



# CITY OF BLAINE

## DEPARTMENT OF PUBLIC WORKS

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## *MEMORANDUM*

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DATE: August 24, 2020

FROM: Bob Hammond, Interim Public Works Director

TO: City Council  
Through Michael Jones, City Manager

SUBJECT: Comcast Franchise Agreement Renewal

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Over the past several months, Les Reardanz with Chmelik Sitkin & Davis P.S. has been negotiating on behalf of the City of Blaine to renew a Franchise Agreement with Comcast for telecommunication services for Blaine's citizens and businesses. At Work Session on Monday August 24, 2020, Mr. Reardanz will present the results of those negotiations. Attached is a table to be used by Mr. Reardanz and City staff to highlight features of the proposed Franchise Agreement which is also attached.

This subject was also recently presented to the City's Public Works Advisory Committee (PWAC). The comments of the PWAC centered on frustration related to internet 'dead' service zones within City limits. Mr. Reardanz summarized the City's legal limitations regarding this issue at the PWAC meeting, indicating that the City can't unilaterally impose service requirements.

The comments from the PWAC members along with previous comments staff have received from City Council members have helped open communications with Comcast on the internet services issue. City staff continues to research opportunities like an upcoming state grant/loan program to partner with telecommunications companies like Comcast to bridge the gap in internet services.

## COMCAST FRANCHISE: SUMMARY OF SUBSTANTIVE PROVISIONS

*Executive Summary:* The purpose of this Chart is to offer an overview of the substantive changes in the proposed new Franchise to provide a framework for the City's analysis.

*General Description:* The Franchise is an agreement between the City and Comcast that, in essence, grants Comcast a non-exclusive right to operate a cable system in Blaine, including using the rights of way. The agreement is subject to applicable federal, state, and local law, including, by way of example, the federal Cable Act, RCW Chapter 35.99 (governing telecommunications and cable service), and the Blaine Municipal Code. To the extent the Federal Government has covered the regulatory field under the Cable Act and FCC implementing regulations, those regulations control over state/local regulation. In developing the Franchise, the parties intended to set forth a relational roadmap to work together so Comcast can provide a reliable and beneficial service to Blaine citizens.

<u>Section</u>	<u>Description</u>	<u>Discussion</u>	<u>Risk</u>
2.3	Term	10 years from Effective Date (Sec. 2.4) which is when Comcast accepts the Council adopted version (Comcast has 90 days to accept)	Minimal: Ten years will allow for certainty in service but short enough to track tech changes
2.5	Performance Bond	Comcast post a \$25k bond that covers the franchise and projects up to \$250k; Projects over \$250k require a discussion on separate bonding	Minimal: Most projects are small so will ease regulatory burden on both parties and protect City if a project is incomplete or not done per permit
2.7	Reservation of Rights	City maintains its police powers and code authority (Note: would be an issue if City tried to change Franchise by Code)	None
2.8	Competitive Equity	If the City adopts a franchise with a competitor, this section sets the framework to level the playing field to ensure the competitors have regulatory equity	Minimal: Requires thoughtful negotiations with any new cable provider
3.1	Permits	Comcast must secure permits for construction	None
3.2.1	Relocation (City Request)	Comcast must relocate upon City request within rights of way for health, safety, or welfare reasons or for City project (subject to Sec. 3.2.6) at Comcast cost	None
3.2.2	Relocation (Third Party Request)	Comcast will relocate for third party request but at third party expense.	Minimal: Risk is with third party but could affect timing and service
3.2.3	Street work	Comcast will restore street after work; agree not to do	Minimal: Administrative risk for the

		street work within 5 years of prior street work (e.g., paving) to minimize street maintenance and maintain service life. If the City adopts code provision governing this, BMC controls over this provision.	City to coordinate with Comcast regarding street work
3.2.6	Undergrounding	Undergrounding requests must be similar to other wire service providers for competitive equity. So, if others are going underground, Comcast will as well. There are 3 situations governing: (1) City driven projects: Comcast pays – coordination requirement within the 6 Year TIP framework; (2) LID projects: LID reimburses Comcast; and (3) Developer projects: Developer pays	Minimal: Advances City policy to continue undergrounding; requires good coordination between City/Comcast, especially as to the 6 Year TIP and potential City driven projects
4	Service Obligations	Provides for service to all residential dwellings in an urban environment (i.e., Blaine) on a non-discriminatory basis (unless a developer does not allow Comcast access)	Minimal: Risk is lack of service if a developer denies access, which seems like a low probability and, if this happens, the citizen would know
5	Fees/Charges	Follows FCC rules	Minimal: Covered by federal law; mitigate by tracking relevant FCC rules through Association of Washington Cities (AWC)
6	Customer Service	Federal law covers customer service requirements, bills, and privacy	Minimal: Risk is if a citizen isn't happy and wants City to do something – Federal regs preempt
7.1-7.6	Franchise Fees	Comcast pay 5% of Gross Revenues as Franchise Fee in addition to applicable taxes; paid quarterly and is auditable with interest if underpaid	Minimal: Process is set up for audit and remedies if Comcast underpays. It also allows the City to inspect operation and maintenance and review technical standards.
7.7-7.9	Documents	Allows the City to access various maps, annual reports, etc. upon City request	Minimal: City must request
7.10	Pole Attachment	Maintains obligation for Comcast to pay \$9 per pole to attach its equipment to City Poles; Currently there are approximately 300 poles but the parties are working to validate that number; Additionally, the parties are working on a separate pole attachment agreement that would replace his section	Minimal: (1) Understand the actual numbers; (2) Federal pole attachment regulations have changed requiring a more comprehensive agreement than franchise but didn't want to slow

			Franchise adoption – this provision bridges that gap
8	Transfer of Control	If Comcast transfers 51% or more of control, must have City's written consent; Under 51% they can transfer but must give City notice	Moderate: City would need to invest time and energy to understand the transfer to consent but is important to ensure the new entity has the legal, technical, and financial capabilities
9	Insurance/Indemnity	Standard and commercially reasonable insurance requirements; NOTE: Comcast can be self-insured for their own property but must carry commercial insurance for third party issues; Strong indemnity and environmental liability provisions	Minimal: City risk is mitigated by insurance and indemnity provisions
10	System	Provide categories of service types, e.g., sports, news, etc.; Note (Sec. 10.2): A new FCC Order allows for cable providers to reduce formerly complementary services to government buildings (e.g., schools, city halls, etc.) from the 5% Franchise Fee (Sec. 7.1). The FCC Order is being appealed by various cities nationwide. This section is written to account for this uncertainty.	Minimal: If City desires services to government buildings, City will either pay for them or reduce off the Franchise Fee per FCC Order (could have budgetary implications)
11.-11.5	Enforcement & Termination	Sets up the framework – essentially, notice of violation, opportunity to fix violation, and then go to Court if dispute still exists; in Court, City may seek money, specific performance to comply with franchise provision, and/or termination.	Minimal: This relational roadmap sets up the framework; however, how it is used during a dispute is always a risk. Nevertheless, this provision mitigates that risk.
11.6	Continuation of Service	Requires the continuation of service during dispute to ensure citizens continue to receive cable	Mitigates risk to service during a dispute.
11.7	Relocation	Ensures that a dispute doesn't affect or otherwise impair Comcast's duty to relocate the system under Sec. 3	Mitigates the risk of a dispute preventing relocation or undergrounding
12	Miscellaneous Provisions	Covers the legal provisions, such as force majeure, severability if a provision is found illegal/void, governing law/venue, there's no waiver of a provision by failing to enforce the provision (i.e., can't continue to violate provision if one party doesn't enforce against the violation), time is of the essence, etc.	These provisions help mitigate and set a framework around the unknown risks and develop the relational roadmap

**CABLE FRANCHISE AGREEMENT**

**Between**

**BLAINE, WASHINGTON**

**And**

**COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC**

## **Cable Franchise Agreement**

This Cable Franchise Agreement (hereinafter, the “Franchise”) is between Blaine, WA (hereinafter, “City”) and Comcast Cable Communications Management, LLC (hereinafter, “Grantee”). The City and Grantee may be individually referred to herein as a “party” and may be collectively referred to herein as the “parties”.

The City, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

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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 in the Cable Act, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- 1.1 **"Affiliate"**  
when used in connection with Grantee means any Person who owns or controls or is owned or controlled by Grantee.
- 1.2 **"Applicable Law"**  
shall mean any and all applicable state or federal laws, regulations, judgments or decrees.
- 1.3 **"Basic" or "Basic Service"**  
means basic cable service as defined in the Cable Act.
- 1.4 **"Cable Service(s)"**  
shall mean (1) the one-way transmission to Customers of (a) video programming, or (b) other programming service, and (2) Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.5 **"Cable System"**  
shall mean the Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming, and which is provided within the Franchise Area.
- 1.6 **"City"**  
means the City of Blaine, a municipal corporation and Political Subdivision of the State of Washington, or the lawful successor, transferee, designee, or assignee thereof.
- 1.7 **"Customer"**  
means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.
- 1.8 **"FCC"**  
means the Federal Communications Commission, or successor governmental entity thereto.
- 1.9 **"Franchise"**  
shall mean this document and any amendments or modifications hereto.

- 1.10 “Franchise Area”  
means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.
- 1.11 “Grantee”  
shall mean Comcast Cable Communications Management, LLC
- 1.12 “Gross Revenue”  
means the revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles, including but not limited to monthly basic, premium and pay-per-view fees, installation fees, and equipment rental fees. Gross Revenue shall not include advertising or home shopping revenue, refundable deposits, bad debt, late fees, investment income, nor any taxes, fees or assessments imposed or assessed by any governmental authority.
- 1.13 “Person”  
means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.
- 1.14 “Public Way”  
shall mean the surface of, and the space above and below, any City public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, drive, circle located within City road right-of-way, including, but not limited to, utility easements, dedicated utility strips, or City road rights-of-way dedicated for compatible City road uses now or hereafter held by the City in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, upgrading and maintaining the Cable System. Public Way shall also mean any City road right-of-way easement now or hereafter held by the City 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 City road right-of-way easements or City road rights-of-way as shall within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
- 1.15 “State”  
means the State of Washington.

## **Section 2. - Grant of Authority**

- 2.1 Grant  
The City hereby grants to the Grantee under the Cable Act (and to the extent applicable,

Chapter 35.99, Revised Code of Washington) a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System and to provide Cable Service subject to the terms and conditions set forth in this Franchise and Applicable Law in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Grantee accepts the use of the Public Way in an “as is” condition. Neither the City nor the Grantee waive any rights they may have under Applicable Law as to the lawful use of the Cable System for other services and the regulatory obligations related to such services.

## 2.2 Other Ordinances

The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Grantee reserves the right to challenge provisions of any ordinance which conflict with its contractual rights, either now or in the future. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the City.

## 2.3 Term of Franchise

The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise and the Cable Act. The parties may mutually agree to extend the term of this Franchise beyond ten (10) years; however, any such extension shall be in compliance with Applicable Law (including the Cable Act, 47 U.S.C. Section 546 as currently adopted or hereinafter modified) and done in writing and executed by authorized representatives of the parties before the expiration of the Franchise’s ten (10) year term.

## 2.4 Effective Date

The effective date of this Franchise shall be the date of Grantee’s signed acceptance following the adoption of this Franchise by the City, unless Grantee fails to file with the City an unconditional written acceptance of this Franchise within ninety (90) days of the date of adoption of this Franchise by the City Council, in which event this Franchise shall be voidable at the option of the City, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Franchise may be terminated.

## 2.5 Performance Bond

Grantee shall provide a performance bond, in a form acceptable to the City, in the amount of twenty-five thousand dollars (\$25,000) (the “Security”) to ensure the faithful performance of its responsibilities under this Franchise and Applicable Law in accordance with the procedures set forth in the performance bond.

2.5.1 Grantee shall pay all premiums or costs associated with maintaining the Security, and shall keep the same in full force and effect at all times and shall immediately replenish the bond upon foreclosure. Grantee shall not cancel the Security without obtaining an alternative performance bond in conformance with this Franchise.

2.5.2 The Security provided under this Section 2.5 shall cover any required additional security, such as generally applicable construction bonds, as may be required under the City's permitting requirements. However, if a Comcast project is over \$250,000 based on the engineers estimate at the time of permit application, the parties shall negotiate whether any additional security is required based upon the risk associated with the project.

2.6 Renewal

Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.7 Reservation of Authority

Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City (or City police power), or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.8 Competitive Equity

2.8.1 The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided the City 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 the 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; system build-out requirements; security instruments; Access Channel and support; free Cable Service connections to City facilities; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by the City and Grantee.

2.8.2 In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon the Grantee by registered or certified mail or via nationally recognized overnight courier service.

2.8.3 In the event that a wireline multichannel video programming distributor provides cable service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity (but without a City franchise), the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the 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 City shall not unreasonably withhold consent to the Grantee's petition.

## 2.9 Conditions of Sale

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

2.9.2 The Grantee and the City agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

## **Section 3. - Construction and Maintenance of the Cable System**

### 3.1 Permits and General Obligations

The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary from all applicable jurisdictions to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe manner using materials that meet or exceed industry standards. All facilities, poles, conduits, cables, and equipment installed by the Grantee for use in the Cable System in accordance with the

terms and conditions of this Franchise shall be located so as to minimize interference with the designated use of the Public Ways at the time of Cable System facilities installation, and shall be installed to the reasonable satisfaction of the City.

### 3.2 Conditions on Occupancy of Public Ways

#### 3.2.1 Relocation at request of the City

Upon thirty (30) days prior written notice to Grantee, the City shall have the right to require Grantee to relocate any part of Grantee's Cable System within the Public Ways when the safety, health or welfare of the public requires such change (or to facilitate any City driven project, subject to the terms of Section 3.2.6(1)), and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the Public Ways, the City shall make a reasonable effort to provide Grantee with an alternate location within the Public Ways. This Section does not apply to overhead to underground conversions, see Section 3.2.6 "Aerial and Underground Construction". Grantee is responsible and liable for the timely performance of any reasonable request by the City for the relocation of any and all of Grantee's Cable System located within the Public Ways (when the safety, health or welfare of the public requires such change, or to facilitate any City driven project subject to 3.2.6(1)), and Grantee further agrees to be liable and responsible for any and all costs, expenses, and/or damages suffered by the City arising from and/or related to any delay associated with Grantee's failure to relocate Grantee's Cable System within the Public Ways, pursuant to the terms of this subsection.

#### 3.2.2 Temporary Relocation at request of Third Party

The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its facilities to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its facilities, and such charge may be required to be paid in advance of the movement of its wires or cables; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

#### 3.2.3 Restoration of Public Ways

If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.

- (1) Grantee shall not open trench newly paved or newly constructed streets for a period of five (5) years after the new paving or street construction is

complete, provided that all wireline cable providers and utilities are treated consistently, in a fair and equitable manner. The City shall notify Grantee of its paving or new street construction projects that include open trenching with sufficient and reasonable time for Grantee to determine whether it wants to do any work during the paving or new street construction.

- (2) At such time that the City Council adopts, in their discretion, an amendment to the Blaine Municipal Code adding the provisions of Section 3.2.3(1), or its equivalent, this said section shall become null and void, provided that the period shall not be longer than five (5) years.

#### 3.2.4 Safety Requirements

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent accidents that may cause damage or injuries. All work undertaken on the Cable System shall be performed in accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Public Ways, including not interfering with the City's infrastructure. Grantee shall take such commercially reasonable actions to remove the danger or interference within thirty (30) days of the City notifying Grantee. If the Grantee fails to take such action within the thirty (30) day period, the City reserves the right, but not the obligation, to address the issue and bill the Grantee.

#### 3.2.5 Trimming of Trees and Shrubbery

The Grantee shall have the authority to trim trees or other natural growth interfering with, damaging, or restricting access to, any of its Cable System facilities in the Public Ways. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

#### 3.2.6 Aerial and Underground Construction

If the transmission and distribution lines of all of the respective wireline service providers in any given area within the Franchise Area are underground, the Grantee shall place its Cable System distribution cables underground; provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution lines of any of the respective wireline service providers are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. In areas where a wireline service provider's wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground

any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

- (1) In the event of a City driven facilities relocations project that requires conversion of overhead facilities to underground, such as projects that may include, but not be limited to: road widening, surface grade changes, sidewalk installation, or beautification, Grantee agrees to bear the costs of converting Grantee's cable system from an overhead system to an underground system as follows:
  - (a) Utility Trench Engineering  
To ensure proper space and availability in the supplied joint trench, Grantee shall only pay for the work hours necessary to complete cable system related engineering coordination with the other utilities involved in the project.
  - (b) Conduit and Vaults/Pedestals Placement  
Grantee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo cable trench as follows:
    - (i) If the City contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project.
    - (ii) If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the City or its contractor, Grantee shall have the option to hire its own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.
    - (iii) If Grantee chooses option (ii), the City and its contractor(s) are responsible to coordinate with Grantee's contractor(s) to provide reasonable notice and time to complete the placement of Grantee's conduits and vaults/pedestals in the supplied joint trench.
  - (c) Within the conversion area, Grantee shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo cable trench. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed in item (b) above.
  - (d) A "City driven facilities relocations project" shall include projects on the adopted City's Six Year Transportation Improvement Program (TIP). In order to ensure transparency, the City will notify Grantee of proposed revisions to the TIP before City Council



consideration to solicit Grantee's comments. Additionally, Grantee and the City agree to meet annually, or as needed, before the TIP's consideration to coordinate and synchronize potential projects.

- (2) In the event of a Local Improvement District (LID) project that requires relocation of Grantee's facilities, Grantee shall be reimbursed by the LID for all expenses incurred as a result of the project.
- (3) The Grantee shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided
  - (a) the Grantee may impose a charge for all time and material costs associated with the project on any Person for the relocation of its facilities, and such charge may be required to be paid in advance of the relocation of its wires or cables, and
  - (b) Grantee is granted a permit for such work by the City.
- (4) In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all time and material costs associated with the underground conversion of cable facilities. Grantee and/or its authorized contractor is/are the only agent(s) allowed to complete the reconnection aspects of the conversion. Grantee shall be the responsible party for ensuring that developers pay Grantee for such time and materials.
- (5) The Grantee shall utilize existing poles and conduit wherever possible. With respect to any portion of the Cable System which is located underground within any Public Way, nothing in this Franchise is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of the underground portions of the Cable System. Grantee shall identify, mark, and otherwise locate any and all underground Facilities located within the Franchise Area in accordance with and subject to Chapter 19.122 RCW (commonly known as the "call before you dig" law), and/or any other such subsequent and/or successor legislation. Grantee agrees to be liable and responsible for any and all costs, expenses, and/or damages suffered by the City arising from and/or directly related to any delay caused by Grantee's failure to locate its underground Facilities within the Franchise Area within the timeframes specified by Chapter 19.122 RCW (and/or any other subsequent and/or successor legislation), and/or otherwise pursuant to the terms of this Franchise.

## **Section 4. - Service Obligations**

### **4.1 General Service Obligation**

The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per strand mile in areas served by overhead facilities and sixty (60) dwelling units per strand mile in areas served by underground facilities. Subject to the density requirement, Grantee shall offer Cable Service at standard installation rates to all new homes or previously unserved homes located within one hundred twenty-five (125) aerial feet of the Grantee's aerial distribution cable, or within sixty (60) underground trench feet of either aerial or underground distribution facilities.

The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension 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 Programming**

The Grantee shall offer to all Customers a diversity of video programming services. See Section 10.1 for additional requirements.

### **4.3 No Discrimination**

Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination 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 the Grantee are satisfied. Grantee shall not however be required to continue service to a customer who is verbally or physically abusive, harassing, or threatening to Grantee or any of its employees, agents, representatives, contractors, subcontractors, or consultants. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

### **4.4 Customer Service in New Developments**

In the event that a developer refuses to allow Grantee reasonable access to open trenches in a developer's new development for purposes of allowing Grantee to install cable facilities within such trenches (prior to the transfer of or dedication of any right[s]-of-way to the City at the completion of any such new development), then the Grantee shall not be required to provide cable service(s) to customers located within any such portion of the Franchise Area from which Grantee has been denied reasonable access to open trenches by a developer (and Grantee shall not be in default of the terms of this Franchise for any such refusal or failure to provide cable services to customers located within such area[s]).

4.5 Prohibition Against Reselling Service

No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

**Section 5. - Fees and Charges to Customers**

5.1 Rates, Fees, Charges and Deposits

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

**Section 6. - Customer Service**

6.1 Customer Service Standards

The City hereby adopts the customer service standards set forth in 47 CFR §76.309, as they may be amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Customer Bills

Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. The Grantee may, in its sole discretion, line item costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3 Privacy Protection

The 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

The Grantee shall pay to the City franchise fees in an amount equal to five percent (5%) of Gross Revenues; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other subsequent wireline cable operator providing service in the same part of the Franchise Area. 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. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of

the Franchise Fees paid during that period.

In the event any franchise fee payment is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay, in addition to the payment or sum due, interest on the amount due at one percent (1%) above the prime rate (as the prime rate is listed in The Wall Street Journal) from the date the payment was due until the date the City receives the payment.

## 7.2 Franchise Fee Audit

- 7.2.1 Upon reasonable prior written notice, during normal business hours, at Grantee's principal business office in the Seattle area, the City shall have the right to inspect the Grantee's financial records used to calculate the franchise fees; provided, however, that any such inspection shall take place within three (3) years from the date the City receives such payment, after which period any such payment shall be considered final.
- 7.2.2 Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the City 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 agree upon a "Finally Settled Amount." For purposes of this Section (7.2), the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Grantee as a result of any such audit. If the parties cannot agree on a "Finally Settled Amount," either party may bring an action to have the disputed amount determined by a court of law.
- 7.2.3 Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Grantee within forty-five (45) days from the date the parties agree upon the "Finally Settled Amount" plus interest at the rate set by Washington law on the date the parties agree to the "Finally Settled Amount" from the date the payment was originally due. Once the parties agree upon a "Finally Settled Amount" and such amount plus interest is paid by the Grantee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Grantee's books and records unless there is an underpayment exceeding ten percent (10%) in a calendar year, in which case Grantee shall pay for the cost of the audit up to a maximum of \$10,000.
- 7.2.4 In the event of the "Finally Settled Amount(s)" being an overpayment by Grantee, the City shall have the option of reimbursing Grantee within forty-five (45) days or of requesting in writing within forty-five (45) days that Grantee withhold fifty percent (50%) of each future Franchise Fee payment until such time as said overpayment is recovered and thereafter remitting the full amounts to the City.

### 7.3 Tax Liability

The franchise fees shall be in addition to any and all taxes which are now or hereafter required to be paid by businesses in general by any law of the City, County, State, or the United States including, without limitation, sales, use, utility and other taxes. Payment of the franchise fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee or tax on the business, occupation, property or income of Grantee that may be lawfully imposed by the City, County, State or the United States.

### 7.4 Inspection

In accordance with applicable law, the City shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Public Ways, as necessary to monitor Grantee's compliance with the provisions of this Franchise.

### 7.5 Technical Standards

The Grantee shall comply with all applicable technical standards as published in Subpart K of 47 CFR Part 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The City shall have, upon written request, the right to review tests and records required to be performed pursuant to the FCC's rules.

### 7.6 Maintenance of Books, Records, and Files

#### 7.6.1 Books and Records

Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise at the Grantee's local business office, 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 the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years.

#### 7.6.2 File for Public Inspection

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

#### 7.6.3 Proprietary Information

The Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, except as may be otherwise required by law. The City and Grantee recognize and agree that any information

disclosed by the Grantee (even if considered to be proprietary or confidential by Grantee) may be subject to public disclosure pursuant to State law (including, but not limited to, RCW 42.56), unless specifically exempt from public disclosure pursuant to State law. Nevertheless, in the event that Grantee provides the City with information considered by the Grantee (and identified and marked by the Grantee) to be proprietary or confidential, the City may only distribute such information to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise or otherwise effectuate the terms of this Franchise. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, 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 the Grantee to be competitively sensitive. In the event that the City receives a request under a state “sunshine,” public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request. This subsection 7.6.3 is subject to all State public disclosure laws (including, but not limited to, RCW 42.56), and in the event of a conflict, State law will prevail.

## 7.7 Maps and Records Required

7.7.1 Grantee shall make available to the City upon request:

- (1) A route map that depicts the general location of the Cable System facilities placed in the Right-of-Ways. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Grantee shall also provide, if requested, an electronic format of the aerial/underground facilities in relation to a Right-of-Way centerline reference to allow the City to add this information to City's geographic information system program;
- (2) A copy of all FCC filings that relate to the operation of the Cable System in the Franchise area; and
- (3) A list of Grantee's Cable Services, rates, and Channel line-up.

7.7.2 The Grantee shall submit the required documents hereunder within thirty (30) calendar days of the City's request.

## 7.8 Submittal of Documents

Upon written request and within thirty (30) calendars of the request, Grantee shall submit to the City a copy of any application, notification, communication or document of any kind, submitted by Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other governmental bodies if such document directly relates to the

operations of Grantee's Cable System within the Franchise Area; however, Grantee agrees to provide the City written notice of the entry of any judgment against Grantee, within reasonable time after entry, that would reasonably affect the operation of the Grantee's Cable System.

#### 7.9 Annual Reports

Upon request, one hundred twenty (120) days after the end of the first quarter, Grantee shall submit to the City a written report containing the following information:

- (1) the most recently completed annual corporate report;
- (2) Aa Gross Revenue statement for the preceding fiscal year and all deductions and computations for the period, reviewed by a certified public accountant, who may also be the chief financial officer or controller of Grantee;
- (3) a summary of the previous years' activities regarding the development of the Cable System, including, but not limited to, homes passed, beginning and ending plant miles, any technological changes occurring in the Cable System;
- (4) an executive summary of Subscriber Complaints received in the previous year; and
- (5) a description of planned construction, if any, for the current year.

#### 7.10 Pole Attachment Fee

Grantee shall pay the City an annual fee for the attachment of Equipment to the City owned Poles at the annual rate (the "Annual Rate") then in effect for each Pole to which Equipment is attached.

7.10.1 Grantee shall pay the City the greater of an amount equal to the number of Poles to which Equipment is attached multiplied by the Annual Rate of nine dollars (\$9) per pole attachment, or One Hundred Dollars (\$100.00). In no event shall the Annual Rate be less than One Hundred Dollars (\$100.00).

7.10.2 Within forty-five (45) days of Grantee's receipt of the City's written request, Grantee shall deliver to the City a written statement of the number of Poles to which Equipment is attached. Each such statement shall be verified by an officer of Grantee and supported by such documents, information and other items as the City may request. If any audit or inspection by the City discloses any understatement of the number of such Poles, Grantee shall immediately pay to the City any deficiency in the payments of fees and other amounts due the City under this Agreement, plus late charges and interest as provided for in Section 7.10. If the understatement is in excess of fifteen percent (15%) of the number of Poles shown on the applicable statement, Grantee shall reimburse the City all reasonable costs incurred by the City to conduct the audit or inspection; provided, however, that the City shall have given Grantee sixty (60) days advance notice of such audit or inspection in order to provide Grantee an

opportunity to participate in such inspection or audit. Such reimbursement shall in no event cure any default under or breach of this Agreement by Grantee.

7.10.3 The City may, at any time after commencement of the Term, change the Annual Rate by giving Grantee written notice thereof at least sixty (60) days prior to the effective date of the change; provided that the Annual Rate shall at all times be just, fair, reasonable and sufficient in accordance with applicable law.

7.10.4 This Section 7.10 shall expire and become null and void at such time as the City shall adopt a separately negotiated pole attachment agreement with the Grantee. The parties agree to use best efforts and work in good faith to adopt a separate pole attachment agreement within a reasonable time period.

## **Section 8. - Transfer or Change of Control of Cable System or Franchise**

### 8.1 Transfer or Change of Control

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined herein as actual working control (51% or more) in whatever manner exercised, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. If no consent is required, the Grantee will nonetheless provide the City notice of such transfer or change of control hereunder in writing within thirty (30) days of the event occurring. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with federal rules and regulations, notify the Grantee, and the proposed transferee or new controlling party in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given. Grantee shall continue service throughout any transfer or change of control. This Franchise's terms and conditions shall be binding on any successors or assigns hereunder.

## **Section 9. - Insurance, Indemnity and Environmental Liability**

### 9.1 Insurance

9.1.1 Throughout the term of this Franchise, the Grantee shall, at its own cost and expense, maintain and provide evidence of self-insurance and/or an insurance certificate, that names the City, its officers, elected officials, agents, employees,



representatives, engineers, consultants and volunteers as additional insureds, to the City prior to the commencement of this Franchise's Effective Date and annually thereafter upon request. Self-insurance applies to Grantee's own facilities and not liability insurance situations. Such self-insurance and/or insurance certificate shall evidence the following minimum coverages:

- (1) Comprehensive general/excess liability insurance including coverage for premises - operations, explosions and collapse hazard, underground hazard and products completed hazard, with limits not less than: \$2,000,000 (Two Million dollars) per occurrence (and also in the aggregate for bodily injury or death to each person), and for property damage resulting from any one accident, and for general liability;
- (2) Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 (One Million dollars) for each person (and for each accident); and
- (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$5,000,000 (Five Million dollars);

9.1.2 If coverage is purchased on a "claims made" basis, then Grantee shall warrant 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 termination of this Franchise, and/or conversion from a "claims made" form to an "occurrence" coverage form. The required liability limits may be met under a primary or an excess policy, or any combination thereof. Any deductibles or self-insured retentions must be declared to the City, if requested by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Grantee. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability.

9.1.3 Grantee's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of Grantee's insurance and shall not contribute to it. In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide that: "The above described policies will not be canceled before the expiration date thereof, without the issuing company giving thirty (30) days written notice to the certificate holder." In the event of said cancellation or intent not to renew, Grantee shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date.

## 9.2 Indemnification

- 9.2.1 The Grantee shall indemnify, defend and hold harmless the City, its appointed and elected officials, agents, officers, employees and volunteers from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, on account of injury, harm, death or damage to persons or property which is caused, in whole, or in part, by the acts or omissions of Grantee or its agents, employees, contractors, or subcontractors in the exercise of the rights granted to Grantee by this Franchise.
- 9.2.2 The Grantee shall indemnify, defend and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided per this Franchise, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing 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. This waiver has been mutually negotiated by the parties.
- 9.2.3 In the event any matter (for which the City intends to assert its rights under this Subsection 9.2) is presented to or filed with the City, the City shall promptly notify Grantee thereof, and Grantee shall have the exclusive right, at its election and at its sole cost and expense, to settle and compromise such matter as it pertains to Grantee's responsibility to indemnify, defend and hold harmless the City, its agents, officials, officers, employees, and volunteers. In the event any suit or action is started against the City based upon any such matter, the City shall likewise promptly notify Grantee thereof, and Grantee shall have the exclusive right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Grantee's responsibility to indemnify, defend and hold harmless the City, its agents, officials, officers, employees, and volunteers.

### 9.3 Environmental Liability

Grantee shall at its own cost, expense, and liability, comply with all applicable laws, statutes, rules, and regulations concerning Hazardous Substances that relate to Grantee's Cable System. "Hazardous Substances" shall mean any material or substance which does cause or may cause environmental pollution or contamination (and associated liability and clean-up costs related thereto) as defined under applicable state and federal laws, rules, and regulations. Grantee shall be solely and separately liable and responsible for the containment, remediation and/or clean-up of any release of Hazardous Substances directly arising from or relating to Grantee's Cable System. Grantee shall indemnify, defend and hold the City harmless from any fines, suits, procedures, claims, costs, damages, expenses, and actions of any kind arising out of or in any way connected with any release(s) of Hazardous Substances directly arising from or related to Grantee's Cable System. This indemnity includes, but is not limited to:

- (1) liability for a governmental agency's costs of removal or remedial action for Hazardous Substances;
- (2) damages to natural resources caused by Hazardous Substances, including the reasonable costs of assessing such damages;
- (3) liability for the City's costs of responding to Hazardous Substances; and
- (4) liability for any costs of investigation, abatement, mitigation, correction, remediation, cleanup, fines, penalties, or other damages arising under any environmental laws.

## **Section 10. - System Description and Complimentary Service**

### **10.1 System Capacity**

During the term of this Franchise the Grantee's Cable System shall be 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. Grantee will provide the City notification if Grantee is modifying its channel programming. Grantee will provide at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;
- (2) News, weather and information;
- (3) Sports;
- (4) General entertainment including movies;
- (5) Children, family oriented;
- (6) Arts, culture and performing arts; and,
- (7) Science/documentary.

### **10.2 Service to City Governmental Facilities**

The City acknowledges that the Grantee currently provides certain complimentary video services to schools, libraries and/or municipal buildings, and that the ongoing provision of those services has been impacted by the FCC's recent 621 Order (FCC 19-80). At such time as Grantee elects to offset the value of complimentary service against Franchise Fees payable to the City in accordance with applicable federal law, the Grantee agrees that it will do so after providing City one hundred twenty (120) Days' prior written notice. Upon written notice from the Grantee, the City shall be given the full 120 days to review the list of outlets receiving complimentary service and shall have the right to discontinue receipt of all or a portion of the outlets receiving complimentary service provided by Grantee in the event Grantee elects to offset the value of complimentary service as set forth in the preceding sentence. In the event the Section 621 Order is stayed or overturned in whole or in part by action of the FCC or through judicial review, the City and the Franchisee will meet promptly to discuss what impact

such action has on the provision of the in-kind cable-related contributions to which this section applies.

## **Section 11. - Enforcement and Termination of Franchise**

### 11.1 Notice of Violation or Default

In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

### 11.2 Grantee's Right to Cure or Respond

The Grantee shall have forty-five (45) days from the receipt of the City's written notice:

- (1) to respond to the City, contesting the assertion of noncompliance or default; or
- (2) to cure such default; or
- (3) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

### 11.3 Judicial Remedies

In the event the Grantee fails to respond to the City's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the City may commence judicial proceedings.

### 11.4 Enforcement

Subject to applicable federal and state law, the City may:

- (1) seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; and
- (2) seek monetary damages in a judicial proceeding; and
- (3) in the case of a default of a material provision of the Franchise, declare the Franchise to be revoked.

At the judicial proceeding regarding revocation, the court shall grant such relief as the court may deem proper.

### 11.5 Technical Violation

The City agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

- (1) in instances or for matters where a violation or a breach of the Franchise by the Grantee was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or
- (2) where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

11.6 Continued Performance During Dispute

Unless otherwise agreed by the parties in writing, the parties shall, as may be reasonably practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute and for a reasonable time thereafter to implement whatever decision arises from the dispute.

11.7 No Impairment of Grantee's Duties to Relocate Cable System

The timeframes specified within this Section 11.7 shall not alter, modify, or impair Grantee's duty to relocate Grantee's Cable System within the Public Way, and shall not alter, modify, or impair Grantee's duty to locate underground portions of Grantee's Cable System within the Public Way, pursuant to the terms of Section 3 of this Franchise.

11.8 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City or Grantee to seek or obtain judicial relief from a violation of any provision of the Franchise. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City or Grantee to recover monetary damages for such violations by the other party, or to seek and obtain judicial enforcement of the other party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

## **Section 12. - Miscellaneous Provisions**

12.1 Force Majeure

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation (if Grantee is precluded from operating its Cable System) or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as other similar unforeseen circumstances completely outside of Grantee's control.

12.2 Notices

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City Clerk  
City of Blaine  
435 Martin St  
Blaine, WA 98230

To the Grantee:

Government Affairs  
Comcast Cable Communications Management, LLC  
15815 25th Ave W  
Lynnwood, WA 98087

With a copy to:

Government Affairs  
Comcast Cable Communications Management, LLC  
400 Sequoia Dr STE 100  
Bellingham, WA 98226

12.3 Entire Franchise

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

12.4 Severability

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

12.5 Governing Law; Compliance with Laws

This Franchise shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, and all applicable federal laws, rules, and regulations. The parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

- 12.6 Modification  
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 City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.
- 12.7 No Third-Party Beneficiaries  
Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.
- 12.8 No Waiver of Rights  
Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, the City or Grantee may have under Federal or state law unless such waiver is subsequently agreed to by the parties in writing. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of future compliance of that term or condition, and such terms or conditions shall remain in full force and effect.
- 12.9 Attorneys' Fees  
If any action or suit arises in connection with this Franchise, excluding subsequent franchise renewal proceedings, the prevailing party shall be entitled to recover reasonable costs and expenses in connection therewith as allowed by the court, in addition to such other relief, such as reasonable attorneys' fees, as the court may deem proper.
- 12.10 Venue  
Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in the United States District Court for the Western District of Washington in Seattle or Whatcom County Superior Court in Bellingham, Washington.
- 12.11 Costs and Expenses to be Borne by Grantee  
Costs and expenses to be borne by Grantee shall include the application fee and publication and hearing costs related to this Franchise.
- 12.12 Counterparts  
This Franchise Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.
- 12.13 Descriptive Headings  
The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.
- 12.14 Time is of the Essence  
Whenever this Franchise shall set forth any time for an act to be performed by or on behalf of either party, such time shall be deemed of the essence.

IN WITNESS WHEREOF, this Franchise has been executed by the duly authorized representatives of the parties as set forth below, as of the dates set forth below:

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF BLAINE, WASHINGTON

\_\_\_\_\_  
Bonnie Onyon, Mayor

ATTEST:

\_\_\_\_\_  
Samuel Crawford, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

This acceptance of the Franchise is unconditionally made without reservation. Grantee (Comcast Cable Communications Management, LLC) accepts all of the rights and privileges of the Franchise subject to all of the terms, conditions, duties, and obligations of the Franchise.

Accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST: Comcast Cable Communications Management, LLC

\_\_\_\_\_  
Public Notary

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_