



**CITY COUNCIL MEETING AGENDA
Council Chambers, 1000 Laurel Street**

**January 8, 2018
Monday**

**Special Meeting
7:00 p.m.**

- 1. Call to Order and Flag Salute**
- 2. Roll Call of Councilmembers**
- 3. Additions/Deletions**
- 4. Citizen Participation**

Citizens may comment on any topic that is not on the Regular Agenda. To comment, please raise your hand to request recognition by the Mayor. Once so recognized, please step to the podium and state your name and address for the record before making your comments. Also, please limit your comments to no more than three (3) minutes.

The public may comment on individual agenda items on the Regular Agenda prior to Council's action. The public may also submit written communications, via letters or emails to sstyronsherrell@cityofmilton.net. Any item received by noon on the day of the meeting will be distributed to Council.

- 5. Minutes Approval – 1/2/2018 Regular Meeting**
- 6. Regular Agenda**
 - A. Ordinance 1st Read – Street Vacation of Portion of Emerald Street
 - B. Resolution – Comcast Franchise Agreement
 - C. Contract Amendment – Robinson Noble – Well #10
 - D. Voucher Approval
- 7. Council Reports**
- 8. Director's Reports**
- 9. Mayor's Report**
- 10. Adjournment**

If you need ADA accommodations, please contact City Hall at (253) 517-2705 prior to the meeting.

Thank you.



Regular Meeting
Tuesday, January 2, 2018
7:00 p.m.

CALL TO ORDER

Mayor Styron Sherrell called the Regular Meeting to order at 7:00 p.m., and led the flag salute.

ROLL CALL

Present: Mayor Pro Tem Whalen, Councilmembers Whitaker, Johnson, Ott, Tompkins, Morton, and Hutson

STAFF PRESENT

Police Chief/City Administrator Hernandez, City Attorney Cameron, Public Works Director Peretti, City Engineer Howlett, City Clerk Bolam

ADDITIONS/DELETIONS

Mayor Styron Sherrell scheduled an Executive Session right before Adjournment.

CITIZEN PARTICIPATION

Speaker	Comments
Chief Backer	Provided statistics and general information regarding the recent fire at Alder Ridge
Richard Cosner	Provided a photo presentation of the Alder Ridge fire – Chief Backer provided some detailed narrative

CONSENT AGENDA

- A. Minutes – Approval of the minutes of:
 - 1. December 4, 2017 Regular Meeting
 - 2. December 11, 2017 Special Meeting
 - 3. December 18, 2017 Regular Meeting
- B. Claims Approval:

1. Approval of the 2017 checks/vouchers numbered 62784-62830 in the amount of \$155,801.01.
2. Approval of the 2018 checks/vouchers numbered 62831-62842 in the amount of \$224,917.87.
3. Approval of the payroll disbursement of 12/20/2017 and related checks numbered 62773-62783 in the amount of \$167,829.66.

COUNCILMEMBER OTT MOVED, seconded by Councilmember Morton, to pass the Consent Agenda.

Councilmember Tompkins requested the Finance Committee's questions/comments be provided to the rest of Council.

The motion was voted on and passed 7/0.

REGULAR AGENDA

A. Selection of 2018 Mayor Pro Tem

Mayor Styron Sherrell introduced this item, provided for discussion time, and opened the floor for discussion prior to nominations. The floor was opened for nominations:

- Councilmember Johnson nominated Councilmember Whalen
- Councilmember Tompkins nominated Councilmember Hutson

The floor was closed for nominations.

VOTE for Councilmember Whalen was taken by roll call – **Failed 3/4** (Johnson/Whalen/Morton minority)

VOTE for Councilmember Hutson was taken by roll call – **Passed 4/3** (Johnson/Whalen/Morton minority)

Councilmember Hutson selected Mayor Pro Tem for 2018.

B. Councilmember Appointments to Regional Boards

Mayor Styron Sherrell asked for volunteers for serving on these boards.

COUNCILMEMBER WHALEN MOVED, seconded by Councilmember Tompkins, to appoint as follows:

PCRC – Mayor / Johnson
SCA – Mayor / Tompkins

The motion passed 7/0.

C. Resolution – Setting Public Hearing for Street Vacation of a Portion of Diamond Street

City Engineer Howlett explained this item.

COUNCILMEMBER OTT MOVED, seconded by Councilmember Whalen, to approve the attached Resolution setting a public hearing for February 5, 2018 for the vacation of a portion of Diamond Street west of 10th Avenue. **Passed 7/0.**

D. PUBLIC HEARING – Resolution – Concomitant Agreement Approval – Falk Development

City Attorney Cameron explained this item.

At 7:53pm, the Public Hearing was opened.

Speaker	Comments
Jacquelyn Whalen	Referred to the long age of the permits, asking about building standards, setbacks, storm water, etc

At 7:55pm, the Public Hearing was closed.

COUNCILMEMBER TOMPKINS MOVED, seconded by Councilmember Whalen, to approve the attached Resolution authorizing the attached Concomitant Agreement with Falk Development, Inc. **Passed 7/0.**

E. Grant Acceptance – Yuma Street Overlay

City Engineer Howlett explained this grant award information, the \$48,033 matching funds requirement, and that the City will work closely with the City of Edgewood on it.

COUNCILMEMBER OTT MOVED, seconded by Councilmember Morton, to accept the \$432,303 grant from the Washington State Transportation Improvement Board for the Yuma Street Overlay Project and authorize the Mayor to sign all documents necessary to execute the grant, and approve the \$48,033 in appropriated funding. **Passed 7/0.**

COUNCIL REPORTS

Councilmembers centered their remarks on the impressive community and agency response to the Alder Ridge fire, thanking everyone involved.

DIRECTOR REPORTS

Chief Hernandez

- Many responding agencies to fire – this was a best-case scenario with no fatalities or serious injuries

Director Peretti

- The snowy weather, coupled with the fire event, taxed the PW crews, but they did a great job

MAYOR'S REPORT

- Privilege to serve as your Mayor – honored to work hard for Milton

EXECUTIVE SESSION

At 8:36 pm, Mayor Styron Sherrell recessed the meeting to Executive Session for the purpose of discussing with legal counsel the performance of a public employee, as per RCW 42.30.110 (1) (g).”

At 9:06 the meeting was called back to order.

ADJOURNMENT

The next meeting is on Monday, January 8, 2018.

The meeting was adjourned at 9:07 p.m.

ATTEST:

Shanna Styron Sherrell, Mayor

Katie Bolam, City Clerk

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To: Mayor Styron Sherrell and City Council Members
From: William L. Cameron, City Attorney
Date: January 8, 2018
Re: **Ordinance 1st Read – Street Vacation of Portion of Emerald Street – Falk Development, Inc.**

ATTACHMENTS: Ordinance

TYPE OF ACTION:

Information Only Discussion Action Public Hearing Expenditure

Recommended Actions:

1. Discussion of First Reading of Vacation Ordinance
2. Decide on two or three councilmembers to conduct the public hearing – then vote to appoint:
MOTION – “I move to appoint (*insert names*) to conduct the public hearing on January 16, 2018, in accord with the Council’s Resolution concerning the vacation of an unused portion of Emerald Street between Meridian and 28th.”

Financial Impact: None

Issue: A more complete explanation of the current situation with the Falk Development property at Meridian and Emerald was provided to Council on January 2, at which time Council approved Resolution 18-1898 authorizing a concomitant agreement with Falk Development.

The vacation of the now unused portion of Emerald Street is now before Council. A Public Hearing will be held to take any public testimony on January 16, 2018, as provided by previous resolution. The ordinance will be presented for second reading/adoption at the February 5, 2018 Council Meeting.

ORDINANCE _____

**AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON,
VACATING RIGHT-OF-WAY NO LONGER NECESSARY FOR
EMERALD STREET BETWEEN 28TH AVENUE AND MERIDIAN
AND LYING THREE FEET SOUTH OF THE SOUTH SIDEWALK,
AS MORE PARTICULARLY SET FORTH HEREIN.**

WHEREAS, the City Council by the adoption of a Resolution on December 4, 2017, fixed a time and place for a public hearing to vacate the hereinafter described portion of Emerald Street fixing the hearing for 7:00 PM on January 16, 2018, or as soon thereafter as the public may be heard; said date is not more than sixty days nor less than twenty days after the date of passage of the resolution and fixing the place of hearing at the Milton Council Chambers, 1000 Laurel Street, Milton, Washington; and

WHEREAS, pursuant to RCW 35.79.020, notices for the time and place of the hearing were properly given; and

WHEREAS, all steps and procedures required by law to vacate the hereinafter described portion of Emerald Street have been duly taken and carried out; and

WHEREAS, the execution of a Concomitant Agreement with Falk Development, Inc. is found to be adequate consideration for the vacated property; and

NOW, THEREFORE, the City Council of the City of Milton, Washington do ordain as follows:

Section 1. That the portion of Emerald Street lying more than three feet south of the present south sidewalk on Emerald street between 28th and Meridian is hereby vacated, subject to the city retaining an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services.

Section 2. Effective Date. This ordinance shall take effect and be in full force five (5) days from and after publication.

Approved this 5th day of February 2018.

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ATTEST

Katie Bolam, City Clerk

Shanna Styron Sherrell, Mayor

APPROVED AS TO FORM:

William L. Cameron, City Attorney

Published: _____
Effective Date: _____



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To: Mayor Styron Sherrell and City Council Members
From: Mark Howlett, P.E., City Engineer
Date: January 8, 2018
Re: **Resolution – Franchise Extension Agreement with Comcast**

ATTACHMENTS: Resolution Extending Franchise Agreement with Comcast
Original Franchise Agreement

TYPE OF ACTION:

Information Only Discussion Action Public Hearing Expenditure

Recommendations/Actions: I move to adopt the Resolution extending for a period of 5 years the Franchise Agreement between the City of Milton and Comcast.

Fiscal Impact/Source of Funds: No Budgetary Impact

Issue: The Franchise Agreement between the City of Milton has expired and is in need of being extended.

Discussion: Comcast, like most private utilities in the City, has a Franchise Agreement with the City of Milton. This agreement spells out the terms and conditions under which Comcast serves the citizens of Milton. It also dictates the requirements of how Comcast installs and, if necessary, relocates their facilities to accommodate public works projects.

The City and Comcast have been operating under the terms of the previous franchise since its expiration. In order to continue coverage under the terms of the original franchise, it is necessary to extend its expiration date through the adoption of the attached Resolution.

**CITY OF MILTON
RESOLUTION NO. __-__**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MILTON, WASHINGTON AUTHORIZING THE MAYOR
TO EXTEND A CABLE TV FRANCHISE AGREEMENT
WITH COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC.**

WHEREAS, the City entered into a cable TV franchise agreement with Comcast Cable Communications Management, LLC, effective on September 26, 2011, and

WHEREAS, pursuant to paragraph 2.3 of the above referred to agreement, the agreement is five (5) years in duration and contains a provision that it may be extended by mutual agreement for a period of additional five (5) years, and

WHEREAS, the City and Comcast Cable Communications Management, LLC have reached a mutual agreement for a five (5) year extension; Now, Therefore

**THE CITY COUNCIL OF THE CITY OF MILTON, WASHINGTON DOES
HEREBY RESOLVE AS FOLLOWS:**

Section 1: That the Franchise Agreement with Comcast Cable Communications Management, LLC, the successor in interest to Comcast, as executed on September 26, 2011 shall be extended for a period of five (5) years, expiring on September 26, 2022.

Section 2: The Franchise Agreement, which is being extended for a period of five (5) years, is attached hereto and incorporated by reference as Exhibit A.

Section 3: If any provision of this Resolution and/or the attached Exhibit A is determined to be invalid or unenforceable for any reason by federal, state or local law, the remaining provisions of this Resolution and/or the provisions set forth in the attached Exhibit A will remain in force and affect.

Section 4: Neither party waives any rights which it enjoys under law as a result of agreeing to this extension.

PASSED AND APPROVED at a regular meeting of the Council of the City of Milton, this _____ day of _____, 2018.

Shanna Styron Sherrell, Mayor

Attest:

Katie Bolam, City Clerk

Approved as to Form:

Katie Bolam, City Clerk

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3 **CABLE TV FRANCHISE AGREEMENT**
4 Between City of Milton & Comcast of Puget Sound, Inc.
5
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ORIGINAL

- 1 "State"
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1 CABLE TV FRANCHISE AGREEMENT
2

3 **SECTION 1. DEFINITIONS**

4 For the purposes of this Franchise and all exhibits attached hereto the following terms, phrases,
5 words and their derivations shall have the meanings given herein. When not inconsistent with
6 the context, words used in the present tense include the future, words in the plural include the
7 singular, and words in the singular include the plural. Words not defined shall be given their
8 common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

9 **"Access"**

10 means the availability for Noncommercial use by various governmental and educational
11 agencies, including Grantor and its designees, of particular channels on the System to receive
12 and distribute Video Programming to Subscribers, as permitted under applicable law, including,
13 but not limited to:

14 (A) "Educational Access" means Access where Schools are the primary users having
15 editorial control over programming and services.

16 (B) "Governmental Access" means Access where governmental institutions or their
17 designees are the primary users having editorial control over programming and services; and

18 (C) "Access" means Educational Access and Governmental Access, collectively.

19 **"Access Center"**

20 means a facility or facilities where signals are managed and delivered to the Grantee for
21 Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

22 **"Access Channel"**

23 means any Channel, or portion thereof, designated for Noncommercial Access purposes or
24 otherwise made available to facilitate or transmit Access programming.

25 **"Access Fees"**

26 means the Capital Fee paid to the Grantor by the Grantee in accordance with section 9.1 below.

27 **"Activation" or "Activated"**

28 means the status of any capacity on or part of the System wherein the use of that capacity or part
29 thereof may be made available without further installation of system equipment other than
30 Subscriber premise equipment, whether hardware or software.

31 **"Affiliated Entity" or "Affiliate"**

32 means when used in connection with Grantee any corporation, Person who owns or controls, is
33 owned or controlled by, or is under common ownership or control with, Grantee and its
34 successor corporations. Affiliated Entity or Affiliate also means any Person with whom Grantee
35 contracts to provide Cable Services on the Cable System.

36 **"Bad Debt"**

37 means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee,
38 but not collected after reasonable efforts by Grantee.

1 **"Basic Service"**
2 means any Cable Service tier which includes, at a minimum, the retransmission of local
3 television Broadcast Signals.

4 **"Broadcast Signal"**
5 means a television signal transmitted over the air to a wide geographic audience, and received by
6 a System off-the-air by antenna, microwave, satellite dishes or any other means.

7 **"Cable Acts"**
8 means the Cable Communications Policy Act of 1984, and the Cable Television Consumer
9 Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996
10 and any amendments thereto.

11 **"Cable Operator"**
12 means any Person or groups of Persons, including Grantee, who provides Cable Service over a
13 System and directly or through one or more Affiliates owns a significant interest in such System
14 or who otherwise control(s) or is(are) responsible for, through any arrangement, the management
15 and operation of such a System.

16 **"Cable Service"**
17 means the one-way transmission to Subscribers of Video Programming, or other programming
18 service and Subscriber interaction, if any, which is required for the selection or use of such
19 Video Programming or other programming service.

20 **"Channel"**
21 means a portion of the frequency band capable of carrying a Video Programming Service or
22 combination of Video Programming Services, whether by analog or digital signal, on a twenty-
23 four (24) hour per day basis or a portion thereof.

24 **"Connection"**
25 with regard to connections to public buildings, means installation of fiber optic or coaxial cable
26 or other System related facilities through the outer wall of the building.

27 **"Designated Access Provider"**
28 means the entity or entities designated by the Grantor to manage or co-manage Educational or
29 Governmental Access Channels and facilities. The Grantor may be a Designated Access
30 Provider.
31

32 **"Designated Distributor"**
33 means any entity authorized by Grantor to distribute Access Programming.

34 **"Downstream Channel"**
35 means a Channel capable of carrying a transmission from the Headend to remote points on the
36 System.

37 **"Dwelling Unit"**
38 means any residential building, or each portion thereof.

1 **"Expanded Basic Service"**

2 means cable programming services not included in the Basic Service and excluding premium or
3 pay-per-view services.

4 **"FCC"**

5 means the Federal Communications Commission or its lawful successor.

6 **"Fiber Optic"**

7 means a transmission medium of optical fiber cable, along with all associated electronics and
8 equipment capable of carrying Cable Service by means of electric lightwave pulses.

9 **"Franchise"**

10 means the document in which this definition appears, which is executed between Grantor and
11 Grantee, containing the specific provisions of the authorization granted and the contractual and
12 regulatory agreement created hereby.

13 **"Franchise Area"**

14 means the area within the jurisdictional boundaries of the Grantor, including any areas annexed
15 by Grantor during the term of this Franchise.

17 **"Franchise Fee"**

18 includes any tax, fee or assessment of any kind imposed by the Grantor on the Grantee or
19 Subscribers, or both solely because of their status as such. The term Franchise Fee does not
20 include:

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

22 (B) Capital costs which are required by the Franchise to be incurred by the Grantee
23 for educational or governmental access facilities, including the support required in Section 9.1;

24 (C) Requirements or charges incidental to the awarding or enforcing of the franchise,
25 including but not limited to, payments for bonds, letters of credit, insurance, indemnification,
26 penalties or liquidated damages; or

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

29 **"Grantee"**

30 Means Comcast of Puget Sound, Inc. or its lawful successor, transferee or assignee.

32 **"Grantor"**

33 Means the City of Milton.

34 **"Gross Revenues"**

35 means any and all revenue derived directly or indirectly by the Grantee, or by any other entity
36 that is a Cable Operator of the Cable System including Grantee's Affiliates, from the operation
37 of Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues
38 include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable
39 Services including Basic Service, any expanded tiers of Cable Service, optional Premium
40 Services; installation, disconnection, reconnection and change-in-service fees, Leased Access
41 Channel fees, all Cable Service lease payments from the Cable System, late fees and

1 administrative fees, revenues from rentals or sales of converters or other Cable System
2 equipment; advertising sales revenues (including local, regional and a pro rata share of national
3 advertising carried on the Cable System in the Franchise Area) net of commissions due to
4 advertising agencies that arrange for the advertising buy; the fair market value of consideration
5 received by the Grantee for use of the Cable System to provide Cable Service and accounted for
6 as revenue under GAAP; revenues from program guides, additional outlet fees, Franchise Fees,
7 revenue from interactive services to the extent they are considered Cable Services under federal
8 law, revenue from the sale or carriage of other Cable Services, and revenues from home
9 shopping, and other revenue-sharing arrangements. Gross Revenues shall include revenue
10 received by any entity other than the Grantee where necessary to prevent evasion or avoidance of
11 the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include
12 (i) to the extent consistent with GAAP, Bad Debt, provided, however, that all or part of any such
13 Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in
14 the period collected; (ii) the Capital Fee specified in subsection 9.1; (iii) any taxes on services
15 furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City
16 or other governmental unit and which are collected by the Grantee on behalf of said
17 governmental unit. The Franchise Fee is not such a tax.

18
19 The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent
20 with existing applicable law.

21 **"Headend" or "Hub"**

22 means any Facility for signal reception and dissemination on a System, including cable,
23 antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast
24 Signals or other signals, equipment for the interconnection of the System with adjacent Systems
25 and interconnection of any networks which are part of the System, and all other related
26 equipment and Facilities.

27 **"Leased Access Channel"**

28 means any Channel or portion of a Channel commercially available for programming in
29 accordance with Section 612 of the Cable Act.

30 **"Noncommercial"**

31 means, in the context of Access Channels, that particular products and services are not promoted
32 or sold. This term shall not be interpreted to prohibit an Access Channel operator or programmer
33 from soliciting and receiving financial support to produce and transmit video programming on an
34 Access Channel, or from acknowledging a contribution, in the manner of the Corporation for
35 Public Broadcasting.

36 **"Normal Business Hours"**

37 means those hours during which most similar businesses in the community are open to serve
38 customers.

39 **"Normal Operating Conditions"**

40 means those service conditions which are within the control of the Grantee. Those conditions
41 which are not within the control of the Grantee include, but are not limited to, natural disasters,
42 civil disturbances, power outages, telephone network outages, and severe or unusual weather

1 conditions. Those conditions which are ordinarily within the control of the Grantee include, but
2 are not limited to, special promotions, rate increases, and maintenance or upgrade of the System.

3 **"Pay Service" or "Premium Service"**

4 means Video Programming or other programming service choices (such as movie channels or
5 pay-per-view programs) offered to Subscribers on a per-channel, per-program or per-event basis.

6 **"Person"**

7 means any natural person, sole proprietorship, partnership, joint venture, association, or limited
8 liability entity or corporation, or any other form of entity or organization.

9 **"RCC"**

10 Rainier Communications Commission, established as an interlocal governmental cooperative,
11 pursuant to the Interlocal Cooperation Act, RCW 39.34, et. seq., and the general laws of the State
12 of Washington, its lawful successor, or, if none, that other consortium or interlocal agreement
13 formed by Grantor and any other municipal corporations that is designed to cooperate on
14 telecommunications and cable television services.

15 **"RMC"**

16 means the educational and governmental Access Center known as the Rainier Media Center
17 which is operated by the RCC or its lawful successor, or if none, that consortium formed by
18 Grantor and other political subdivisions and any other municipal corporations that is designed to
19 cooperate on Educational and Government Access services.
20

21 **"Rights-of-Way"**

22 means land acquired or dedicated for public streets or roads, highways, avenues, lanes, alleys,
23 bridges, sidewalks, easements and similar public property located within the Franchise area.

24 **"Roads"**

25 means Rights-of-Way.

26 **"School"**

27 means any accredited educational institution including, for example, primary and secondary
28 schools (K-12), colleges and universities and excluding home schools and residential facilities.

29 **"Service Interruption"**

30 means the loss of picture or sound on one or more cable channels.

31 **"State"**

32 means the State of Washington.

33 **"Subscriber"**

34 means any Person who lawfully receives Cable Services provided by Grantee by means of the
35 System with Grantee's express permission.

36 **"System" or "Cable System"**

37 means a facility, consisting of a set of closed transmission paths and associated signal generation,
38 reception and control equipment that is designed to provide Cable Service which includes video

1 programming and which is provided to multiple Subscribers within a community, but such term
2 does not include (1) a facility that serves only to retransmit the television signals of one or more
3 television broadcast stations; (2) a facility that serves Subscribers without using any public right-
4 of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions
5 of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility
6 shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. §
7 541(c)) to the extent such facility is used in the transmission of video programming directly to
8 Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4)
9 an open video system that complies with federal statutes; or (5) any facilities of any electric
10 utility used solely for operating its electric utility systems. When used herein, the term "Cable
11 System" or "System" shall mean Grantee's Cable System in the Franchise Area.

12 **"Tier"**

13 means a category of Cable Services provided by the Grantee for which a separate rate is charged.

14 **"Upstream Channel"**

15 means a Channel capable of carrying a transmission to the Headend from remote points on the
16 System.

17 **"Video Programming"**

18 means programming provided by, or generally considered comparable to programming provided
19 by, a television broadcast station.
20

21 **SECTION 2. GRANT OF FRANCHISE**

22 **2.1 Grant**

23 (A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to
24 make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct,
25 operate, maintain, reconstruct, and upgrade a System for the purpose of providing Cable
26 Services, subject to the terms and conditions set forth in this Franchise. This Franchise shall
27 constitute both a right and an obligation to provide the Cable Services required by, and to fulfill
28 the obligations set forth in, the provisions of this Franchise.

29 (B) The Grantee, through this Franchise, is granted the right to operate its System
30 using the Grantor's Rights-of-Way within the Franchise Area in compliance with all lawfully
31 enacted applicable Grantor construction codes and regulations. Nothing in this Franchise shall be
32 deemed to waive the requirements of the other codes and ordinances of general applicability
33 lawfully enacted, or hereafter lawfully enacted, by the Grantor to the extent that the provisions of
34 the codes and ordinances do not have the effect of materially limiting the benefits or materially
35 expanding the obligations of the Grantee that are granted by this Franchise. The Grantee
36 specifically agrees to comply with the provisions of Grantor ordinances provided that in the
37 event of a conflict between the provisions of ordinances and the Franchise, the express
38 provisions of the Franchise shall govern. Grantee reserves the right to challenge provisions of
39 any ordinance, rule, regulation, resolution or other enactment of the Grantor that conflicts with
40 its contractual right granted herein.

1 (C) This Franchise shall not be interpreted to prevent the Grantor from imposing
2 additional conditions, including additional compensation conditions for use of the Rights-of-
3 Way, should Grantee provide service other than Cable Service, to the extent permitted by law.

4 (D) Grantee promises and guarantees, as a condition of exercising the privileges
5 granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of
6 Cable Service in the Franchise Area, or directly involved in the management or operation of the
7 System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

8 (E) No rights shall pass to Grantee by implication.

9 (F) This Franchise is intended to convey limited rights and interests only as to those
10 Rights-of-Ways in which the Grantor has an actual interest. It is not a warranty of title or
11 interest in any Rights-of-Way; it does not provide the Grantee with any interest in any particular
12 location within the Rights-of-Way; and it does not confer rights other than as expressly provided
13 in the grant hereof.

14 **2.2 Use of Rights-of-Way**

15 (A) Subject to Grantor's supervision and control, Grantee may erect, install, construct,
16 repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-
17 Way within the Franchise Area, such wires, cables (both coaxial and fiber optic), conductors,
18 ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other
19 property and equipment as are necessary and appurtenant to the operation of a System for the
20 provision of Cable Services within the Franchise Area. Grantee shall comply with all applicable
21 construction codes, laws, ordinances, and regulations, now in effect or enacted hereafter. This
22 grant does not include the installation, maintenance or construction, repair or replacement of any
23 wireless telecommunications facilities or equipment within Rights-of-Way or otherwise on
24 Grantor owned property or on property held in trust or used by the Grantor.

25 (B) Grantee must follow Grantor-established written requirements including all
26 Grantor codes, ordinances and other regulations regarding placement of System facilities in
27 Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any
28 event install System facilities in a manner that minimizes interference with the use of the Rights-
29 of-Way by others, including others that may be installing communications facilities. The
30 Grantor may require that System facilities be installed at a particular time, at a specific place or
31 in a particular manner as a condition of access to a particular Right-of-way; may deny access if
32 Grantee is not willing to comply with Grantor's requirements; and may remove, or require
33 removal of, any facility that is not installed in compliance with the requirements established by
34 Grantor, or which is installed without prior Grantor approval of the time, place or manner of
35 installation and charge Grantee for all the costs associated with removal; and may require
36 Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through
37 joint trenching and other arrangements. Grantee shall assume all Grantee's costs associated with
38 any requirement of Grantor in the exercise of its police powers or in furtherance of any public
39 improvement to move its System located in the Right-of-way.

41 **2.3 Duration**

42 The term of this Franchise and all rights, privileges, obligations and restrictions pertaining
43 thereto shall be five (5) years from the effective date of this Franchise, unless terminated sooner

1 as hereinafter provided. This Franchise may be extended by mutual agreement of the parties for
2 five (5) additional years.

3 **2.4 Effective Date**

4 The provisions of this Franchise shall be effective upon the written acceptance of this Franchise
5 by the Grantee, signed by its proper officers, filed with the Clerk of the Grantor within sixty days
6 from August 1st, 2011.

7 **2.5 Franchise Nonexclusive**

8 This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or
9 licenses granted by Grantor or its predecessors to any Person to use any property, Rights-of-
10 Way, easement, right, interest or license for any purpose whatsoever, including the right of
11 Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed
12 Grantee hereunder. Grantor may at any time grant authorization to use the Rights-of-Way for
13 any purpose not incompatible with Grantee's authority under this Franchise and for such
14 additional Franchises for Systems as Grantor deems appropriate.

15 **2.6 Grant of Other Franchises**

16 (A) The Grantee acknowledges and agrees that the Grantor reserves the right to grant
17 one or more additional franchises to provide Cable Service within the Franchise Area; provided,
18 the Grantor agrees that it shall amend this Franchise to include any material terms or conditions
19 that it makes available to the new entrant within ninety (90) days of the Grantee's request, so as
20 to ensure that the regulatory and financial burdens on each entity are materially equivalent.
21 "Material terms and conditions" include but are not limited to: franchise fees; insurance; system
22 build-out requirements; security instruments; public, education and government Access Channels
23 and support; customer service standards; required reports and related record keeping; and notice
24 and opportunity to cure breaches. If any such additional or competitive franchise is granted by
25 the Grantor which, in the reasonable opinion of the Grantee, contains more favorable or less
26 burdensome terms or conditions than this Franchise, the Grantor agrees that it shall amend this
27 Franchise to include any more favorable or less burdensome terms or conditions in a manner
28 mutually agreed upon by Grantor and Grantee.

29
30 (B) In the event an application for a new cable television franchise is filed with the
31 Grantor proposing to serve the Franchise Area, in whole or in part, the Grantor shall provide
32 notice of such application.

33
34 (C) In the event that a wireline multichannel video programming distributor provides
35 video service to the residents of the Grantor under the authority granted by federal or State
36 legislation or other regulatory entity, the Grantee shall have a right to request Franchise
37 amendments that relieve the Grantee of regulatory burdens that create a competitive
38 disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking
39 to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline
40 competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise
41 place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be
42 amended or repealed in order to eliminate the competitive disadvantage. The Grantor shall not
43 unreasonably withhold consent to the Grantee's petition.
44

1 **2.7 Familiarity with Franchise**

2 The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreement
3 granted herein, that it has carefully read and fully comprehends the terms and conditions of this
4 Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions,
5 terms and conditions herein. The Grantee further acknowledges and states that it has fully
6 studied and considered the requirements and provisions of this Franchise, and finds that the same
7 are commercially practicable at this time and consistent with all local, state and federal laws and
8 regulations currently in effect, including the Cable Act.

9 **2.8 Effect of Acceptance**

10 By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right
11 to issue and enforce the Franchise; (2) agrees that it will not oppose the Grantor's intervening in
12 any legal or regulatory proceeding affecting the System; (3) accepts and agrees to comply with
13 each and every provision of this Franchise; and (4) agrees that the Franchise was granted
14 pursuant to processes and procedures consistent with applicable law, and that it will not raise any
15 claim to the contrary.

16 **2.9 Police Powers**

17 Grantee's rights hereunder are subject to the police powers of Grantor to adopt and enforce
18 ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to
19 comply with all applicable laws, ordinances and regulations enacted pursuant to the police
20 powers of Grantor, or hereafter enacted in accordance therewith, by Grantor or any other legally-
21 constituted governmental unit having lawful jurisdiction over the subject matter hereof. Any
22 conflict between the provisions of this Franchise and any other present or future lawful exercise
23 of Grantor's police powers shall be resolved in favor of the latter.

25 **2.10 Franchise Area**

26 Grantee shall provide Cable Service, as authorized under this Franchise, within the Franchise
27 Area.
28

29 **SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS**

30 **3.1 Franchise Fee**

31 As compensation for the use of Grantor's Rights-of-Way or Roads, Grantee shall pay as a
32 Franchise Fee to Grantor, throughout the duration of this Franchise, an amount equal to five
33 (5%) percent of Grantee's Gross Revenues associated with Grantee's operation of its System in
34 the Franchise Area. Accrual of such Franchise Fee shall commence as of the effective date of
35 this Franchise.

36 **3.2 Payments**

37 Grantee's Franchise Fee payments to Grantor shall be computed quarterly for the preceding
38 calendar quarter ending September 30, December 31, March 31 and June 30. Each quarterly
39 payment shall be due and payable no later than forty-five (45) days after said dates.

1 **3.3 Acceptance of Payment**

2 No acceptance of any payment shall be construed as an accord by Grantor that the amount paid
3 is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of
4 any claim Grantor may have for further or additional sums payable or for the performance of any
5 other obligation of Grantee.

6 **3.4 Quarterly Franchise Fee Reports**

7 Each payment shall be accompanied by a written report to Grantor, verified by an officer of
8 Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's
9 Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross
10 Revenues of the System and shall be drafted in accordance with generally accepted accounting
11 principles.

12 **3.5 Audits**

13 On an annual basis, upon thirty (30) days' prior written notice, Grantor shall have the right to
14 conduct an independent audit of Grantee's records related to this Franchise and to re-compute
15 any amounts determined to be payable under this Franchise. Provided Grantee cooperates in
16 making all relevant records available upon request, Grantor will in good faith attempt to
17 complete each audit within six (6) months, and the audit period shall not be any greater than the
18 previous three (3) years, unless Grantor has information relating to previous years beyond the
19 three (3) which raises doubt as to the accuracy of payments made under this or previous
20 Franchises. Any additional amounts due to the Grantor as a result of the audit shall be paid
21 within sixty (60) days following written notice to the Grantee by the Grantor, which notice shall
22 include a copy of the audit findings. If the audit shows that Franchise Fees have been underpaid,
23 by three percent (3%) in a calendar year or more, Grantee shall pay the total cost of the audit.

24 **3.6 Financial Records**

25 Grantee agrees to meet with a representative of the Grantor upon written request to review
26 Grantee's method of record-keeping, financial reporting, the computing of Franchise Fee
27 obligations and other procedures, the understanding of which the Grantor deems necessary for
28 reviewing reports and records that are relevant to the enforcement of this Franchise.

29 **3.7 Interest on Late Payments**

30 In the event any payment is not received within forty-five (45) days from the end of the calendar
31 quarter, Grantee shall pay, in addition to the payment or sum due, interest from the due date at an
32 interest rate of 1%, beginning on the forty-sixth (46th) day after the end of the calendar quarter
33 and continuing every day thereafter until the seventy-sixth (76th) day after the end of the calendar
34 quarter, or until payment is made, whichever is earlier. If any payment is not received within
35 seventy-six (76) days after the end of the calendar quarter, Grantee shall be assessed a late fee in
36 the additional amount of two hundred dollars (\$200.00) per day, beginning on the seventy-sixth
37 (76th) day after the end of the calendar quarter and continuing every day thereafter until paid.

38 **3.8 Maximum Franchise Fee**

39 The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a
40 Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the
41 duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent
42 (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide

1 that such excess amount shall be added to the Franchise Fee to be paid by Grantee to Grantor
2 hereunder, provided that all providers of Cable Service in the Franchise Area over which the
3 Grantor has jurisdiction are treated in an equivalent manner, and Grantee has received sixty (60)
4 days prior written notice from Grantor of such amendment.

5 **3.9 Additional Commitments Not Franchise Fees**

6 No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to
7 pay Franchise Fees. Although the total sum of Franchise Fee payments and additional
8 commitments set forth elsewhere in this Franchise may total more than five percent (5%) of
9 Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional
10 commitments herein are not Franchise Fees, nor are they to be offset or credited against any
11 Franchise Fee payments due to Grantor, nor do they represent an increase in Franchise Fees to be
12 passed through to Subscribers pursuant to any federal law. Access Fees are not to be offset
13 against and are not Franchise Fees.

14 **3.10 Payment on Termination**

15 If this Franchise terminates for any reason, the Grantee shall file with the Grantor within ninety
16 (90) calendar days of the date of the termination, a financial statement, certified by an
17 independent certified public accountant, showing the Gross Revenues received by the Grantee
18 since the end of the previous fiscal year. Within sixty (60) days of the filing of the certified
19 statement with the Grantor, Grantee shall pay any unpaid amounts as indicated. If the Grantee
20 fails to satisfy its remaining financial obligations as required in this Franchise, the Grantor may
21 do so by utilizing the funds available in a Letter of Credit or other security provided by the
22 Grantee.

23 **SECTION 4. ADMINISTRATION AND REGULATION**

24 **4.1 General Provisions**

25 (A) Grantor shall be vested with the power and right to administer and enforce the
26 requirements of this Franchise and the regulations and requirements of applicable law, including
27 the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted
28 under State and local law.

29 (B) Grantee shall comply with all applicable federal and state laws and regulations,
30 including regulations of any administrative agency thereof, as well as all Grantor ordinances,
31 resolutions, rules and regulations heretofore or hereafter adopted or established during the term
32 of the Franchise. Nothing in this Franchise shall limit or expand the Grantor's right of eminent
33 domain under State law.

34 (C) The Grantee and Grantor shall be entitled to all rights and be bound by all
35 changes in local, State and federal law that occur subsequent to the effective date of this
36 Franchise. The Grantee and the Grantor acknowledge that their rights and obligations under this
37 Franchise are explicitly subject to all such changes. However, should such changes in law
38 substantially reduce Grantee's obligation to pay or provide Franchise Fees, or any other support
39 required in this Franchise, the Grantor and Grantee agree to enter into good faith negotiations for
40 a six (6) month period, at the request of either party, to resolve the issues. If resolution is not
41 reached within the six (6) month period, and the period has not been extended by mutual

1 agreement, the term of this Franchise shall be reduced to three (3) years, and the parties shall
2 commence the renewal process in accordance with the Cable Act.

3 **4.2 Rates and Charges**

4 All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation
5 by Grantor to the full extent authorized by applicable federal, State and local laws.

6 **4.3 Rate Discrimination**

7 All Grantee rates and charges shall be published (in the form of a publicly-available rate card),
8 made available to the public, and shall be non-discriminatory as to all Persons of similar classes,
9 under similar circumstances and conditions. Grantee shall apply its rates in accordance with
10 governing law. Grantee shall permit Subscribers to make any in-residence connections the
11 Subscriber chooses without additional charge and without penalizing the Subscriber therefore.
12 However, if any in-home connection requires service from Grantee due to signal quality, signal
13 leakage or other factors, caused by improper installation of such in-home wiring or faulty
14 materials of such in-home wiring, the Subscriber may be charged appropriate service charges by
15 Grantee. Nothing herein shall be construed to prohibit:

16
17 (A) The temporary reduction or waiving of rates or charges in conjunction with valid
18 promotional campaigns;

19 (B) The offering of reasonable discounts to similarly situated Persons.

20 (C) The offering of rate discounts for either Cable Service generally, or data
21 transmission to governmental agencies or educational institutions; or

22 (D) The offering of bulk discounts for Multiple Dwelling Units.

23 **4.4 Filing of Rates and Charges**

24 (A) Throughout the term of this Franchise, Grantee shall maintain on file with Grantor
25 a complete schedule of applicable rates and charges for Cable Services provided under this
26 Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and
27 charges under temporary reductions or waivers of rates and charges in conjunction with
28 promotional campaigns. As used in this subsection, no rate or charge shall be considered
29 temporary if Subscribers have the ability over a period greater than twelve (12) consecutive
30 months (or such other period as may be approved by Grantor) to purchase Cable Services at such
31 rate or charge.

32 (B) On an annual basis, Grantee shall provide a complete schedule of current rates
33 and charges for any and all Leased Access Channels, or portions of such Channels, provided by
34 Grantee.

35 **4.5 Late Fees**

36 If the Grantee assesses any kind of penalty fee for late payment, such fee shall comply with
37 applicable law.

38 **4.6 Time Limits Strictly Construed**

39 Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall
40 be deemed to be of the essence, and any failure of Grantee to perform within the allotted time

1 may be considered a material breach of this Franchise. However, in the event that Grantee is
2 prevented or delayed in the performance of any of its obligations under this Franchise by reason
3 beyond the reasonable control of Grantee, Grantee shall have a reasonable time, under the
4 circumstances, to perform the affected obligation under this Franchise or to procure a substitute
5 for such obligation which is satisfactory to Grantor.

6 **4.7 Performance Evaluation**

7 (A) Special evaluation sessions may be held at any time upon request by Grantor
8 during the term of this Franchise.

9 (B) All evaluation sessions shall be open to the public and announced at least one
10 week in advance in a newspaper of general circulation in the Franchise Area. Grantor may
11 notify its Subscribers of evaluation sessions by announcement on its Access Channel.

12 (C) Topics which may be discussed at any evaluation session may include, but are not
13 limited to, Cable Service rate structures; Franchise Fees; liquidated damages; free or discounted
14 Cable Services; application of new technologies; system performance; Cable Services provided;
15 programming offered; customer complaints; privacy; amendments to this Franchise; judicial and
16 FCC rulings; line extension policies; and Grantor's or Grantee's rules; provided that nothing in
17 this subsection shall be construed as requiring the renegotiation of this Franchise.

18 (D) During evaluations under this Section, Grantee shall fully cooperate with Grantor
19 and shall provide such information and documents as Grantor may require to perform the
20 evaluation.
21

22 **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

23 **5.1 Indemnification**

24 (A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its
25 officers, officials, boards, commissions, authorized agents and employees, harmless from any
26 action or claim for injury including death, damage, loss, liability, cost or expense, including
27 court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to
28 Person or property, including, without limitation, copyright infringement, defamation, and all
29 other damages in any way arising out of, or by reason of, any construction, excavation,
30 operation, maintenance, reconstruction, or any other act done under this Franchise, by or for
31 Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee its
32 agents or its employees. Grantee shall consult and cooperate with the Grantor while conducting
33 its defense of the Grantor.
34

35 (B) Indemnification for Relocation. Grantee shall indemnify Grantor for any
36 damages, claims, additional costs or expenses assessed against, or payable by, Grantor related to,
37 arising out of, or resulting, directly or indirectly, from Grantee's failure to remove, adjust or
38 relocate any of its facilities in the Streets in a timely manner in accordance with any relocation
39 required by Grantor.
40

41 (C) Additional Circumstances. Grantee shall also indemnify, defend and hold Grantor
42 harmless for any claim for injury, damage, loss, liability, cost or expense, including court and
43 appeal costs and attorneys' fees or expenses in any way arising out of:

1
2 (1) The grant of this Franchise;

3
4 (2) Any failure by Grantee to secure consents from the owners, authorized
5 distributors or licensees/licensors of programs to be delivered by the System.
6

7 (D) Procedures and Defense. If a claim or action arises, Grantor or any other
8 indemnified party shall tender the defense of the claim to Grantee, which defense shall be at
9 Grantee's expense. Grantor may participate in the defense of a claim and, in any event, Grantee
10 may not agree to any settlement of claims affecting Grantor without Grantor's written approval.
11

12 (E) Non-waiver. The fact that Grantee carries out any activities under this Franchise
13 through independent contractors shall not constitute an avoidance of or defense to Grantee's duty
14 of defense and indemnification under this Section.
15

16 (F) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee
17 timely written notice of any claim or of the commencement of any action, suit or other
18 proceeding covered by the indemnity in this Section. In the event any such claim arises, the
19 Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the
20 Grantee shall have the obligation and duty to defend any claims arising thereunder, and the
21 Grantor shall cooperate fully therein.
22

23 (G) If separate representation to fully protect the interests of both parties is necessary,
24 such as a conflict of interest between the Grantor and the counsel selected by Grantee to
25 represent, the Grantor, Grantee shall pay expenses incurred by the Grantor in defending itself
26 with regard to any action, suit or proceeding indemnified by Grantee. The Grantor's expenses
27 shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the
28 reasonable value of any services rendered by the Grantor attorney or his/her assistants or any
29 employees of the Grantor or its agents but shall not include outside attorneys' fees for services
30 that are unnecessarily duplicative of services provided the Grantor by Grantee.
31

32 **5.2 Insurance Requirements**

33 (A) General Requirement. Grantee must have adequate insurance during the entire
34 term of this Franchise to protect the Grantor against claims for injuries to Persons or damages to
35 property which in any way relate to, arise from or are connected with this Franchise, or involve
36 Grantee, its agents, representatives, contractors, subcontractors and their employees.

37 (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance
38 with the minimum insurance limits herein set forth by the Grantor from time to time. The
39 Grantee shall obtain policies for the following initial minimum insurance limits:

40 (1) Commercial General Liability: Five million dollars (\$5,000,000)
41 aggregate limit per occurrence for bodily injury, personal injury and property damage;

42 (2) Automobile Liability: Three million dollars (\$3,000,000) combined single
43 limit per accident for bodily injury and property damage; and

44 (3) Employer's Liability: One million dollars (\$1,000,000).

45 (C) Endorsements.

1 (1) All policies shall contain, or shall be endorsed so that:

2 (a) The Grantor shall be designated as additional insured.

3 (b) The Grantee's insurance coverage shall be primary insurance with
4 respect to the Grantor, its officers, officials, boards, commissions, employees and
5 duly authorized agents. Any insurance or self-insurance maintained by the
6 Grantor, its officers, officials, boards, commissions, employees and agents shall
7 be in excess of the Grantee's insurance and shall not contribute to it; and

8 (c) Grantee's insurance shall apply separately to each insured against
9 whom a claim is made or lawsuit is brought, except with respect to the limits of
10 the insurer's liability.

11 (2) The insurance shall provide that the insurance shall not be cancelled or
12 materially altered so as to be out of compliance with the requirements of this Section
13 without thirty (30) days' written notice first being given to Grantor. If the insurance is
14 cancelled or materially altered so as to be out of compliance with the requirements of this
15 Section within the term of this Franchise, Grantee shall provide a replacement policy.
16 Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts
17 required, for the duration of this Franchise.

18 (D) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with
19 insurers with a Best's rating of no less than "A."

20 (E) Verification of Coverage. The Grantee shall furnish the Grantor with certificates
21 of insurance or a copy of the page of the policy reflecting blanket additional insured status. The
22 certificates for each insurance policy are to be signed by a Person authorized by that insurer to
23 bind coverage on its behalf. The certificates for each insurance policy are to be on standard
24 forms or such forms as are consistent with standard industry practices, and are to be received and
25 approved by the Grantor prior to the commencement of activities associated with this Franchise.
26 The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

27 **5.3 Security**

28 Upon the effective date of this Franchise, Grantee shall provide a performance bond in the
29 amount of \$25,000.00 to ensure the faithful performance of its responsibilities under this
30 Franchise and applicable law, including, by way of example and not limitation, its obligations to
31 relocate and remove its facilities and to restore Grantor Rights-of-Way and other property.
32

33 **SECTION 6. CUSTOMER SERVICE**

34 **6.1 Subscriber Contracts**

35 Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with
36 the terms of this Franchise.

37 **6.2 Subscriber Privacy**

38 Grantee will comply with privacy rights of Subscribers in accordance with applicable federal,
39 State and local laws.

1 **6.3 Customer Service Center**

2 Throughout the Franchise term, the Grantee must maintain, at a minimum, one (1) customer
3 service center located within Pierce County that will be open during Normal Business Hours, to
4 provide Subscribers the opportunity to receive and pick up Subscriber equipment and to make
5 bill payments and complaints.

6 **6.4 Customer Service Agreement and Manual**

7 (A) Grantee shall provide to Subscribers an accurate, comprehensive service
8 agreement and customer installation packet for use in establishing Subscriber service. This
9 material shall, at a minimum, contain the following:

- 10 (1) Grantee's procedure for investigation and resolution of Subscriber service
11 complaints.
- 12 (2) Services to be provided and rates for such services.
- 13 (3) Billing procedures.
- 14 (4) Service termination procedure.
- 15 (5) A description of the manner that will be used to provide notice of changes
16 in rates, service or service terms and conditions.
- 17 (6) A complete statement of the Subscriber's right to privacy.
- 18 (7) Converter and cable modem equipment policy.
- 19 (8) The name, address and phone number of the Person identified by the
20 Grantor as responsible for handling cable questions and complaints for the Grantor. This
21 information shall be prominently displayed in the installation packet.

22 (B) A copy of the installation packet shall be provided to each Subscriber at the time
23 of initial installation and any reconnection (excluding reconnections to the same Subscriber
24 within twelve (12) months), and at any time the packet is requested by the Subscriber. Grantee
25 shall make reasonable efforts to advise customers of any material changes in cable operation
26 policies.
27

28 **SECTION 7. REPORTS AND RECORDS**

29 **7.1 Open Records**

30 Grantor shall have access to, and the right to inspect, any books and records of Grantee, its
31 parent corporations and Affiliated entities, necessary for the enforcement of the terms of this
32 Franchise. Grantee shall not deny Grantor access to any of Grantee's records on the basis that
33 Grantee's records are under the control of any parent corporation, Affiliated entity or a third
34 party. Grantor may, in writing, request copies of any such records or books, and Grantee shall
35 provide such copies within thirty (30) days of the transmittal of such request. One copy of all
36 reports and records required under this or any other Section shall be furnished to Grantor at the
37 sole expense of Grantee. If the requested books and records are too voluminous, or for security
38 reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days,
39 that Grantor inspect them at Grantee's local offices. If any books or records of Grantee are not
40 kept in a local office and not made available in copies to Grantor upon written request as set
41 forth above, and if Grantor determines that an examination of such records is necessary for the

1 enforcement of this Franchise, then all reasonable travel and maintenance expenses incurred in
2 making such examination shall be paid by Grantee.

3 **7.2 Confidentiality**

4 Grantor agrees to keep confidential any proprietary or confidential books or records to the extent
5 permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the
6 work confidential or proprietary, and shall provide a brief written explanation as to why such
7 information is confidential and how it may be treated as such under State or federal law. If
8 Grantor receives a demand from any Person for disclosure of any information designated by
9 Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee
10 and provide Grantee with a copy of any written request by the party demanding access to such
11 information within a reasonable time. If Grantee believes that the disclosure of such documents
12 by Grantor would interfere with Grantee's rights under federal or state law, Grantee shall
13 institute an action in the Pierce County Superior Court to prevent the disclosure by Grantor of
14 such documents. Grantee shall join the Person requesting the documents to such an action.
15 Grantee shall defend, indemnify and hold Grantor harmless from any claim or judgment
16 including, but not limited to, any penalties or costs under RCW 42.56.

17 **7.3 Records Required**

18 Grantee shall at all times maintain:

19 (A) A full and complete set of plans, records and "as built" maps showing the
20 exact location of all System equipment installed or in use in the Franchise Area, which is
21 generated in Grantee's normal course of business;

22 (B) A copy of all FCC filings on behalf of Grantee, its parent corporations or
23 Affiliates which relate to the operation of the System in the Franchise Area;

24 (C) A list of Grantee's Cable Services, rates and Channel line-ups;

25 (D) A statistical compilation of Subscriber complaints, actions taken and
26 resolution, and a log of service calls.

27 **7.4 Copies of Federal and State Reports**

28 Upon written request, Grantee shall submit to Grantor copies of any pleading, applications,
29 notifications, communications and documents of any kind, submitted by Grantee or its Affiliates
30 to any federal, State or local courts, regulatory agencies and other government bodies if such
31 documents directly relate to the operations of Grantee's System within the Franchise Area.
32 Grantee shall submit such documents to Grantor no later than thirty (30) days after receipt of
33 Grantor's request. Grantee shall not claim confidential, privileged or proprietary rights to such
34 documents unless under federal, State, or local law such documents have been determined to be
35 confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all
36 other reports, documents and notifications provided to any federal, State or local regulatory
37 agency as a routine matter in the due course of operating Grantee's System within the Franchise
38 Area, Grantee shall make such documents available to Grantor upon Grantor's written request.

39 **7.5 Complaint File and Reports**

40 Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the
41 System, and Grantee's actions in response to those complaints, in a manner consistent with the

1 privacy rights of Subscribers. Those files shall remain open to Grantor during normal business
2 hours and shall be retained for a period of one year. Upon request, Grantee shall provide a report
3 to the Grantor which can, at Grantor's option, include the following information:

4 (A) Nature and type of customer complaints;

5 (B) Number, duration, general location and customer impact of unplanned service
6 interruptions;

7 (C) Any significant construction activities which affect the quality or otherwise
8 enhance the service of the System;

9 (D) Average response time for service calls;

10 (E) New areas constructed and available for Cable Service;

11 (F) Video programming changes (additions/deletions); and

12 (G) Such other information as reasonably requested by Grantor.

13 **7.6 Inspection of Facilities**

14 Grantor may inspect any of Grantee's cable system facilities and equipment in the Rights-of-Way
15 at any reasonable time during business hours upon at least forty-eight (48) hours notice, or, in
16 case of emergency, upon demand without prior notice.

17 **7.7 False Statements**

18 Any intentional false or misleading statement or representation in any report required by this
19 Franchise shall be a material breach of this Franchise and may subject Grantee to all remedies,
20 legal or equitable, which are available to Grantor under this Franchise or otherwise.
21

22 **SECTION 8. PROGRAMMING AND CHANNEL CAPACITY**

23 **8.1 Grantee Compliance**

24 Grantee will provide the broad categories of programming and Channel capacity required in this
25 Franchise, and in all applicable federal, State or local laws, statutes, regulations or standards.

26 **8.2 Broad Programming Categories**

27 Grantee shall provide or enable the provision of at least the following initial broad categories of
28 programming to the extent such categories are reasonably available:

29 (A) Educational programming;

30 (B) Sports programming;

31 (C) General entertainment programming;

32 (D) Children's programming;

33 (E) Information/news programming;

34 (F) National and local government programming.

1 **8.3 Obscenity**

2 Grantee or Grantor shall not transmit, or permit to be transmitted, over any Channel subject to its
3 editorial control any programming which is obscene.

4 **8.4 Parental Control Device**

5 Upon request by any Subscriber, Grantee shall make available a parental control or lockout
6 device traps or filters to enable a Subscriber to control access to both the audio and video
7 portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the
8 lockout device at the time of their initial subscription and periodically thereafter.

9 **8.5 Complimentary Cable Service**

10 Grantee, upon written request, shall provide without charge, a Standard Installation and one
11 outlet of Basic and Expanded Basic Service to those administrative buildings owned and
12 occupied or leased and occupied by the Grantor, fire station(s), police station(s), libraries and K-
13 12 public school(s) that are within 125 feet aerial or 60 feet underground of its Cable System. In
14 the case of leased facilities, recipient of service is responsible for securing approval for
15 appropriate right of entry suitable to the Grantee at its sole discretion. The Cable Service
16 provided shall not be distributed beyond the originally installed outlet without authorization from
17 Grantee. The Cable Service provided shall not be used for commercial purposes, and such
18 outlets shall not be located in areas open to the public. The Grantor shall take reasonable
19 precautions to prevent any use of the Grantee's Cable System in any manner that results in the
20 inappropriate use thereof or any loss or damage to the Cable System. The Grantor shall hold the
21 Grantee harmless from any and all liability or claims arising out of the provision and use of
22 Cable Service required by this Section. The Grantee shall not be required to provide an outlet to
23 such buildings where a non-Standard Installation is required, unless the Grantor or building
24 owner/occupant agrees to pay the incremental cost of any necessary Cable System extension
25 and/or non-Standard Installation. If additional outlets of Cable Service are provided to such
26 buildings, the building owner/occupant shall pay the usual installation and service fees
27 associated therewith.

28 **8.6 New Developments**

29 If there is a new technology which in Grantor's opinion would enhance substantially the quality
30 or quantity of programming available to Subscribers on the System, Grantee shall, at the request
31 of the Grantor, investigate the feasibility of implementing said technology and report to Grantor
32 the results of such investigation.

34 **SECTION 9. EDUCATIONAL AND GOVERNMENTAL ACCESS**

35 **9.1 Capital Fee**

36 Effective sixty (60) days after written notice from Grantor to Grantee, Grantee shall pay to
37 Grantor a Capital Fee for educational and government access capital expenditures in the amount
38 up to thirty-five cents (\$.35) per Subscriber per month. Grantee shall make such payments
39 quarterly, no later than thirty (30) days following the end of the quarter. The Grantor agrees that
40 47 C.F.R. §76.922 permits Grantee to add the cost of the Capital Fee to the price of Cable
41 Services and to collect the Capital Fee from Subscribers. In addition, as permitted in 47 C.F.R.

1 §76.985, all amounts paid as the Capital Fee may be separately stated on Subscriber's bills as a
2 government access capital equipment fee.

3 **9.2 Access Reporting**

4 Upon Grantee's written request the Grantor shall submit a report annually on the use of Access
5 Channels and Capital Fee. The Grantor shall submit a report to Grantee within one hundred
6 twenty (120) days of a written request. Grantee may review the records of the Grantor regarding
7 the use of the Capital Fee.

8 **9.3 Management and Control of Access Channels**

9 (A) Grantor may authorize Designated Access Providers to control, operate, and
10 manage the use of any and all Access facilities provided by Grantee under this Franchise,
11 including, without limitation, the operation of Access Channels. The Grantor or its designee
12 may formulate rules for the operation of the Access Channels, consistent with this Franchise.
13 Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access
14 Provider.

15 (B) Grantee shall cooperate with Grantor and Designated Access Providers in the use
16 of the System and Access facilities for the provision of Access Channels.

17 **9.4 Access Channels**

18 (A) Grantee shall provide at no charge commencing within one hundred eighty (180)
19 days after acceptance of this Franchise, and continuing throughout the term of this Franchise,
20 One (1) Channel for use by Grantor (said Channel to be capable of cable-casting both live and
21 recorded programming only within the geographic territory of Grantor).

22 (B) Grantee shall provide immediately at no charge after acceptance of this Franchise,
23 and continuing throughout the term of this Franchise the following:

- 24 (1) One (1) Channel for use by PCTV; and
- 25 (2) Three (3) Channels for Educational Access programming.

26 (C) All assigned Access Channels can be used to transmit programming in any format
27 which is technically compatible with the Cable System, including, by way of example and not
28 limitation, video, audio only, secondary audio and/or text (character generated) messages. Such
29 uses must be in furtherance of Access purposes. Each of the above five (5) Channels may be
30 digitized by the Grantee and must be capable of transmitting one standard analog or one digital
31 video signal. Any Access Channels provided via digital or compressed video technology shall
32 have at least the same transmission quality as is used to carry any of the commercial Channels
33 that deliver programming on the System and shall be full motion video. The provision of Access
34 Channels via digital or compressed video technology will not reduce the total Access Channel
35 requirement herein.

36 **9.5 Change in Technology**

37 In the event Grantee makes any change in the System and related equipment and facilities or in
38 Grantee's signal delivery technology, which directly or indirectly affects the signal quality or
39 transmission of Access programming, Grantee shall at its own expense take necessary technical
40 steps or provide necessary technical assistance, including the acquisition of all necessary
41 equipment, and full training of Access personnel to ensure that the capabilities of Access

1 channels are not diminished or adversely affected by such change. For example, this provision
2 shall apply if Basic Service on the Cable System is converted from an analog to a digital format,
3 such that the Access Channels must also be converted to digital in order to be received by
4 Subscribers.

5 **9.6 Access Channels on Lowest Level of Service**

6 All Access Channels provided to Subscribers under this Franchise shall be included by Grantee,
7 without limitation, as a part of the lowest level of service, subject to applicable law.

8 **9.7 Access Channel Location/Relocation**

9 Grantee will carry Designated Access channels as follows: the C-RCC channel shall be on 22,
10 the educational and other Grantor channels shall be together on adjacent channels, if technically
11 feasible; provided that if Grantee places similar access channels in other jurisdictions on these
12 numbered channels, then feasibility shall be presumed. Grantee will carry Grantor's
13 programming on the channel designated for local government programming on its regional
14 channel line-up, currently channel 21, so that the Grantor will receive the same benefits from
15 such carriage as other jurisdictions in western Washington Furthermore, Grantee will use
16 reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall
17 provide three (3) months notice to the Grantor prior to any relocation and shall reimburse
18 Grantor for its costs incurred for any promoting, marketing, advertising and notice of the
19 Channel change up to three thousand dollars (\$3,000).

20
21
22
23 **9.8 Technical Quality**

24
25 The Grantee shall maintain Access channels at the same or better level of technical quality and
26 reliability required by this Franchise and all other applicable laws, rules and regulations for other
27 Channels. The Grantee shall provide routine maintenance and shall repair and replace, if
28 necessary, all Grantee's transmission equipment, including fiber transmitters and receivers,
29 channel modulators, associated cable and equipment, required to carry a quality signal to and
30 from the Grantor's Designated Distributor's facilities (and Designated Access Providers') and the
31 Grantee's facilities for the Access channels provided under this Franchise.
32

33 **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

34 **10.1 Construction**

35 (A) Subject to applicable laws, regulations and ordinances of Grantor and the
36 provisions of this Franchise, Grantee may perform all construction necessary for the operation of
37 its System. All construction and maintenance of any and all Grantee's facilities within Rights-
38 of-Way shall, regardless of who performs the construction, be and remain Grantee's
39 responsibility.

40 (B) Prior to beginning any construction, Grantee shall provide Grantor with a
41 construction schedule for work in the Rights-of-Ways.

42 (C) Grantee may make excavations in Rights-of-Way for any facility needed for the
43 maintenance or extension of Grantee's System. Prior to doing such work, Grantee shall apply

1 for, and obtain, appropriate permits from Grantor, and give appropriate notices to Grantor. As a
2 condition of any permits so issued, Grantor officials may impose such conditions and regulations
3 as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper
4 restoration of such Rights-of-Way and structures, protection of the public and the continuity of
5 pedestrian or vehicular traffic. When obtaining a permit, Grantee shall inquire in writing about
6 other construction currently in progress, planned or proposed, in order to investigate thoroughly
7 all opportunities for joint trenching or boring. Whenever it is possible and reasonably
8 practicable to joint trench or share bores or cuts, Grantee shall work with other providers,
9 licensees, permittees and franchisees so as to reduce so far as possible the number of Rights-of-
10 Way cuts within the Franchise Area.

11 (D) In the event that emergency repairs are necessary, Grantee shall immediately
12 notify Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and
13 shall apply for appropriate permits within forty-eight (48) hours after discovery of the
14 emergency.

15 (E) Repair and Restoration of Property.

16 (1) The Grantee shall protect public and private property within the Rights-of-
17 Way from damage.

18 (2) If public property is disturbed or damaged, the Grantee shall restore the
19 property to its former condition. Public right-of-way or other Grantor property shall be
20 restored in a manner and within a timeframe approved by the Grantor's Director of Public
21 Works. If restoration of public right-of-way or other property of the Grantor is not
22 satisfactorily performed within a reasonable time, the Director of Public Works may,
23 after prior notice to the Grantee, or without notice where the disturbance or damage may
24 create a risk to public health or safety, or cause delay or added expense to a public project
25 or activity, cause the repairs to be made at the Grantee's expense and recover the cost of
26 those repairs from the Grantee. Within forty-five (45) days of receipt of an itemized list
27 of those costs, including the costs of labor, materials and equipment, the Grantee shall
28 pay the Grantor. If suit is brought by Grantor upon Grantee's failure to pay for repair or
29 restoration, the reasonable costs and expenses of the prevailing party will be paid by the
30 non-prevailing party.

31 (F) Movement for Other Permittees.

32
33 At the request of any Person holding a valid permit and upon reasonable advance notice,
34 Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a
35 building, vehicle, equipment or other item. The expense of such temporary changes must be paid
36 by the permit holder, and Grantee may require the estimated payment in advance.

37 **10.2 Relocation**

38 (A) Facilities Relocation – Upon the receipt of a demand by the Grantor, within thirty
39 days, or in the event of an emergency, upon such shorter notice period as the Grantor deems
40 reasonable under the circumstances, Grantee, at its sole cost and expense, shall remove or
41 relocate any Facilities, if and when the removal or relocation of such Facilities is made necessary
42 by the Grantor acting pursuant to any lawful governmental or proprietary purpose, including,
43 without limitation, engaging in any lawful change of grade, alignment or width of any Rights-of-
44 Way in the Franchise Area pursuant to any concern regarding health, safety and welfare, or in the
45 installation or replacement of any street light pole. Whenever Grantee is required to remove

1 Facilities or if Grantee desires to relocate Facilities, then the Grantor shall use its best efforts to
2 accommodate Grantee by making another functionally equivalent property available for use in
3 accordance with and subject to the terms and conditions of this Franchise. However, nothing in
4 this Agreement shall be construed as creating an obligation of the Grantor to provide Grantee
5 with such property.

6 (B) Relocation Costs – Whenever the removal or relocation of Facilities is required
7 under this Franchise or otherwise by order of Grantor, and such removal or relocation shall cause
8 the Rights-of-Way to be damaged, Grantee, at its sole cost and expense, shall promptly repair
9 and return the Rights-of-Way, in which the Facilities are located, to the same condition as
10 existed prior to such work in the sole determination of Grantor. If Grantee does not return the
11 affected site to a safe and satisfactory condition, then Grantor shall have the option to perform or
12 cause to be performed such reasonable and necessary work and charge Grantee for the proposed
13 costs to be incurred or the actual cost incurred by Grantor. Upon the receipt of a demand for
14 payment by the Grantor, Grantee shall reimburse Grantor for such costs within thirty days.

15 **10.3 Location of Facilities**

16 Within five (5) business days, unless otherwise specified in Grantee's regulations, after the
17 Grantor or any franchisee, licensee or permittee of the Grantor notifies Grantee of a proposed
18 Right-of-Way excavation, Grantee shall, at Grantee's expense:

19 (A) Mark on the surface all of its located underground facilities within the area of the
20 proposed excavation;

21 (B) Notify the excavator of any unlocated underground facilities in the area of the
22 proposed excavation; or

23 (C) Notify the excavator that Grantee does not have any underground facilities in the
24 vicinity of the proposed excavation.

25 **10.4 Restoration of Rights-of-Way / Grantor Owned Property**

26 (A) Whenever Grantee disturbs the surface of any Rights-of-Way or Grantor owned
27 property for any purpose, Grantee shall promptly restore the Rights-of-Way or Grantor owned
28 property to a condition as good or better than its prior condition in Grantor's sole determination.
29 When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way or
30 Grantor owned property, Grantee shall promptly refill the opening and restore the surface to a
31 condition satisfactory to Grantor.

32 (B) If Grantee excavates the surface of any Rights-of-Way or Grantor owned
33 property, Grantee shall be responsible for restoration in accordance with applicable regulations
34 of the Rights-of-Way and its surface within the area affected by the excavation. Grantor may,
35 after providing notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-
36 Way or on Grantor owned property, and the expense thereof shall be paid by Grantee. Grantor
37 may, after providing notice to Grantee, remove and repair any work done by Grantee which, in
38 the determination of Grantor, does not conform to applicable code. The cost thereof, including
39 the costs of inspection and supervision shall be paid by Grantee. All excavations made by
40 Grantee in Rights-of-Way or on Grantor owned property shall be properly safeguarded for the
41 prevention of accidents. All of Grantee's work under this Franchise, and this Section in
42 particular, shall be done in strict compliance with all rules, regulations and ordinances of
43 Grantor.

1 **10.5 Maintenance and Workmanship**

2 (A) Grantee's System shall be constructed and maintained in such manner as not to
3 interfere with sewers, water pipes or any other property of Grantor, or with any other pipes,
4 wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way
5 by, or under, Grantor's authority.

6 (B) Grantee shall provide and use any equipment and appliances necessary to control
7 and carry Grantee's signals so as to prevent injury to Grantor's property or property belonging to
8 any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to
9 keep them in good repair and safe and presentable condition.

10 (C) The Grantee's transmission and distribution system, wires and appurtenances shall
11 be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or
12 to unnecessarily hinder or obstruct the free use of Rights-of-Way, alleys, bridges or other public
13 property.

14 **10.6 Acquisition of Facilities**

15 Upon Grantee's acquisition of facilities in any Grantor Rights-of-Way, or upon the addition or
16 annexation to the Grantor of any area in which Grantee owns or operates any facility, Grantee
17 shall, at Grantor's request, submit to Grantor a statement describing all facilities involved,
18 whether authorized by franchise, permit, license or other prior right, and specifying the location
19 of all such facilities to the extent Grantee has possession of such information. Such facilities
20 shall immediately be subject to the terms of this Franchise.

21
22 **10.7 Discontinuing Use of Facilities**

23 Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee
24 shall submit for Grantor's approval a complete description of the facility and the date on which
25 Grantee intends to discontinue using the facility. Grantee may remove the facility or request that
26 Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility
27 remain in place, Grantor may require Grantee to remove the facility from the Rights of Way or
28 modify the facility to protect the public health, welfare, safety and convenience, or otherwise
29 serve the public interest. Grantor may require Grantee to perform a combination of modification
30 and removal of the facility. Grantee shall complete such removal or modification in accordance
31 with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as
32 directed by Grantor, or until the rights to and responsibility for the facility are accepted by
33 another Person having authority to construct and maintain such facility, Grantee shall be
34 responsible for all necessary repairs and relocations of the facility, as well as maintenance of the
35 Rights-of-Way, in the same manner and degree as if the facility were in active use, and Grantee
36 shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to
37 use such facilities for any purpose whatsoever including, but not limited to, Access Channel
38 purposes.

39 **10.8 Hazardous Substances**

40 (A) Grantee shall comply with all applicable State and federal laws, statutes,
41 regulations and orders concerning hazardous substances relating to Grantee's System in Rights-
42 of-Way.

1 (B) Grantee shall maintain and inspect its System located in Rights-of-Way. Upon
2 reasonable notice to Grantee, Grantor may inspect Grantee's facilities in Rights-of-Way to
3 determine if any release of hazardous substances has occurred, or may occur, from or related to
4 Grantee's System. In removing or modifying Grantee's facilities as provided in this Franchise,
5 Grantee shall also remove all residues of hazardous substances related thereto.

6 **10.9 Undergrounding of Cable**

7 (A) Where electric and telephone utility wiring is installed underground at the time of
8 System construction, or when such wiring is subsequently placed underground, all System lines,
9 wiring and equipment shall also be placed underground with other wire line service at no
10 expense to the Grantor. Related System equipment, such as pedestals, must be placed in
11 accordance with applicable code requirements and rules as interpreted by the Grantor's Director
12 of Public Works. In areas where either electric and telephone utility wiring are aerial, the
13 Grantee may install aerial cable, except when a property owner or resident requests underground
14 installation and agrees to bear the additional cost in excess of aerial installation.

15 (B) The Grantee shall utilize existing poles and conduit wherever possible.

16 (C) This Franchise does not grant, give or convey to the Grantee the right or privilege
17 to install its facilities in any manner on specific utility poles or equipment of the Grantor or any
18 other Person.

19 (D) The Grantee and the Grantor recognize that situations may occur in the future
20 where the Grantor may desire to place its own cable or conduit for fiber optic cable in trenches or
21 bores opened by the Grantee. If the Grantee upgrades in the future, the Grantee shall submit
22 these plans to the Grantor in accordance with the Grantor's permitting process so that such
23 opportunities may be explored. However, nothing set forth herein shall obligate the Grantee to
24 slow the progress of the upgrade of the System to accommodate the Grantor. In addition, the
25 Grantee agrees to cooperate with the Grantor in any other construction by the Grantee that
26 involves trenching or boring. If sufficient space is reasonably available, the Grantee shall allow
27 the Grantor to lay its cable, conduit and fiber optic cable in the Grantee's trenches and bores,
28 provided the Grantor shares in the cost of the trenching and boring on the same terms and
29 conditions as the Grantee at that time shares the total cost of trenches and bores. The Grantor
30 shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried in
31 the Grantee's trenches and bores under this paragraph.

32 (E) The Grantor shall not be required to obtain easements for the Grantee.

33 (F) The Grantee shall participate with other providers in joint trench projects to
34 relocate its overhead facilities underground and remove its overhead facilities in areas where all
35 utilities are being converted to underground facilities.

36 **10.10 Construction Codes**

37 Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect.
38 Grantee shall arrange its lines, cables and other appurtenances, on both public and private
39 property, in such a manner as to cause no unreasonable interference with the use of said public or
40 private property by any Person. In the event of such interference, Grantor may require the
41 removal or relocation of Grantee's lines, cables and other appurtenances from the property in
42 question.

1 **10.11 Construction and Use of Poles**

2 Whenever feasible, Grantee shall use existing poles when the installation of facilities above-
3 ground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities
4 pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for
5 Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying,
6 maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any
7 other facility needed for the maintenance or extension of Grantee's System. All poles of Grantee
8 shall be erected between the curb and the sidewalk unless otherwise designated by the proper
9 authorities of Grantor, and each pole shall be set whenever practicable at an extension lot line.
10 Grantor shall have the right to require Grantee to change the location of any pole, conduit,
11 structure or other facility within Rights-of-Way when, in the opinion of Grantor, the public
12 convenience requires such change, and the expense thereof shall be paid by Grantee.

13 **10.12 Tree Trimming**

14 Upon obtaining a written permit from Grantor, if such a permit is required, Grantee may prune or
15 cause to be pruned, using proper pruning practices in accordance with such permit, any tree in
16 the Rights-of-Way which interferes with the System.
17

18 **10.13 Standards**

19 (A) All work authorized and required hereunder shall be done in a safe, thorough and
20 worker-like manner. The Grantee must comply with all federal, State and Grantor safety
21 requirements, rules, regulations, laws and practices, and employ all necessary devices as required
22 by applicable law during construction, operation and repair of its System. By way of illustration
23 and not limitation, the Grantee must comply with the National Electric Code, National Electrical
24 Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

25 (B) Grantee shall ensure that all cable drops are properly bonded to the electrical
26 power ground at the home, consistent with applicable code requirements. All non-conforming or
27 non-performing cable drops shall be replaced by Grantee as necessary.

28 (C) All installations of equipment shall be permanent in nature, durable and installed
29 in accordance with good engineering practices and of sufficient height to comply with all
30 existing Grantor regulations, ordinances and State laws so as not to interfere in any manner with
31 the right of the public or individual property owner, and shall not interfere with the travel and use
32 of public places by the public during the construction, repair, operation or removal thereof, and
33 shall not obstruct or impede traffic.

34 (D) In the maintenance and operation of its System in Rights-of-Way, alleys and other
35 public places, and in the course of any new construction or addition to its facilities, the Grantee
36 shall proceed so as to cause the least possible inconvenience to the general public; any opening
37 or obstruction in the Rights-of-Way or other public places made by the Grantee in the course of
38 its operations shall be guarded and protected at all times by the placement of adequate barriers,
39 fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly
40 designated by warning lights.

41 (E) In the event the Grantor shall relocate a Rights-of-Way, raise or lower a bridge, or
42 make any other changes requiring the removal of utility installations, the Grantee shall remove or
43 relocate its installations at said locations at no cost to the Grantor.

1 **10.14 Stop Work**

2 On notice from Grantor that any work is being conducted contrary to the provisions of this
3 Franchise, or in an unsafe or dangerous manner as determined by Grantor, or in violation of the
4 terms of any applicable permit, laws, regulations, ordinances or standards, the work may
5 immediately be stopped by Grantor. The stop work order shall:

- 6 (A) Be in writing;
- 7 (B) Be given to the individual doing the work, or posted on the work site;
- 8 (C) Be sent to Grantee by mail at the address given herein;
- 9 (D) Indicate the nature of the alleged violation or unsafe condition; and
- 10 (E) Establish conditions under which work may be resumed.

11 **10.15 Work of Contractors and Subcontractors**

12 Grantee's contractors and subcontractors shall be licensed and bonded in accordance with
13 Grantor's ordinances, regulations and requirements. Work by contractors and subcontractors is
14 subject to the same restrictions, limitations and conditions as if the work were performed by
15 Grantee. Grantee shall be responsible for all work performed by its contractors and
16 subcontractors and others performing work on its behalf as if the work were performed by it, and
17 shall ensure that all such work is performed in compliance with this Franchise and other
18 applicable law, and shall be jointly and severally liable for all damages and correcting all damage
19 caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other
20 persons performing work on Grantee's behalf are familiar with the requirements of this Franchise
21 and other applicable laws governing the work performed by them.

22
23 **SECTION 11. CABLE SYSTEM DESIGN AND CAPACITY**

24 **11.1 Equal and Uniform Service**

25 The Grantee shall provide access to equal and uniform Cable Service offerings throughout the
26 Franchise Area along public rights-of-way, provided that nothing shall prohibit the Grantee from
27 activating additional Cable Services to Subscribers on a node by node basis during an upgrade of
28 its Cable System.

29 **11.2 Cable System Upgrade**

1 Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its
2 Cable System to a fiber-to-the-node system architecture, with fiber-optic cable deployed from
3 the Headend to the node and tying into a hybrid fiber-coaxial system already serving
4 Subscribers. Active and passive devices are capable of passing a minimum of 750 MHz, and the
5 Cable System is capable of delivering high quality signals that meet, or exceed, FCC technical
6 quality standards regardless of a particular manner in which signal is transmitted. During the
7 term of this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent
8 with, or in excess of these specifications.
9

10 **11.3 Technical Performance**

11 The technical performance of the Cable System shall meet or exceed all applicable federal
12 (including, but not limited to, the FCC), State and local technical standards, as they may be
13 amended from time to time, regardless of the transmission technology utilized. Grantor shall
14 have the full authority permitted by applicable law to enforce compliance with these technical
15 standards.

16 **11.4 Cable System Performance Testing**

17 (A) Grantee shall, at Grantee's expense, perform the following tests on its Cable
18 System:

- 19 (1) All tests required by the FCC;
- 20 (2) All other tests reasonably necessary to determine compliance with
21 technical standards adopted by the FCC at any time during the term of this Franchise; and
- 22 (3) All other tests as otherwise specified in this Franchise.

23 (B) At a minimum, Grantee's tests shall include:

- 24 (1) Cumulative leakage index testing of any new construction;
- 25 (2) Semi-annual compliance and proof of performance tests in conformance
26 with generally accepted industry guidelines;
- 27 (3) Tests in response to Subscriber complaints;

28
29 (4) Cumulative leakage index tests, at least annually, designed to ensure that
30 one hundred percent (100%) of Grantee's Cable System has been ground or air tested for
31 signal leakage in accordance with FCC standards.

32 (C) Grantee shall maintain written records of all results of its Cable System tests,
33 performed by or for Grantee. Copies of such test results will be provided to Grantor upon
34 request.

35 (D) The FCC semi-annual testing is conducted in January/February and July/August
36 of each year. If Grantor contacts Grantee prior to the next test period (*i.e.*, before December 15
37 and June 15 respectively of each year), Grantee shall provide Grantor with no less than seven (7)
38 days prior written notice of the actual date(s) for FCC compliance testing. If Grantor notifies
39 Grantee by the December 15th and June 15th dates that it wishes to have a representative present
40 during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative
41 can be present. Notwithstanding the above, all technical performance tests may be witnessed by
42 representatives of the Grantor.

1 (E) Grantee shall be required to promptly take such corrective measures as are
2 necessary to correct any performance deficiencies fully and to prevent their recurrence as far as
3 possible. Grantee's failure to correct deficiencies identified through this testing process shall be
4 a material violation of this Franchise. Sites shall be re-tested following correction.

5 **11.5 Additional Tests**

6 Where there exists other evidence that in the judgment of Grantor casts doubt upon the reliability
7 or technical quality of Cable Service, the Grantor shall have the right and authority to require
8 Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully
9 cooperate with the Grantor in performing such testing and shall prepare the results and a report,
10 if requested, within thirty (30) days after testing. Such report shall include the following
11 information:

- 12 (A) the nature of the complaint or problem which precipitated the special tests;
 - 13 (B) the Cable System component tested;
 - 14 (C) the equipment used and procedures employed in testing;
 - 15 (D) the method, if any, in which such complaint or problem was resolved; and
 - 16 (E) any other information pertinent to said tests and analysis which may be required.
- 17

18 **SECTION 12. SERVICE EXTENSION**

19 **12.1 Service Availability**

20 (A) In general, except as otherwise provided herein, Grantee shall provide Service
21 within seven (7) days of a request by any Person within its Franchise Area. For purposes of this
22 Section, a request shall be deemed made on the date of signing a service agreement, receipt of
23 funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified
24 verbal request. Grantee shall provide such service:

25 (1) At a non-discriminatory installation charge for a standard installation,
26 consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall,
27 with additional charges for non-standard installations computed according to a non-
28 discriminatory method for such installations, adopted by Grantee and provided in writing
29 to Grantor.

30 (2) At non-discriminatory monthly rates for all Subscribers, excepting
31 commercial customers, MDU Bulk customers and other lawful exceptions to uniform
32 pricing.
33

34 **SECTION 13. STANDBY POWER AND EAS**

35 **13.1 Standby Power**

36 Grantee shall provide standby power generating capacity at the System Headend capable of
37 providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby
38 power system supplies, rated for at least two (2) hours duration, throughout the trunk and
39 distribution networks. In addition, throughout the term of this Franchise Grantee shall have a

1 plan in place, along with all resources necessary for implementing such plan, for dealing with
2 outages of more than two (2) hours.

3 **13.2 Emergency Alert Capability**

4 (A) In accordance with, and at the time required by, the provisions of FCC
5 Regulations, as such provisions may from time to time be amended, EAS activation will be
6 accomplished in compliance with the FCC approved Washington State EAS plan and the Local
7 Area EAS plan that applies to City of Milton, which has already been submitted for approval to
8 the Washington State Emergency Communications Committee (WSECC).

9 (B) Grantee shall ensure that the EAS system is functioning properly at all times. It
10 will test the EAS system periodically, in accordance with FCC regulations.
11

12 **SECTION 14. FRANCHISE BREACHES; TERMINATION OF** 13 **FRANCHISE**

14 **14.1 Informal Dispute Resolution**

15 Prior to proceeding with the formal Procedure for Remedying of Franchise Violations process as
16 set forth below (in subsection 14.2), Grantor agrees to provide Grantee informal verbal or
17 electronic mail notice of any alleged material violation of this Franchise and allow Grantee a
18 reasonable opportunity to cure the violation. If the alleged violation is investigated by Grantee
19 and determined to be valid, Grantee agrees to exert good faith efforts to immediately resolve the
20 matter. However, if the alleged violation is determined by Grantee to be invalid, or outside of
21 Grantee's legal responsibilities, the Grantee promptly shall so advise Grantor. Grantee agrees to
22 exert good faith efforts to expedite its investigation, determination and communications to
23 Grantor so that the informal resolution process proceeds on an expedited basis. If Grantor
24 believes that Grantee is unreasonably delaying the informal resolution process, it may commence
25 the formal dispute resolution process.

26 **14.2 Procedure for Remedying Franchise Violations**

27 (A) If Grantor believes that Grantee has failed to perform any material obligation
28 under this Franchise, or has failed to perform in a timely manner, Grantor shall notify Grantee in
29 writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have
30 thirty (30) days from the receipt of such notice to:

31 (1) Respond to Grantor, contesting Grantor's assertion that a default has
32 occurred, and requesting a hearing in accordance with subsection (B), below;

33 (2) Cure the default; or

34 (3) Notify Grantor that Grantee cannot cure the default within the thirty (30)
35 days, because of the nature of the default. In the event the default cannot be cured within
36 thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and
37 notify Grantor in writing and in detail as to the exact steps that will be taken and the
38 projected completion date. In such case, Grantor may set a hearing in accordance with
39 subsection (B) below to determine whether additional time beyond the thirty (30) days
40 specified above is indeed needed, and whether Grantee's proposed completion schedule
41 and steps are reasonable. Upon five (5) business days' prior written notice, either Grantor
42 or Grantee may call an informal meeting to discuss the alleged default.

1 (B) If Grantee does not cure the alleged default within the cure period stated above, or
2 by the projected completion date under subsection (A) (3), or denies the default and requests a
3 hearing in accordance with subsection (A) (1), or Grantor orders a hearing in accordance with
4 subsection (A) (3), Grantor shall set a public hearing to investigate said issues or the existence of
5 the alleged default. Grantor shall notify Grantee of the hearing in writing and such hearing shall
6 take place no less than seven (7) days after Grantee's receipt of notice of the hearing. At the
7 hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses,
8 and to present evidence in its defense. At any such hearing, Grantor shall not unreasonably limit
9 Grantee's opportunity to make a record which may be reviewed should any final decision of
10 Grantor be appealed to a court of competent jurisdiction. The determination as to whether a
11 default or a material breach of this Franchise has occurred shall be within Grantor's sole
12 discretion, but any such determination shall be subject to appeal to a court of competent
13 jurisdiction.

14 (C) If, after the public hearing, Grantor determines that a default still exists; Grantor
15 shall order Grantee to correct or remedy the default or breach within fourteen (14) days or within
16 such other reasonable time frame as Grantor shall determine. In the event Grantee does not cure
17 within such time to Grantor's reasonable satisfaction, Grantor may:

- 18 (1) Assess and collect monetary damages in accordance with this Franchise;
- 19 (2) Commence procedures to terminate this Franchise; or,
- 20 (3) Pursue any other legal or equitable remedy available under this Franchise
21 or applicable law.

22 (D) The determination as to whether a violation of this Franchise has occurred
23 pursuant to this Section herein shall be within the sole discretion of the Grantor or its designee.
24 Any such determination by Grantor shall be accompanied by a record, to which Grantee's
25 contribution shall not be unreasonably limited by Grantor. Any such final determination shall be
26 subject to appeal to a court of competent jurisdiction.

27 **14.3 Alternative Remedies**

28 (A) No provision of this Franchise shall be deemed to bar the right of either party to
29 seek or obtain judicial relief from a violation of any provision of the Franchise or any rule,
30 regulation, requirement or directive promulgated hereunder. Neither the existence of other
31 remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise
32 limit the right of either party to recover monetary damages, as allowed under applicable law, or
33 to seek and obtain judicial enforcement of obligations by means of specific performance,
34 injunctive relief or mandate, or any other remedy at law or in equity.

35 (B) The Grantor specifically does not, by any provision of this Franchise, waive any
36 right, immunity, limitation or protection (including complete damage immunity) otherwise
37 available to the Grantor, its officers, officials, Councils, boards, commissions, authorized agents,
38 or employees under federal, state, or local law including by example Section 635A of the Cable
39 Act. The Grantee shall not have any monetary recourse against the Grantor, or its officers,
40 officials, Council, Boards, commissions, agents or employees for any loss, costs, expenses or
41 damages arising out of any provision, requirement of this Franchise or the enforcement thereof.

1 **14.4 Assessment of Monetary Damages**

2 (A) Upon completion of the procedures set forth above, and from the date of said
3 violation pursuant to the procedures specified in this Franchise, Grantor may assess against and
4 collect from Grantee monetary damages in amounts of up to two hundred fifty dollars (\$250.00)
5 per day for any material breaches. Grantor may collect the assessment as specified in this
6 Franchise.

7 (B) Any assessment hereunder shall not constitute a waiver by Grantor of any other
8 right or remedy it may have under this Franchise or applicable law, including its right to recover
9 from Grantee any additional rights or claims Grantor might have to damages, losses, costs and
10 expenses, after the period for collecting liquidated damages referenced in subsection (C) below
11 has expired.

12 (C) The Grantor and the Grantee recognize the delays, expense and unique difficulties
13 involved in proving in a legal proceeding the actual loss suffered by the Grantor as a result of the
14 Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, the Grantor and
15 the Grantee agree that the Grantee shall pay to the Grantor the sums set forth above for each day
16 that the Grantee shall be in breach of the specific provisions of this Franchise, for a maximum of
17 ninety (90) days. Such amounts are agreed by both parties to be a reasonable estimate of the
18 actual damages the Grantor would suffer in the event of the Grantee's breach of such provisions
19 of this Franchise, and are not intended as a penalty.

20 (D) The Grantee's maintenance of the Security required herein or by applicable code
21 shall not be construed to excuse unfaithful performance by the Grantee of this Franchise; to limit
22 the liability of the Grantee to the amount of the Security; or to otherwise limit the Grantor's
23 recourse to any other remedy available at law or equity.

24 **14.5 Revocation**

25 (A) This Franchise may be revoked and all rights and privileges rescinded if a
26 material breach of the Franchise is not cured pursuant to Section 14.2, or in the event that:

- 27 (1) Grantee fails to perform any material obligation under this Franchise;
- 28 (2) Grantee attempts to evade any material provision of this Franchise or to
29 practice any fraud or deceit upon the Grantor or Subscribers;
- 30 (3) Grantee makes a material misrepresentation of fact in the negotiation of
31 this Franchise;
- 32 (4) Grantee or an Affiliate challenges the legality or enforceability of this
33 Franchise in a judicial or administrative (for example, FCC) proceeding;
- 34 (5) Grantee fails to maintain required business offices as provided above;
- 35 (6) Grantee abandons the System, or terminates the System's operations;
- 36 (7) Grantee fails to restore service to the System after three consecutive days
37 of an outage or interruption in service; except when approval of such outage or
38 interruption is obtained from the Grantor, it being the intent that there shall be continuous
39 operation of the System; or
- 40 (8) Grantee becomes insolvent, unable or unwilling to pay its debts, or is
41 adjudged bankrupt, there is an assignment for the benefit of Grantee's creditors, or all or
42 part of the Grantee's System is sold under an instrument to secure a debt and is not
43 redeemed by Grantee within thirty (30) days from said sale.

1 (B) Additionally, this Franchise may be revoked one hundred twenty (120) days after
2 the appointment of a receiver or trustee to take over and conduct the business of the Grantee (at
3 the option of the Grantor and subject to applicable law) whether in a receivership, reorganization,
4 bankruptcy or other action or proceeding, unless:

5 (1) The receivership or trusteeship is vacated within one hundred twenty (120)
6 days of appointment; or

7 (2) The receivers or trustees have, within one hundred twenty (120) days after
8 their election or appointment, fully complied with all the material terms and provisions of
9 this Franchise, and has remedied all material defaults under the Franchise. Additionally,
10 the receivers or trustees shall have executed an agreement duly approved by the court
11 having jurisdiction, by which the receivers or trustees assume and agree to be bound by
12 each and every term and provision of this Franchise.

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

17 (1) Grantor has approved the transfer of the Franchise, in accordance with the
18 procedures set forth in this Franchise and as provided by law; and

19 (2) The purchaser has covenanted and agreed with Grantor to assume and be
20 bound by all of the terms and provisions of this Franchise.

21 (D) Grantor shall provide Grantee written notice of its intent to consider revocation
22 and hold a hearing in accordance with the provisions of this Franchise. Grantee shall submit any
23 objection to revocation in writing to Grantor, stating with specificity its objections. Grantor shall
24 hear any Persons interested in the revocation, and shall allow Grantee an opportunity to be heard,
25 to cross-examine witnesses, to present evidence, and to make all reasonable additions to the
26 hearing record.

27 (E) Grantor shall determine whether the Franchise shall be revoked. The Grantee
28 may appeal such determination to a court of competent jurisdiction. Such appeal to the
29 appropriate court shall be taken within thirty (30) days of the issuance of the determination of the
30 Grantor. Grantor shall receive notice of any appeal concurrent with any filing to a court of
31 competent jurisdiction.

32 **14.6 Removal**

33 (A) In the event of termination, expiration or revocation of this Franchise, and after all
34 appeals from any judicial determination are exhausted and final, Grantor may order the removal
35 of the System facilities from the Franchise Area at Grantee's sole expense within a reasonable
36 period of time as determined by Grantor. In removing its plant, structures and equipment,
37 Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all
38 Rights-of-Way, public places and private property in as good a condition as that prevailing prior
39 to Grantee's removal of its equipment.

40 (B) If Grantee fails to complete any required removal to the satisfaction of Grantor,
41 Grantor may cause the work to be done, and Grantee shall reimburse Grantor for the reasonable
42 costs incurred within thirty (30) days after receipt of an itemized list of Grantor's expenses and
43 costs, or Grantor may recover its expenses and costs from the Security, or pursue any other
44 judicial remedies for the collection thereof. Any expenses incurred in the collection by Grantor

1 of such obligation shall be included in the monies due Grantor from Grantee, including
2 reasonable attorney fees, court expenses and attributed expenses for work conducted by
3 Grantor's staff or agents.
4

5 **SECTION 15. ABANDONMENT**

6 **15.1 Effect of Abandonment**

7 If the Grantee abandons its System during the Franchise term, or fails to operate its System in
8 accordance with its duty to provide continuous service, the Grantor, at its option, may operate the
9 System or; designate another entity to operate the System temporarily until the Grantee restores
10 service under conditions acceptable to the Grantor, or until the Franchise is revoked and a new
11 franchisee is selected by the Grantor. If the Grantor designates another entity to operate the
12 System, the Grantee shall reimburse the Grantor for all reasonable costs, expenses and damages
13 incurred, including reasonable attorney fees, court expenses and attributed expenses for work
14 conducted by Grantor's staff or agents.

15 **SECTION 16. FRANCHISE TRANSFER**

16 **16.1 Transfer of Ownership or Control**

17 (A) The Cable System and this Franchise shall not be sold, assigned, transferred,
18 leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale,
19 merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or
20 property therein pass to or vest in any Person or entity without the prior written consent of the
21 Grantor, which consent shall be by the Grantor's Council, acting by ordinance or resolution.

22 (B) The Grantee shall promptly notify the Grantor of any actual or proposed change
23 in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control"
24 as used herein is not limited to majority stockholders but includes actual working control in
25 whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall
26 make this Franchise subject to cancellation unless and until the Grantor shall have consented in
27 writing thereto.

28 (C) The parties to the sale or transfer shall make a written request to the Grantor for
29 its approval of a sale or transfer and furnish all information required by law and the Grantor.

30 (D) In seeking the Grantor's consent to any change in ownership or control, the
31 proposed transferee shall indicate whether it:

32 (1) Has ever been convicted or held liable for acts involving deceit including
33 any violation of federal, State or local law or regulations, or is currently under an
34 indictment, investigation or complaint charging such acts;

35 (2) Has ever had a judgment in an action for fraud, deceit, or
36 misrepresentation entered against the proposed transferee by any court of competent
37 jurisdiction;

38 (3) Has pending any material legal claim, lawsuit, or administrative
39 proceeding arising out of or involving a cable system;

40 (4) Is financially solvent, by submitting financial data including financial
41 statements that are audited by a certified public accountant who may also be an officer of
42 the transferee, along with any other data that the Grantor may reasonably require; and

1 (5) Has the financial, legal and technical capability to enable it to maintain
2 and operate the Cable System for the remaining term of the Franchise.

3 (E) The Grantor shall act by ordinance or resolution on the request within one
4 hundred twenty (120) days of the request, provided it has received all requested information.
5 Subject to the foregoing, if the Grantor fails to render a final decision on the request within one
6 hundred twenty (120) days, such request shall be deemed granted unless the requesting party and
7 the Grantor agree to an extension of time.

8 (F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by
9 the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other
10 written instrument evidencing such sale or transfer of ownership or control, certified and sworn
11 to as correct by Grantee and the transferee, and the transferee shall file its written acceptance
12 agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the
13 event of a change in control, in which the Grantee is not replaced by another entity, the Grantee
14 will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and
15 will not be required to file an additional written acceptance. By agreeing to any transfer of
16 ownership, Grantor does not waive any rights in this Franchise.

17 (G) In reviewing a request for sale or transfer, the Grantor may inquire into the legal,
18 technical and financial qualifications of the prospective controlling party or transferee, and
19 Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer
20 upon such terms and conditions as it deems reasonably appropriate, provided, however, any such
21 terms and conditions so attached shall be related to the legal, technical and financial
22 qualifications of the prospective controlling party or transferee and to the resolution of
23 outstanding and unresolved issues of noncompliance with the terms and conditions of this
24 Franchise by Grantee.

25 (H) Notwithstanding anything to the contrary in this subsection, the prior approval of
26 the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable
27 System to an entity controlling, controlled by or under the same common control as Grantee,
28 provided that the proposed assignee or transferee must show financial responsibility as may be
29 determined necessary by the Grantor and must agree in writing to comply with all of the
30 provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the
31 purpose of financing without the consent of the Grantor; provided that such pledge of assets shall
32 not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations
33 under the provisions of this Franchise.
34

35 **SECTION 17. MISCELLANEOUS PROVISIONS**

36 **17.1 Preferential or Discriminatory Practices Prohibited**

37 Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color,
38 ethnic or national origin, religion, age, sex, sexual orientation, or physical or mental disability.
39 Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or
40 non-discrimination provisions and requirements of federal, State and local laws, and rules and
41 regulations relating thereto.

1 **17.2 Notices**

2 Throughout the term of this Franchise, each party shall maintain and file with the other a local
3 address for the service of notices by mail. All notices shall be sent to such respective address,
4 and such notices shall be effective upon the date of mailing. At the effective date of this
5 Franchise:

6
7 Grantee's address shall be:

8 Comcast Cable
9 410 Valley Ave. NW, Suite 9
10 Puyallup, WA 98371
11 Attention: General Manager
12

13
14 With a copy to:

15 Comcast Cable
16 15815 25th Avenue West
17 Lynnwood, WA 98087
18 Attention: Franchise Department
19

20 Grantor's address shall be:

21 City of Milton, Mayor
22 1000 Laurel Street
23 Milton, WA 98354-8628
24
25

26 **17.3 Costs to be Borne by Grantee**

27 Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to
28 not more than two (2) public meetings provided for pursuant to this Franchise.

29 **17.4 Binding Effect**

30 This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

31 **17.5 Authority to Amend**

32 No provision of this Franchise Agreement Shall be amended or otherwise modified, in whole or
33 in part, except by an instrument, in writing, duly executed by the Grantor and the Grantee, which
34 amendment shall be authorized on behalf of the Grantor through the adoption of an appropriate
35 resolution or order by the Grantor, as required by applicable law.

36 **17.6 Venue**

37 The Venue for any dispute related to this Franchise shall be with the United States District Court
38 for the Western District of Washington or the Pierce County Superior Court, Tacoma,
39 Washington.

40 **17.7 Governing Law**

41 This Franchise shall be governed in all respects by the laws of the State of Washington.

1 **17.8 Captions**

2 The captions and headings of this Franchise are for convenience and reference purposes only and
3 shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

4 **17.9 Construction of Franchise**

5 The provisions of this Franchise shall be liberally construed to promote the public interest.

6 **17.10 No Joint Venture**

7 Nothing herein shall be deemed to create a joint venture or principal-agent relationship between
8 the parties and neither party is authorized to, nor shall either party act toward third persons or the
9 public in any manner that would indicate any such relationship with the other.

10 **17.11 Waiver**

11 The failure of either party at any time to require performance by the other of any provision
12 hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall
13 the waiver by either party of any breach of any provision hereof be taken or held to be a waiver
14 of any succeeding breach of such provision, or as a waiver of the provision itself or any other
15 provision.

16 **17.12 Severability**

17 If any Section, subsection, paragraph, term or provision of this Franchise is determined to be
18 illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such
19 determination shall have no effect on the validity of any other Section, subsection, paragraph, term
20 or provision of this Franchise, all of which will remain in full force and effect for the term of the
21 Franchise.

22 **17.13 Entire Agreement**

23 This Franchise and all Exhibits represent the entire understanding and agreement between the
24 parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations
25 and written agreements between the parties.

26 **17.14 Compliance with Federal, State, and Local Laws**

27 The Grantee shall comply with applicable federal, state and local laws, rules and regulations.

28 **17.15 Customer Service Standards**

29 The Grantee shall comply with any applicable customer service standards that are lawfully
30 adopted by Grantor and are consistent with applicable Federal law.

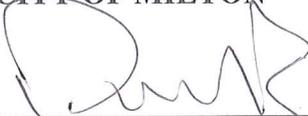
31 **17.16 Force Majeure**

32 The Grantee shall not be held in default under, or in noncompliance with, the provisions of this
33 Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where
34 such noncompliance or alleged defaults occurred or were caused by circumstances reasonably
35 beyond the ability of the Grantee to anticipate and control, including war or riots, civil
36 disturbances, floods or other natural catastrophes, labor stoppages, slow downs, or power outages
37 exceeding back-up power supplies, work delays caused by waiting for utility providers to service
38 or monitor their utility poles to which the Grantee's Cable System is attached as well as
39 unavailability of materials irrespective of cost.

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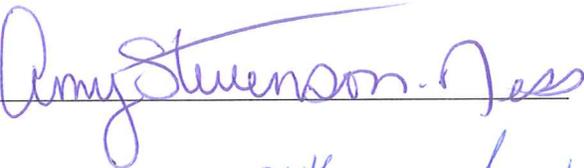
IN WITNESS WHEREOF, and pursuant to the vote of approval of the qualified electors (if required) of the City of Milton, Washington this Franchise is signed in the name of the City of Milton, Washington, this 1st day of August, 2011.

CITY OF MILTON



By: Debra Perry
Mayor, City of Milton

ATTEST:



ACCEPTED this 26th day of September, 2011, subject to applicable federal, state and local law.

Comcast of Puget Sound, Inc.



By: (Authorized Representative Signature)
Leonard J. Rozek
Sr. Vice President

Back to Agenda Bill



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To: Mayor Styron Sherrell and City Council Members
From: Mark Howlett, P.E., City Engineer
Date: January 8, 2018
Re: Well #10 – Amendment to Consultant Services Agreement with Robinson Noble

ATTACHMENTS: Explanatory Letter from Robinson Noble
Amendment to Contract with Robinson Noble

TYPE OF ACTION:

Information Only Discussion Action Expenditure Required:

Recommendation/Action: I move to authorize the Mayor to execute a \$4,170 amendment to the consultant services agreement with Robinson Noble, Inc. for a total amount not to exceed \$13,650 to provide engineering services for the replacement of the City's Well Number 10.

Fiscal Impact/Source of Funds: Funds needed for this contract will be out of the Water Capital Project Fund.

Issue: In the Fall of 2017 the City's Well Number 10 experienced a failure that requires the drilling of a new well. On August 22, 2017 the City executed a Consultant Services Agreement with Robinson Noble for the design and permitting of a new well. Additional work outside the original scope of work is required to complete this design effort.

Discussion: Replacement of Well #10 is critical to ensure a continued reliable drinking water supply for the City's customers.

During the design of the replacement well it came to the City's attention that the baseball field adjacent to our well site had been designated as an unpermitted dump site by the Washington State Department of Ecology. This designation resulted in a requirement for the City to apply for a Variance from the Tacoma/Pierce County Health Department. This designation also requires changes to the well design and construction methodology.

This work is outside the original scope of Robinson Noble's contract necessitating a contract modification.



December 6, 2017

Mr. Steve Peretti
Public Works Director
City of Milton
1000 Laurel St.
Milton, WA 98354

Subject: Discussion of additional scope items and costs for the permitting of Well 10R

Dear Steve,

As we've discussed, several challenges have been encountered during the permitting of the site for the City's Well 10R. After a considerable effort, it appears that there is a clear regulatory path forward with TPCHD, DOH, and DOE. However, I have exhausted the original project budget and there is still a significant scope of work remaining.

Robinson Noble tasks yet to be accomplished:

1. Complete and submit the letter supporting the variance in well setback distance. This variance request will be supported by the site geology, the water chemistry records, and the proposed changes in well construction.
2. Provide technical support for the variance request during review at TPCHD.
3. Revise the technical specifications to ensure the new well is drilled and constructed in compliance with the variance.
4. Support the City during bidding, review bidding results, and recommend award.

We have already exceeded our initial project budget by \$980 and anticipate an additional \$3,190 will be necessary to complete the balance of the required tasks. This results in an increase of \$4,170, for a revised project total of \$13,650.

If you have questions or need additional information, please contact me. Thank you for the opportunity to be of service.

Respectfully submitted,
Robinson Noble, Inc.

Michael F. Piechowski, LHG
Principal Hydrogeologist

attachment



**AMENDMENT NO. 1
TO
CONTRACT FOR CONSULTANT SERVICES**

THIS AMENDMENT, made this day, to the Consultant Agreement executed August 22, 2017, by and between the City of Milton, King/Pierce County, Washington, hereinafter referred to as the City, and Robinson Noble, hereinafter referred to as the Consultant, hereby modified and expanded to include the following to which all parties agree:

1. The Maximum Amount Payable will be adjusted from the agreed amount of \$9,480 to \$13,650, as noted in Section 4 of the Consultant Agreement between the City of Milton and Robinson Noble, executed on August 22, 2017.
2. This adjustment is due to a change of scope for the Consultant to provide additional services required to acquire permits from the Tacoma Pierce County Health Department.

IN WITNESS WHEREOF, the parties hereto have executed, or cause to be executed by their duly authorized officials, this **AMENDMENT** to the Contract for Consultant Services in duplicate on the respective dates indicated below.

ROBINSON-NOBLE

CITY OF MILTON

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Print)

Name: _____
(Print)

Date: _____

Date: _____

Back to Agenda Bill



Back to Agenda

To: Mayor Styron Sherrell and City Council Members
From: Steve Peretti, Interim Finance Director
Date: January 8, 2018
Re: Authorization to Process Vouchers

ATTACHMENTS: None.

TYPE OF ACTION:

Information Only Discussion Action Public Hearing Expenditure

Recommendation/Action: I move to authorize the Finance Department to process operating expenses for payment, with the Mayor's approval, during gaps between Regular Council Meetings.

Issue: There are times in the scheduling of Council meetings that result in large gaps between regular meetings and the Voucher Approval process. In the past, Council has voted to authorize the processing of operating expenses by Mayoral approval prior to the official approval of those vouchers. This action helps to avoid late fees and past-due notices.

The recommended motion would authorize the Finance Department to process operating expenses for payment with the Mayor's approval. All payments that are processed during this time will come before Council for review and ratification at the first regular meeting following any lengthy gap. If the Finance Committee, or any Council member, would like to review payments being made, the Finance Department would be happy to provide the paperwork for review at any time.