which Grantee uses in determining revenues for the purpose of reporting to national and state regulatory agencies.

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 produce 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 existing cable franchise approved by Snohomish County Council and identified as Ordinance No. 08-102, recorded under Auditor’s File No. 200809090396.

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 as shall within their proper use and meaning entitle 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.

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.

1.31 “*Telecommunications Network*” means Grantee’s telecommunications network consisting of fiber-based or other telecommunications facilities that are constructed, operated, maintained, and/or upgraded within the Public Rights-of-Way within unincorporated Snohomish County and subject to a separate utility franchise.

## **SECTION 2. Grant of Franchise**

2.1 Grant. Subject to the terms and conditions of this Franchise and the Cable Act, the County hereby grants to Grantee a nonexclusive Franchise authorizing Grantee to operate a Cable System over Grantee’s fiber-based Telecommunications Network to provide Cable Service in, along, among, upon, across, above, over, under, or in any manner connected with Public Rights-of-Way within the Franchise Area. Authority to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Rights-of-Way and all extensions of the Telecommunications Network, and additions thereto, such as poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System is subject to a separate telecommunications franchise (Ordinance No. 23-059) recorded under Auditor File No. 202308140141. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Franchise.

2.2 Grant Not Exclusive. The Franchise and the rights granted herein to provide Cable Service 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 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.

2.4 Franchise Subject to Federal, State and Local Law. Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions now existing or hereafter amended of federal, State and local laws and regulations.

2.5 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 an authorization to provide non-Cable Services nor relieve Grantee of its obligation to comply with any such authorization(s) that may be lawfully required. Any such conditions or obligations must be set forth in the separate telecommunications franchise agreed by the parties.

2.6 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:

2.6.1 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;

2.6.2 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

2.6.3 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.

2.7 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.

2.8 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.

2.9 Other Ordinances. Grantee agrees to comply with the terms of any lawful, generally applicable local ordinance, including but not limited to Titles 13 and 30 of the Snohomish County Code. In the event of a conflict between the regulatory provisions of this Franchise and any other ordinance(s) enacted under the County's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.



2.10 Term of Franchise. The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be five (5) 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. Grantee may terminate this Franchise without cause as described in Section 8.3 below.

2.11 Acceptance and Effective Date.

2.11.1 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. 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.

2.11.2 This Franchise 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 Council; (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.

2.12 Effect of Acceptance; Prior Franchises.

2.12.1 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.

2.12.2 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.

2.13 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 to any multichannel video programming distributor is granted by the County or by transfer, extension or renewal 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.

2.13.1 In the event an application for a new franchise as described in Section 2.13 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.

2.13.2 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.

2.14 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**

Grantee provides Cable Services over its existing Telecommunications Network. Construction and maintenance of Grantee's Cable System (that portion of Grantee's

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Telecommunications Network used to provide Cable Services) shall be in accordance with the requirements set forth in Grantee's telecommunications franchise granted by Ordinance No. 23-059, and recorded under Snohomish County Auditor File No. 202308140141

#### **SECTION 4. Service Obligations**

##### **4.1 General Service Obligation.**

4.1.1 Extension into Low Density Areas. In the event Grantee has more than 1,000 Subscribers 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 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.

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

4.4 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.

4.5 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

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, or to Persons who violated Grantee's policies and terms and conditions of service, so long as those policies and terms are lawful and do not conflict with this Franchise. 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 Subscribers 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 is encouraged to participate in low income assistance programs or otherwise provide discounts for Cable Service to Subscribers who are low income where feasible.

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 entry of any such agreement, 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 Grantee's provision of Cable Services 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. Franchise Fees are not a tax.

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. 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.

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) shall not be offset against Franchise Fees. Furthermore, the County and Grantee agree that any lawfully imposed 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. The County likewise reserves all rights it has 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 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 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

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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, 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 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; provided that a Transfer of the Franchise which is part of a transaction which also includes a transfer of Grantee’s telecommunications network in the County and is approved by the Washington Utilities and Transportation Commission shall be in accordance with the requirements in Grantee’s telecommunications franchise. 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.

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. The County and Grantee may by mutual agreement extend the 120-day period.

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 deed(s), agreement(s), lease(s) 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 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.

8.2.4 Should the Franchise expire without a mutually agreed upon renewed Franchise and Grantee and County are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis with the same terms and conditions as provided in the Franchise, and Grantee and County shall continue to comply with all obligations and duties under the Franchise until final County action is taken to renew or terminate the Franchise pursuant to this Franchise and applicable law and all appeals are resolved.

8.3 Early Termination of Franchise. In the event Grantee ceases its Cable Service operations, Grantee may terminate this Franchise upon providing the County with at least one hundred twenty (120) days prior written notice. Grantee shall provide its Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations and shall pay the Franchise Fees that are due and owing to the County as of the Franchise's early termination date. Upon termination of the Franchise, all rights and obligations stated herein shall cease, except the following provisions shall survive the early termination of the Franchise: Section 10 (Hold Harmless and Indemnification), Section 11 (Limitation of County Liability), and Section 7.10 (Maintenance of Books and Records).

## **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

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 three years 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, 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.

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: \$5,000,000 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.

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.

1. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after 45 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. 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 three (3) year period of the term of this Franchise. 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 following the first three (3) year period of the term of this Franchise.

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, and hold harmless the County, its officers, elected and appointed officials, employees, and agents (collectively, the "County Parties") from and against any and all claims, demands, liability, suits, and judgments, including costs of defense thereof, for bodily injury to persons, death, or property damage to the extent arising out of the acts or omissions of Grantee or authorized agents, employees, and contractors (collectively, "the Grantee Parties"). This covenant of indemnification shall not include 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 as such activities will be governed by the separate telecommunications franchise entered into between the Parties. Grantee shall consult and cooperate with the County while conducting its defense of the County. Said indemnification obligations shall extend to any settlement made by Grantee.

10.2 Indemnification for Relocation. The Indemnification for relocation of the Cable System is governed by the separate telecommunications franchise entered into between the County and Grantee.

10.3 Indemnification for Hazardous Substances. Grantee shall indemnify, defend 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 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.

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 right to inspect any work on the Cable System is governed by the separate telecommunications franchise entered into between the County and Grantee.

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 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. Risk of damage to Grantee’s facilities is covered under the separate telecommunications franchise entered into between the County and Grantee.

**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. 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 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;

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

12.1.3 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.

12.1.4 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. Upon the Effective Date, the Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted.

13.2 Technological Improvements. Throughout the Term of this Franchise and for so long as Grantee is providing Cable Services to new Cable Subscribers within the Franchise Area, 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 request consistent with Section 7.10 above, but no more than once per year. Further, Grantee shall maintain written records of all results of its Cable System tests performed by or for Grantee. Copies of such test results will be provided to the County 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 four (4) hours duration throughout the distribution networks and four (4) 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 all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the County no later than thirty (30) days following receipt of a request therefore.

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

14.1.1 Grantee shall make available Downstream EG Access Channels for use by the County to provide access to Subscribers, which are capable of cable-casting both live and recorded programming within the Franchise Area, as provided for in this Section 14.

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#### 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 (1<sup>st</sup>) 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 (3<sup>rd</sup>) 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”). Notwithstanding the foregoing, if, after receiving a written notice of activation of an HD Access Channel as provided in this Section 14.1.2(A), Grantee provides written notice of early termination of this Franchise under Section 8.3 with a termination date not to exceed one hundred twenty (120) days from the date that termination notice is provided, Grantee’s obligations to provide HD Access Channels shall be suspended until this Franchise is terminated. 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 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

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) After one hundred twenty (120) days written notice to the Grantee and no sooner than the first (1<sup>st</sup>) anniversary of the Effective Date of this Franchise, Grantee shall provide two (2) activated downstream Channels for the simulcast of EG Access Channel(s) in a standard definition (“SD”) digital format. 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. Notwithstanding the foregoing, if, after receiving a written notice of the provision of SD Digital Access Channels as provided in this Section 14.1.3(A), Grantee provides written notice of early termination of this Franchise under Section 8.3 with a termination date not to exceed one hundred twenty (120) days from the date that termination notice is provided, Grantee’s obligations to provide SD Access Channels shall be suspended until this Franchise is terminated.

(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, 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 Provided all provisions of Section 14.1.2 and Section 14.1.3 have been satisfied and Grantee has not provided notice of early termination of this Franchise, 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 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

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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.

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.

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 County capital investments necessary for the programming of its 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 at 3000 Rockefeller Ave, Everett, WA, to Grantee's Headend. Additionally, the County may request Grantee to construct and maintain additional origination sites at other locations within the Franchise Area, for the purpose of delivering Access programming. The County shall make all requests for construction of additional origination sites in writing, and costs associated with constructing fiber optic return lines to the additional origination sites, shall be paid by the County. Grantee shall complete all construction of additional origination sites within twelve (12) 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 sites.

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 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, County shall so notify Grantee. Grantee agrees to enter into good faith negotiations with 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 County and Grantee.

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 providing 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. County acknowledges that the EPG may not be technically possible for all EG programming.

14.8.1 EG Monitoring. Grantee shall provide cable service to the County, without charge, at one (1) origination site which is serviceable via a standard installation, for County representatives to monitor and verify the audio and visual quality of EG Channels and verify the accuracy of the EPG listings received by Subscribers.

## **SECTION 15. Enforcement of Franchise**

15.1 If the County reasonably believes that Grantee has failed to perform any obligation under this Franchise, the County and Grantee agree to use the franchise dispute resolution process in SCC 13.80.125.

15.2 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.

15.3 The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the County.

15.4 In the event Grantee does not cure a Franchise violation in accordance with the terms of a written order to comply with the terms of the Franchise issued by the County Engineer, or any amendments thereto, including any amendments following an appeal by the Grantee to the Hearing Examiner under SCC 13.80.125, then the County may:

15.4.1 Withdraw an amount, based on liquidated damages, from the Franchise Bond as monetary damages. The written order to comply with the franchise will include notice requirements as provided in SCC 13.10.116, as applicable; or

15.4.2 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 In addition to the remedies provided herein, the County reserves the right to pursue any remedy authorized by law to compel Grantee, and/or its permitted successors or assigns, to comply with the terms of this Franchise, including the recovery of damages to or costs incurred by the County by reason of Grantee's failure to comply with the terms of this Franchise.

15.6 The pursuit of any right or remedy by the County under this Section 15 shall not prevent the County from thereafter declaring a forfeiture or revocation of this Franchise for breach of the conditions herein.

15.7 Failure of the County to exercise any rights or remedies under this Franchise shall not constitute a waiver of any such right or remedy and shall not prevent the County from pursuing such right or remedy at any future time.

15.8 Nothing in this Franchise is or was intended to confer third-party beneficiary status on any person or entity to enforce the terms of this Franchise.

### **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 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 written order to comply with the terms of the Franchise subject to the process 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 are capped at \$5000 per year of the term of this Franchise.

16.1.3 In the event Grantee fails to cure a Franchise Violation within the period specified by a written order to comply with the terms of the Franchise under Section 15, 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: (i) there is an uncured material violation of this Franchise; (ii) Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the County or Subscribers; (iii) Grantee makes a material misrepresentation of fact in the negotiation of this Franchise; (iv) there is a foreclosure or involuntary sale of the Cable System; (v) Grantee willfully fails to provide Cable Services as specified in this Franchise for three (3) consecutive days; (vi) Grantee becomes insolvent or if there is an assignment for the benefit of Grantee's creditors; or (vii) there is a pattern or practice of material violation of any requirement of this Franchise.

17.2 Grantee Without Fault. Notwithstanding Section 17.1, none of the foregoing 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 may be subject to review by a court of competent jurisdiction. A 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.

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. This Franchise is subject to the power of eminent domain and the right of the County Council or the people acting for themselves through initiative or referendum to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

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, pandemics, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, 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.

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:

Zipty Fiber Northwest, LLC D/B/A Zipty Fiber  
135 Lake Street South, Suite 155  
Kirkland, WA 98033  
Attn: Legal Department

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.

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).

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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