



SEATTLE CITY COUNCIL

Legislative Summary

CB 119090

Record No.: CB 119090

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125430

In Control: City Clerk

File Created: 08/24/2017

Final Action: 10/05/2017

Title: AN ORDINANCE relating to cable television; authorizing the Mayor or the Mayor's designee to approve the transfer of control, subject to conditions, of WaveDivision I, LLC; authorizing the Mayor or the Mayor's designee to execute a Cable Franchise Transfer of Controlling Interest Consent Agreement for the purpose of implementing and administering the transfer; and ratifying and confirming certain prior acts.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Harrell

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments: Ex A - Cable Franchise Transfer Consent Agreement, Ex A Att 1 – Cable Television Franchise Agreement, Ex A Att 2 - Letter of Agreement

Drafter: megan.erb@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published:

Yes

No

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	08/29/2017	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	08/30/2017	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office						
	Notes:						
1	Council President's Office	09/13/2017	sent for review	Education, Equity, and Governance Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Education, Equity, and Governance Committee						
	Notes:						

Legislative Summary Continued (CB 119090)

- 1 Full Council 09/25/2017 referred Education, Equity,
and Governance
Committee
Action Text: The Council Bill (CB) was referred. to the Education, Equity, and Governance Committee
Notes:
- 1 Education, Equity, and 09/27/2017 pass Pass
Governance Committee
Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
In Favor: 2 Chair Harrell, Vice Chair González
Opposed: 0
- 1 Full Council 10/02/2017 passed Pass
Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
In Favor: 7 Councilmember Bagshaw, Councilmember González , Councilmember
Herbold, Councilmember Johnson, Councilmember Juarez,
Councilmember O'Brien, Councilmember Sawant
Opposed: 0
- 1 City Clerk 10/04/2017 submitted for Mayor
Mayor's signature
Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:
- 1 Mayor 10/05/2017 Signed
- 1 City Clerk 10/05/2017 attested by City Clerk
Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:
- 1 Mayor 10/05/2017 returned City Clerk
Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:
-

CITY OF SEATTLE

ORDINANCE 125430

COUNCIL BILL 119090

AN ORDINANCE relating to cable television; authorizing the Mayor or the Mayor's designee to approve the transfer of control, subject to conditions, of WaveDivision I, LLC; authorizing the Mayor or the Mayor's designee to execute a Cable Franchise Transfer of Controlling Interest Consent Agreement for the purpose of implementing and administering the transfer; and ratifying and confirming certain prior acts.

WHEREAS, WaveDivision I, LLC, a Washington limited liability company, (Wave) operates a cable system in Seattle under a franchise with The City of Seattle (City) authorized under Ordinances 122514 and 123741 (Wave Cable Franchise); and

WHEREAS, Wave and the City have reached mutual agreement on a renewed cable franchise, which is pending City approval as Council Bill 119030 (Proposed Renewed Wave Cable Franchise); and

WHEREAS, Wave's sole member and manager is WaveDivision Holdings, LLC, a Delaware limited liability company (Wave Holdings); and

WHEREAS, Wave Holdings is wholly owned by OH WDH Holdco, LLC, a Delaware limited liability company, which is wholly owned by Wave Holdco, LLC, a Delaware limited liability company (Wave Holdco); and

WHEREAS, on May 18, 2017, Wave Holdco and other entities entered into a Securities Purchase Agreement (Purchase Agreement) that will result in a transfer of the controlling interest in Wave Holdco and Wave Holdco becoming a wholly-owned subsidiary of Radiate HoldCo and an indirect subsidiary on Radiate Holdings, L.P, a Delaware limited partnership (Radiate); and

1 WHEREAS, on or about June 16, 2017, Wave Holdco and Radiate submitted an FCC Form 394
2 Application for Franchise Authority Consent to Change of Control or Transfer of Control
3 of Cable Television Franchise with the City (Application), seeking the City's consent to
4 the proposed transfer of a controlling interest; and

5 WHEREAS, pursuant to Section 14 of the Wave Cable Franchise, and Seattle Municipal Code
6 (SMC) subsection 21.60.110.A, any sale, transfer, or fundamental corporate change of or
7 in a grantee of a cable franchise, including, but not limited to, a fundamental corporate
8 change in the grantee's parent corporation or entity having a controlling interest in the
9 grantee's assets, requires the approval of the City; and

10 WHEREAS, the transactions contemplated by the Purchase Agreement constitute a transfer
11 pursuant to SMC 21.60.110.A; and

12 WHEREAS, pursuant to 47 U.S.C. Section 537, the City has 120 days to act upon a request for
13 approval of a transfer after receipt of a completed application unless an agreement is
14 reached to extend the date; and

15 WHEREAS, the City has received information sufficient to make a determination regarding the
16 Application; and

17 WHEREAS, the City has determined that the proposed transfer is not contrary to public interest
18 or federal, state, or local law; and

19 WHEREAS, Wave and Wave Holdings have agreed to enter into a Cable Franchise Transfer of
20 Controlling Interest Consent Agreement with the City (Consent Agreement), in
21 substantially the form attached to this ordinance as Exhibit A, which requires them to
22 comply with the terms of the Cable Franchise, the Proposed Renewed Wave Cable
23 Franchise, and the proposed letter of agreement negotiated during the cable franchise

1 renewal process (Letter of Agreement), and to otherwise continue to operate the cable
2 system in a manner that benefits the residents of the City; and

3 WHEREAS, Wave will continue to be the grantee under the Wave Cable Franchise and the
4 Proposed Renewed Wave Cable Franchise and is not seeking any modification of the
5 terms and conditions of the Proposed Renewed Wave Cable Franchise in connection with
6 the transfer; and

7 WHEREAS, Wave has agreed to comply fully with all provisions of the Wave Cable Franchise
8 and the Proposed Renewed Wave Cable Franchise, to honor the terms of the Letter of
9 Agreement, and to meet or exceed all applicable and lawful federal, state, and local
10 requirements including, but not limited to, those relating to franchise fees, customer
11 service, and technical standards; and

12 WHEREAS, the Proposed Renewed Wave Cable Franchise and the Letter of Agreement are
13 attached as Attachments 1 and 2 to the Consent Agreement; and

14 WHEREAS, Wave Holdings has agreed to guarantee the performance of Wave under the Wave
15 Cable Franchise and the Proposed Renewed Wave Cable Franchise, and will continue to
16 be the guarantor under the Wave Cable Franchise and the Proposed Renewed Wave
17 Cable Franchise; and

18 NOW, THEREFORE,

19 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

20 Section 1. The Mayor, or the Mayor's designee, is authorized to execute the Cable
21 Franchise Transfer of Controlling Interest Consent Agreement (Consent Agreement) in
22 substantially the form attached to this ordinance as Exhibit A, and to take such further action as
23 may be necessary to implement the Consent Agreement.

1 Section 2. If the transaction or transactions that are the subjects of this ordinance do not
2 close for any reason; or if such transaction or transactions close on terms substantially or
3 materially different from the terms described in the FCC Form 394; or if Wave and Wave
4 Holdings do not accept and comply with each and every condition of the transfer of control
5 required of them respectively as set forth in the Consent Agreement; then the consent provided
6 for in Section 1 shall be null and void, and the City shall be deemed to have disapproved the
7 transfer under the Wave Cable Franchise, the Proposed Renewed Wave Cable Franchise, and
8 federal law, and all remedies under the Wave Cable Franchise and the Proposed Renewed Wave
9 Cable Franchise, and the law shall be available to the City. Within ten days of the Mayor's
10 signature of this ordinance, Wave shall file with the City Clerk a fully executed Consent
11 Agreement, substantially in the same form as Exhibit A to this ordinance, and shall send a copy
12 of the same to the Director of the Office of Cable Communications.

13 Section 3. Any act consistent with the authority of this ordinance taken after its passage
14 and prior to its effective date is ratified and confirmed.

1 Section 4. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 2nd day of October, 2017,
5 and signed by me in open session in authentication of its passage this 2nd day of
6 October, 2017.

7 

8 President Pro Tem of the City Council

9 Approved by me this 5th day of October, 2017.

10 

11 Tim Burgess, Mayor

12 Filed by me this 5th day of OCTOBER, 2017.

13 

14 Monica Martinez Simmons, City Clerk

15 (Seal)

16 Exhibits:

17 Exhibit A – Cable Franchise Transfer of Controlling Interest Consent Agreement between The
18 City of Seattle and Wave and Wave Holdings

19 Attachment 1 – City of Seattle Cable Television Franchise Agreement by and between
20 The City of Seattle and WaveDivision I, LLC

21 Attachment 2 – Letter of Agreement
22

EXHIBIT A
CABLE FRANCHISE TRANSFER OF CONTROLLING INTEREST
CONSENT AGREEMENT

This Cable Franchise Transfer of Controlling Interest Consent Agreement (“Agreement”) is entered into effective as of the Effective Date (as defined in Section 2. below), by and between WaveDivision I, LLC, a Washington limited liability company (“Wave”), WaveDivision Holdings, LLC, a Delaware limited liability company (“Wave Holdings”), and the City of Seattle, a Washington municipal corporation (“City”), each of which may be referred to individually as a “Party” and collectively referred to as the “Parties.”

RECITALS

A. As authorized under City of Seattle Ordinances 122514 and 123741, the City and Wave are parties to a cable television franchise agreement permitting Wave to construct, maintain, and operate a cable television system in the City.

B. Wave and the City have reached mutual agreement on a renewal franchise (“Franchise”), attached hereto as Attachment 1, and a letter of agreement regarding additional public benefits (“Letter of Agreement”), attached hereto as Attachment 2. Together, these documents are referred to herein as the “Franchise Documents.” The Franchise Documents are pending approval by the Seattle City Council under the Ordinance introduced as Council Bill 119030, and will become effective thirty (30) days after such approval is granted.

C. Wave’s sole member and manager is Wave Holdings.

D. Wave Holdings is wholly owned by OH WDH Holdco, LLC, a Delaware limited liability company, which is wholly owned by Wave Holdco, LLC, a Delaware limited liability company (“Wave Holdco”).

E. On May 18, 2017, Wave Holdco and other entities entered into a Securities Purchase Agreement (“Purchase Agreement”) that will result in a transfer of the controlling interest in Wave Holdco. There will be no changes to any of the subsidiaries of Wave.

F. On or about June 19, 2017, Wave Holdco and Radiate Holdings, L.P., a Delaware limited partnership (“Radiate”) submitted an FCC Form 394 Application for Franchise Authority Consent to Change of Control or Transfer of Control of Cable Television Franchise with the City (“Application”), seeking the City’s consent to the proposed transfer of a controlling interest.

G. Section 14 of the Franchise and Subsection 21.60.110.A of the Seattle Municipal Code (“SMC”) provide that any sale, transfer, or fundamental corporate change of or in a grantee of a cable franchise, including, but not limited to, a fundamental corporate change in the grantee’s parent corporation or entity having a controlling interest in the grantee’s assets, requires the approval of the City.

H. The transactions contemplated by the Purchase Agreement constitute a “Transfer” as that term is defined in Subsection 21.60.110.A of the SMC, and shall hereinafter be referred to as a “Transfer.”

I. Wave (as grantee) and Wave Holdings (as guarantor) have agreed to honor the terms and conditions of the Franchise Documents should they be approved by the City.

J. On September __, 2017, the Seattle City Council passed the ordinance introduced as Council Bill _____ approving the Transfer, and thirty (30) days after the Mayor signed the ordinance introduced as Council Bill _____ it became effective. The City’s approval of the Transfer is subject to execution and filing of this Agreement by Wave. The date on which Wave files the executed Agreement with the City Clerk shall be the Approval Date.

AGREEMENT

1. **Consent.** Subject to the terms and conditions of this Agreement, the City consents to the Transfer as specified in the Application. The City acted on the Application in a timely manner under Applicable Law. For purposes of this Agreement, “Applicable Law” shall mean any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order that has been issued, executed, entered and deemed applicable to City, either specifically or by reference to a class including City, by any court of competent jurisdiction or other federal or state department, commission, board or agency, as any of the same may be amended from time to time. The City’s consent to the Transfer shall be null and void and the City shall be deemed to have acted to reject the Application, if a duly authorized officer or agent of Wave fails to deliver the notice required pursuant to Section H of this Agreement.

2. **Effective Date.** For purposes of this Agreement, the “Effective Date” shall be the Approval Date so long as the Approval Date is no later than five (5) days after the “Closing Date” as defined in Section 1.02 of the Purchase Agreement.

3. **Reservation of Rights.** The City reserves all rights not otherwise expressly granted in this Agreement. In particular, and without limitation:

3.1 Neither this Agreement, nor any other action or omission by the City at or before the execution of this Agreement, shall be construed to grant the City’s consent to any future transfer of the Franchise or the Cable System, or change in ownership or control of Wave, or to mean that the City’s consent to any future transaction that is required by the Franchise is otherwise not required.

3.2 As a result of the Transfer, the City does not waive its rights with respect to Wave’s compliance with the terms, conditions, requirements, and obligations set forth in the Franchise Documents; Title 21, Chapter 21.60, of the Seattle Municipal Code; and any other applicable agreement and other Applicable Law, including the City’s right to compel Wave or its successors in interest to comply with the provisions of the Franchise Documents.

3.3 The City's approval of the Transfer shall in no way be deemed a representation by the City that Wave or its successors in interest are in compliance with all of Wave's obligations under the Franchise Documents; provided, however, other than the matters of non-compliance expressly set forth in this Agreement the City, following due inquiry, is not presently aware of any default by Wave to comply with the terms, conditions, requirements, and obligations set forth in the Franchise Documents and no event has occurred and is continuing that, with the giving of notice or passage of time, or both, could constitute a default thereunder.

4. **Compliance with Franchise Documents.**

4.1 Wave accepts, acknowledges, and agrees to continue to be bound by all terms and conditions of the Franchise Documents. Neither the Transfer nor the City's consent thereto shall diminish or otherwise affect Wave's commitments, duties, liabilities, or obligations embodied in the Franchise Documents, except as may be specifically provided for and described herein.

4.2 Wave shall comply with all provisions of the Franchise Documents.

4.3 Neither the Transfer nor the City's approval of the Transfer shall in any respect relieve Wave of responsibility for past acts or omissions, known or unknown, unless expressly stated in this Agreement or otherwise expressly described in writing by the City.

5. **Guaranty.**

5.1 Obligations Guaranteed. In consideration of the City's approval of the Transfer, Wave Holdings absolutely, irrevocably and unconditionally guarantees the full and faithful performance by Wave of all of the terms, covenants, conditions and agreements contained in the Franchise Documents and this Agreement subject to Applicable Law.

5.2 Representations and Warranties. Wave Holdings and Wave hereby represent and warrant that:

(A) Wave has investigated fully whether any benefit or advance will inure to Wave by reason of the execution of this Agreement, and has determined that a direct or indirect benefit will inure to Wave by reason of the execution of this Agreement.

(B) This Agreement is a legal, valid and binding agreement of Wave and Wave Holdings that is enforceable in accordance with its terms, subject to Applicable Law.

(C) The Franchise is legal, valid, binding and enforceable against Wave and Wave Holdings, in accordance with its terms, subject to Applicable Law.

(D) Wave and Wave Holdings each has the full right, power and authority to execute and deliver this Agreement, and to perform the undertakings contained herein and the transactions contemplated hereby, and all corporate or other action necessary to authorize the execution and delivery of this Agreement, and the performance of the undertakings contained herein and the transactions contemplated hereby, have been taken.

(E) No approval, consent, exemption or other action by, or notice to or filing with, any governmental or public body or authority is required in connection with the execution, delivery, performance and enforcement of this Agreement.

6. **Utility Tax and Franchise Fee Obligations.** Within thirty (30) days of the Effective Date, Wave shall remit to the City full payment for all past due franchise fees, cable utility tax obligations, fees in support of local access programming and any other fees, taxes or assessments, if any, that Wave rightfully owes the City, together with applicable interest (collectively, the “Unpaid Fees”). Wave shall also fully reimburse the City for all costs and expenses related to the financial audit of Wave and for costs incurred by the City for legal review, including all applicable consultant and attorneys’ fees (the “Transfer Review Costs”), within twenty (20) days of receipt of an invoice from the City therefor.

7. **Technical Compliance.** Wave acknowledges that the violations delineated in the June 2017, System Technical Review of the Seattle, Washington Wave Franchise Area report (“Report”) submitted by CBG Communications (“CBG”) are representative samplings of the types of code violations found in Wave’s cable system and are not intended as a definitive list of all violations in Wave’s cable system. The City acknowledges receipt of certification from Wave that it has cured the violations identified in the Report and acknowledges that some of the violations identified by CBG and attributed to Wave may in fact had been found on a competitor’s cable system. Notwithstanding, Wave shall implement an ongoing technical inspection and correction program to ensure that its cable system is at all times substantially in compliance with applicable codes, including relevant NESC and NEC provisions and shall share such plan with the City and provide updates on such plan to the City upon request.

8. **Technological Currency.** Wave shall maintain its cable system at a high level of performance and continue to invest adequate funds in the Seattle cable system to ensure that it achieves a reasonable level of technical parity, in terms of advanced services, quality and options, to that provided by other franchised operators in the City.

9. **Renewal.** Except as specifically provided herein, this Agreement shall not have any effect on the City’s authority to enforce Wave’s compliance with the Franchise Documents following the Effective Date. Further, this Agreement shall not have any effect on any authority the City may have to review, conditionally approve or deny the renewal of the Franchise held by Wave. The City expressly reserves its rights to conduct a complete renewal proceeding pursuant to 47 U.S.C. § 546, or other Applicable Law including but not limited to, conducting a complete review of Wave’s compliance with, and performance under, the Franchise and any other obligation Wave may have under Applicable Law, beginning from the Effective Date through the end of the Franchise term, November 10, 2027, and including, without limitation, any Franchise term extensions thereto up to and including during the Franchise renewal process, and to conditionally approve or deny a renewal based on any Franchise noncompliance or violation.

10. **Basic Cable Service Rate.** The Transfer shall not result in an increase in the rate for basic cable service as uniformly applied in the service area covered by the Franchise, consistent with Applicable Law. Nothing shall prohibit rate increases made in the ordinary course of business in compliance with Applicable Law. Wave shall not rely upon an increase in debt

service or in debt service coverage, if any, that results from the Change of Control to justify an increase in the rate for basic cable service.

11. **Representations and Warranties.** The City's consent to the Transfer is in reliance upon the written information provided by Wave, Wave Holdco, and Radiate, as described in the Application and as described in other supplemental information provided by Wave, Wave Holdco and Radiate. Wave and Wave Holdings each represent and warrant that the Application and the additional information and representations contained therein are true and accurate in all material respects, and that no material information is omitted, the absence of which would cause the Application and information to be materially misleading. If prior to the Effective Date Wave becomes aware of any material misrepresentation by Wave Holdco or Radiate set forth in materials submitted to the City in connection with the Application, Wave shall provide prompt written notice of any such matter to the City.

12. **Enforcement.** Any breach of this Agreement shall be deemed a breach of the Franchise subject to the remedies provided in the Franchise Agreement or the Seattle Municipal Code, as well as other remedies provided by other Applicable Law or in equity. Any action to interpret or enforce any provision in this Agreement, the Franchise or the Seattle Municipal Code may only be brought in a court of competent jurisdiction in the State of Washington, and the parties agree to be subject to the jurisdiction of Washington state and federal courts, located in King County, for such purposes. This Agreement shall be governed by the law of the State of Washington.

13. **Authority.** Each of the persons executing this Agreement represents that he or she is authorized by the respective Party to execute this Agreement and to bind that party.

14. **Notices.** All notices required or permitted under the Franchise Documents shall be delivered in the manner provided in Section 20.9 of the Franchise.

15. **Insurance.** Prior to the earlier of the Effective Date or the commencement of any activity whatsoever relating to the operation of the Cable System, Wave shall provide the City with certificates of insurance and original endorsements, unless such information is already on file with the City, evidencing the insurance coverage is in accordance with Section 12.2 of the Franchise.

16. **Security Fund.** Unless such information is already on file with the City, within ten (10) calendar days of the Effective Date, Wave shall provide the required performance bond and security fund set forth in Sections 12.4 and 12.5 of the Franchise.

17. **Effect on Franchise.** This Agreement shall have no effect on the Franchise except as specifically provided in this Agreement.

18. **Notice Regarding Closing of Purchase Agreement.** Within five (5) calendar days of the Closing Date, Wave shall execute and file this Agreement with the City Clerk and the Office of Cable Communications. At such time, all of the pre-conditions and requirements of this Agreement shall be executed, met, or completed, unless otherwise specified herein.

19. **Reimbursement for Out of Pocket Expenses.** Within twenty (20) days of the date of request by the City, Wave shall reimburse the City, or at the direction of the City the City's consultants and attorneys directly, for all reasonable documented (in a manner reasonably acceptable to the Parties) out of pocket expenses incurred by the City, including all reasonable fees, costs and expenses incurred by the City for outside consultants and attorneys, related to the Transfer.

20. **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute an agreement binding on all Parties, notwithstanding that all Parties may not have signed the same counterpart.

21. **Voluntary Agreement.** This Agreement is freely and voluntarily entered into by each Party, without any duress or coercion, and after each Party has had an opportunity to consult with its counsel. Each Party has carefully and completely read all of the terms and provisions of this Agreement. It is understood and agreed by the City and Wave that neither this Agreement nor anything herein shall be deemed to be an admission or confession of any liability whatsoever or any breach of the terms of the Franchise or violation of SMC 21.60.110. If this Agreement should be found to be unenforceable by a court of competent jurisdiction, the Parties shall have all rights under Applicable Law to pursue any and all remedies available.

22. **Binding Agreement.** This Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. This Agreement shall be effective only upon the execution of this Agreement by all Parties hereto. Any purported transfer of this Agreement is void without the express written consent of the Parties hereto.

23. **Reliance on Own Judgment.** Each of the Parties represents that in executing this Agreement it relied solely on its own judgment, belief, and knowledge, and upon the advice and recommendations of its own independently selected counsel and consultants, concerning the nature, extent, and duration of its rights and obligations, and that it has not been influenced in executing this Agreement by any of the other Parties or by any person representing them. This Agreement shall not be deemed to have been drafted by any individual Party and shall not thereby be construed against any Party.

24. **Severability.** If any section, sentence, paragraph, term, or provision of this Agreement is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision of this Agreement, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

25. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. This Agreement may only be modified by a written amendment signed by all Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as their free and voluntary acts and deeds.

Dated: _____

CITY OF SEATTLE

BY: _____
Michael Mattmiller, Chief Technology Officer

Dated: _____

WAVEDIVISION I, LLC

BY: _____
Jim Penney, EVP

Dated: _____

WAVEDIVISION HOLDINGS, LLC

BY: _____
_____, CEO

CITY OF SEATTLE
CABLE TELEVISION FRANCHISE AGREEMENT

BY AND BETWEEN THE CITY OF SEATTLE AND

WAVEDIVISION I, LLC

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SECTION 1. NATURE AND TERM OF GRANT

1.1 Grant of Franchise.

- (A) The City of Seattle hereby grants to WaveDivision I, LLC, a Washington limited liability company, having its principal place of business at 401 Kirkland Parkplace Center, Suite 500, Kirkland, Washington 98033, a Franchise to install, construct, operate and maintain a Cable System to provide Cable Services under such terms and conditions as are set forth in this Franchise.
- (B) Throughout this Franchise, the City of Seattle, Washington shall be referred to as the "City," and WaveDivision I, LLC shall be referred to as the "Grantee."

1.2 Duration of Franchise.

The term of this Franchise, and all rights, privileges, obligations, and restrictions pertaining thereto, shall be ten years from the Effective Date of this Franchise, unless terminated earlier as provided herein.

1.3 Effective Date.

The Effective Date of this Franchise shall be November 11, 2017, subject to applicable law.

1.4 Competitive Equity

- (A) The City reserves the right to grant additional franchises or similar authorizations to provide Video Programming services via Cable Systems or similar wireline systems located in the Right of Way. The City intends to treat wireline competitors in a nondiscriminatory manner in keeping with federal law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to use the Right of Way to provide such services and Grantee believes the City has done so on terms materially more favorable than the obligations under this Agreement, then the provisions of this subsection 1.4 will apply.
- (B) As part of this Franchise, the City and Grantee have mutually agreed upon the following terms as a condition of granting the Franchise, which terms may place the Grantee at a material competitive disadvantage if not required of a wireline competitor: the Franchise Fee, PEG funding, PEG Access Channels, records and reports, and customer service obligations (hereinafter "Material Obligations"). The City and Grantee agree that these Material Obligations bear no relationship to the technology employed by the Grantee or a wireline competitor and as such shall be applied fairly across all wireline competitors. The City and Grantee further agree that this provision shall not require a word for word identical franchise or authorization for competitive equity so long as the regulatory and financial burdens on each entity are, when considered as a whole, materially equivalent.
- (C) Within one year of the adoption of a wireline competitor's franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations

in this Franchise that exceed the Material Obligations of the wireline competitor's franchise or similar authorization. The City shall have 120 days to agree to allow Grantee to adopt the same Material Obligations provided to the wireline competitor, or dispute that the Material Obligations are different. In the event the City disputes that the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than 30 months.

- (D) Nothing in this subsection 1.4 is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under applicable law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.
- (E) This provision does not apply if the City is ordered or required to issue a franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new Cable Operator actually commencing provision of service in the market to its first customer. Should the new Cable Operator fail to continuously provide service for a period of six months, the City has the right to implement this Franchise with its original terms upon 180 days' notice to Grantee.
- (F) This section does not apply to open video systems, nor does it apply to common carrier systems exempted from franchise requirements pursuant to 47 U.S.C. § 571; or to systems that serve less than five percent of the geographic area of the City; or to systems that only provide video services via the public internet.

1.5 Relationship to Other Laws.

- (A) Grantee's Franchise is subject to all lawful terms, conditions, and provisions of this Franchise; of Seattle Municipal Code Chapter 21.60 ("SMC 21.60," or "Cable Code") as the same is now or hereafter amended solely by lawful exercise of the City's police powers; and of the Communications Act of 1934, as amended by the Cable Consumer Protection Act of 1984, the Cable Communications Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as the same is now or hereafter amended (the "Communications Act").
- (B) Grantee's rights hereunder are subject to the lawful exercise of the City's police power. Nothing in this Franchise shall preclude or prohibit the City from enacting any ordinance in the interest of public health, safety and welfare, which may impact the Grantee in its operation of the Cable System, as a proper exercise of the City's police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise.

- (C) Grantee reserves all rights it may have to challenge the lawfulness of any City Code provision or modification whether such rights arise in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.
- (D) It is the intent of both parties that each party shall enjoy all rights and be subject to all obligations of this Franchise for the entire term of the Franchise and, to the extent any provisions have continuing effect, after its expiration for the applicable statute of limitations. However, both parties recognize that the technology of cable television and related technologies are in a state of flux and that regulatory conditions and franchise rights and powers may change drastically during the term of this Franchise. Should such changes occur, the City and Grantee shall negotiate in good faith to amend the Franchise to preserve the rights and obligations of the City and Grantee hereunder to the fullest extent consistent with such changes.

SECTION 2. CITY'S PRINCIPLES AND INTENT

2.1 The following provisions are statements of the City's intent in entering into this Franchise, but do not necessarily reflect Grantee's intent, and shall not supplant or modify specific provisions of the Franchise:

- (A) Ensure that the City stays at the forefront of technology by keeping the Cable System up to date with features meeting the current and future cable-related needs and interests of the community;
- (B) Encourage the widest feasible scope and diversity of Programming and other services to all City residents consistent with community needs and interests;
- (C) Encourage competitive, affordable, and equal access to advanced communications services of all kinds to residents of the City on a non-discriminatory basis;
- (D) Ensure that City residents have the opportunity to view public, educational, and governmental Programming;
- (E) Ensure that rates and charges for cable Programming, equipment, and services provided over the Cable System are affordable and consistent with federal standards;
- (F) Ensure that City residents receive high quality customer service;
- (G) Ensure that the City receives appropriate compensation for the use of its facilities and property and that installation and maintenance of cable Facilities comply with all applicable City regulations, and do not interfere with the City's legitimate use of its own facilities and property;
- (H) Encourage competition among Cable Operators and between Cable Operators and other providers of communications services;

- (I) Protect the City's interests and the health, safety, and welfare of its residents; and
- (J) Provide for timely mandatory Government Access to all Cable Systems in times of civil emergency.

SECTION 3. DEFINITIONS

For the purpose of this Franchise, and all attachments hereto, the following terms, phrases, and their derivations shall have the meanings given below unless the context clearly mandates a different interpretation. Where the context so indicates, the present tense shall imply the future tense, words in plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

- 3.1 "Access" means the right of certain agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, on a non-discriminatory basis, to use the Cable System for specific non-commercial purposes, including the right to acquire Programming, to create Programming and to distribute and receive Programming over the Cable System.
- 3.2 "Access Channel," "PEG Access Channel," or "PEG Channel" means any Channel, or portion of a Channel on a Cable System required by the Franchise to be dedicated by the Grantee for PEG Access.
- 3.3 "Affiliated Entity" means any enterprise that owns or controls the Grantee, or is owned or controlled by the Grantee, or otherwise has ownership or control in common with the Grantee, including, without limitation, Grantee's Parent Corporations and any subsidiaries or affiliates of such Parent Corporations that meet this definition.
- 3.4 "Basic Service" or "Basic Service Tier" means the lowest priced tier of Cable Service offered by Grantee and includes, at a minimum, all signals of domestic television broadcast stations provided to any Subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Cable System), any public, educational, and governmental Programming required by the Franchise to be carried on the Basic Service Tier, and any additional Video Programming signals or service added to the Basic Service Tier by the Grantee.
- 3.5 "Cable Operator" means any Person or group of Persons (a) who provides Cable Services over a Cable System and directly or through one (1) or more affiliates owns a significant interest in such Cable System, or (b) who otherwise controls or, through any arrangement, is responsible for the management and operation of such a Cable System.
- 3.6 "Cable Services" means (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service and (b) Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service. For purposes of this definition, "other programming service" means information that the Grantee makes available to all Subscribers generally.

- 3.7 "Cable System" means a cable system as defined in Title VI of the Communications Act of 1934, 47 U.S.C. § 522(7), as amended, and any implementing regulations.
- 3.8 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).
- 3.9 "City" means the City of Seattle, a municipal corporation of the State of Washington.
- 3.10 "City Council" means the legislative body of the City of Seattle.
- 3.11 "Communications Act" means the Communications Act of 1934, as amended by the Cable Consumer Protection Act of 1984, the Cable Communications Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as the same is now or hereafter amended.
- 3.12 "Demarcation Point" means the physical point 12 inches outside the location at which the Cable System enters a Subscriber's home or Dwelling Unit or building. The Demarcation Point for a PEG facility shall be the termination panel located at the PEG facility.
- 3.13 "Designated Access Managers" means the entity or entities designated by the City under subsection 6.1.
- 3.14 "Document" or "Records" means written or graphic materials, however produced or reproduced, or any other tangible permanent documents, including those maintained by computer or other electronic or digital means, and including, but not limited to, financial documents that may be required for audit purposes and that are maintained by the Grantee in the ordinary course of conducting its business.
- 3.15 "Dominant Cable Operator" means a Cable Operator that occupies the most influential market position in the City as a result of having significantly higher Subscriber levels than other Cable Operators.
- 3.16 "Downgrade Charges" means charges Grantee may impose for implementing a request for a change or reduction of Cable Services to less than current services or tiers.
- 3.17 "Downstream Channel" means a Channel capable of carrying a transmission from a Headend to other points on a Cable System, including interconnection points.
- 3.18 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, designed for residential occupancy and includes "household" as that term is used in the Communications Act, 47 U.S.C. § 521, et seq. Fraternity, sorority houses, and buildings with more than one set of facilities for cooking, unless the additional facilities are clearly accessory, are Multiple Dwelling Unit buildings.
- 3.19 "Educational Access" means Access for Schools and other educational institutions and entities.

- 3.20 "Effective Date" means the Effective Date of this Franchise (see subsection 1.3).
- 3.21 "Facility" means any distribution component of a Cable System.
- 3.22 "FCC" means the Federal Communications Commission or such successor agency of the U.S. government that exercises jurisdiction over Cable Services.
- 3.23 "Fiber Optic" refers to a transmission medium of optical fiber cable and the optronics, software and equipment that support delivery of Cable Services by means of the optical fiber cable.
- 3.24 "Franchise" means this Franchise Agreement.
- 3.25 "Franchise Area" means the area within the City as specified in Section 4.1 hereof within which the Grantee is authorized to provide Cable Services under this Franchise, and any modification thereof.
- 3.26 "Franchise Fee" means consideration paid by Grantee for the privilege to construct and/or operate a Cable System in the Franchise Area as set forth in Section 11, in accordance with Section 622 of the Communications Act.
- 3.27 "Government Access" means Access for governmental entities or their designees.
- 3.28 "Grantee" means WaveDivision I, LLC, its lawful successors, transferees and assignees.
- 3.29 "Gross Revenues" means
- (A) all revenue received by the Grantee, in whatever form and from all sources, derived from the operation of Grantee's Cable System to provide Cable Services in the Franchise Area, including any revenue received by the Grantee from any use of any component of the Cable System consistent with applicable law. Gross Revenues shall include, without limitation, revenue received from: (1) Cable Services; (2) converter and equipment rentals; (3) advertising; (4) installations; (5) sales occurring as a result of home shopping or similar Programming; (6) Leased Access Channels; (7) sales of Programming guides; (8) Franchise Fees; and (9) fees, payments or other consideration paid by Programmers and commissions on advertising accounted for in accordance with generally accepted accounting principles (GAAP). Gross Revenues shall not include amounts that cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they are collected.
 - (B) Gross Revenues shall be determined without deduction for (1) any operating expense; (2) any accrual; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment, and revenue shall be counted only once in determining Gross Revenues. Gross Revenues shall not include funds that the Grantee is legally obligated to collect, such as sales or similar taxes imposed directly on Subscribers.

- (C) This definition shall be construed so as to include all Gross Revenues to the maximum extent permitted by federal and state law, except to the extent specifically excluded in this subsection, and encompasses revenues that may develop in the future, whether or not anticipated. If a statutory change in state or federal law or a decision of the FCC or a court of competent jurisdiction expands or limits the categories of revenue available to the City for the Franchise Fee assessment under this definition as of the Effective Date, that change shall automatically be included in the definition of Gross Revenues under this Franchise, provided that as it pertains to expansions only the City imposes the same requirement upon any other similarly situated multichannel video provider over which the City has jurisdiction and authority to impose such fees.
- 3.30 "Headend" means a facility for signal reception and/or dissemination on the Cable System, including all related equipment, such as cable, antennas and wires, satellite dishes, monitors, switchers, modulators, computers, software, processors for television broadcast signals, equipment for the interconnection of Grantee's Cable System with adjacent cable systems and for interconnection of any separate networks which are part of Grantee's Cable System.
- 3.31 "Leased Access Channel" means a Channel or portion of a Channel made available by Grantee for Programming by others for a fee, as defined in the Communications Act.
- 3.32 "Liquidated Damages" means any requirement imposed on the Grantee to pay specified sums to the City as a result of performance deficiencies and/or Franchise violations identified herein.
- 3.33 "Multiple Dwelling Unit" or "MDU" means an apartment building, condominium building, or cooperative.
- 3.34 "Non-Cable Services" means any service that is distributed over the Cable System, other than a Cable Service.
- 3.35 "Non-Standard Installation" (see subsection 9.7(C)).
- 3.36 "Normal Business Hours" means the hours from 9 a.m. to 7 p.m., Monday through Friday, and 9 a.m. to 5 p.m., Saturday, excluding federal, state or City holidays. All time notations are Pacific Standard Time unless otherwise noted.
- 3.37 "Parent Corporation" means any existing or future corporation, entity, or person with greater than 50 percent ownership or control over Grantee.
- 3.38 "PEG Access" means Public Access, Educational Access, and Government Access, individually or collectively.
- 3.39 "Person" means any sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Washington, or any natural person.

- 3.40 "Programmer" means any Person who prepares, produces or provides Programming that is intended for transmission on a Cable System.
- 3.41 "Programming" means the video, audio, multimedia or other material or programs prepared for or capable of transmission on a Cable System by a Programmer, or, as the context requires, the process of causing such material to be created, received, transmitted or distributed on a Cable System.
- 3.42 "Public Access" means Access for the public, including organizations, groups and individuals.
- 3.43 "Puget Sound Region" or "Region" or "Regional" means the geographic area of King, Pierce, and Snohomish counties.
- 3.44 "Right of Way" means the surface of and the space alongside, above and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement and road right-of-way now or hereafter held or administered by the City.
- 3.45 "School" means any public educational institution accredited by the State of Washington, including primary and secondary schools (K-12), and colleges and universities (excluding the dormitories, fraternity and sorority houses of such institutions).
- 3.46 "Service Interruption" means any loss of picture or sound on one or more cable Channels.
- 3.47 "Standard Installation" (see subsections 9.7(A) and (B)).
- 3.48 "Subscriber" means any Person who is lawfully receiving, for any purpose or reason, any Cable Service whether or not a fee is paid, including each such Person in a Multiple Dwelling Unit building, except for purposes of reporting or cost allocation, where equivalent Subscriber basis may be used.
- 3.49 "Tier" means Programming Services offered by Grantee to Subscribers as a package.
- 3.50 "Upgrade" means an improvement in any technical aspect of a Cable System.
- 3.51 "Upstream Channel" means a Channel capable of carrying a transmission to a Headend from any other point on a Cable System including interconnection points.
- 3.52 "Video Programming" means Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as the term is used in the Communications Act.

SECTION 4. FRANCHISE AREA

4.1 Franchise Area.

- (A) Grantee shall be authorized to provide Cable Services throughout the entire jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.
- (B) Grantee shall maintain accurate maps and improvement plans of its Franchise Area that show the location, size, and a general description of all Cable System facilities installed in the Right of Way and any power supply sources, including voltages and connections.
- (C) Grantee shall make available a map to the City showing the location of the Cable System facilities as maintained in the ordinary course of business and shall update the map annually, whenever the facilities expand or are relocated, and within 30 days of a request by the City.

SECTION 5. PROGRAMMING

5.1 Grantee Compliance.

Grantee shall meet or exceed the Programming and Channel capacity requirements set forth in this Franchise.

5.2 Maintenance of Existing Conditions.

- (A) Without the written consent of the City and except as otherwise specifically provided in this Franchise, Grantee shall not delete, or so limit as to effectively delete, any broad category of Programming identified in subsection 5.3 carried on Grantee's Cable System as of the Effective Date of this Franchise.
- (B) In the event of a modification proceeding under 47 U.S.C. § 545, the mix and quality of services provided by the Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of services required under this Franchise throughout its term.

5.3 Expanded Programming and Channel Capacity.

Grantee shall provide:

- (A) A minimum number of Downstream Channels equal to no fewer Channels than are available to all Subscribers as of the Effective Date of this Franchise.
- (B) In addition to Programming provided on PEG Access Channels and local off-air broadcast Channels, if any, Grantee shall provide the following broad categories of Programming:

- (1) Education
- (2) News & information
- (3) Sports
- (4) Cultural and performing arts
- (5) Government affairs
- (6) Weather
- (7) Foreign language
- (8) Programming addressed to the City's diverse ethnic and minority interests
- (9) Audio Programming (including a selection of local FM radio stations)
- (10) Business news
- (11) General entertainment (including, but not limited to, movies)
- (12) Children's Programming
- (13) Family Programming
- (14) Science/documentary
- (15) Canadian Programming

The requirements for each category of Programming may be satisfied by providing a separate Channel devoted substantially to the category, or by Programming from more than one Channel which in the aggregate totals the equivalent of a Channel devoted substantially to the category.

5.4 Ascertainment Process.

- (A) At the City's request, and not more frequently than once every three years from the Effective Date of this Franchise, Grantee shall conduct, at its sole cost, an ascertainment of the community's views regarding the nature and adequacy of Grantee's Cable Services, and of the cable-related needs and interests of the community and the preferences of Subscribers within the Grantee's Franchise Area, conducted by an independent non-Affiliated Entity using generally accepted market research techniques. The ascertainment shall consist of a telephone survey of a statistically valid sample of Grantee's Subscribers in the City. The survey questionnaire shall be jointly developed by the Grantee, the City, and an independent research entity selected by Grantee. A written summary of the findings, prepared by the independent entity and including a description of the methodology used, and a description of any actions Grantee intends to take, shall be provided to the City.

- (B) Grantee agrees that the costs and expenses associated with conducting the ascertainment and Grantee's payment thereof are not within the meaning of the term "Franchise Fee" as defined by Section 622(g)(1) of the Cable Act (47 U.S.C. § 542(g)(1)) or any successor provision, and are within one (1) or more exclusions to the term "Franchise Fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act (47 U.S.C. § 542(g)(2)(A)-(D)) or any successor provision. Grantee further agrees that such costs and expenses shall not be deemed to be: (i) "payments in kind" or involuntary payments chargeable against the compensation to be paid to the City or chargeable against the payments to any PEG entity by Grantee pursuant to Section 6 hereof, or (ii) part of the compensation to be paid to the City or the payments to any PEG entity by Grantee pursuant to Section 6 hereof.
- (C) Following the ascertainment process, Grantee shall make a good faith determination of whether adjustments to its broad Programming categories or other Cable Services are reasonably necessary to accommodate the cable-related community needs and interests in light of the cost of meeting those needs and interests, and, in the event such changes are determined in good faith by the Grantee to be necessary, shall implement them within a reasonable time. This provision shall not limit the City's rights pursuant to subsection 19.1.

5.5 Deletion or Reduction of Programming Categories.

Grantee shall not delete or so limit as to effectively delete any broad category of Programming within its control for any group of Subscribers without the City's consent, which shall not be unreasonably withheld, and shall provide at least 30 days prior written notice to the City of Grantee's request to do so, including all proposed changes in bandwidth or Channel allocation, and any assignments including any new equipment requirements that may occur as a result of these changes.

5.6 Obscenity.

The Grantee shall comply with all relevant provisions of federal law relating to obscenity. The City acknowledges that Grantee has no editorial control over Programming carried on PEG Access Channels.

5.7 Parental Control Device.

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device compatible with the Subscriber's equipment that will enable the Subscriber to block access to any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of the original subscription and annually thereafter, and if requested by the Subscriber, shall provide the device at the time of the original installation.

5.8 Leased Access Channels.

Leased Access Channels shall be provided in accordance with federal law.

SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS

6.1 Designated Access Managers.

- (A) The City shall name Designated Access Managers for Public, Education, and Governmental ("PEG") Access Programming. Designated Access Managers shall have sole responsibility for operating and managing their respective PEG Access Facilities.
- (B) Grantee shall cooperate with Designated Access Managers.

6.2 PEG Access Channel Capacity.

At no cost to the City or any of its Designated Access Managers, Grantee shall dedicate for the City's use PEG Access Channels as specified in this section.

- (A) Grantee shall continue to carry the following PEG Access Channels in the following format, on its Cable System in the City:
 - (1) Seattle Channel: standard definition (SD) and high definition (HD)
 - (2) Seattle Community Colleges: SD and HD
 - (3) Seattle Public Schools: SD
 - (4) Public Access Television: SD
 - (5) UWTV: SD and HD
 - (6) King County TV (KCTV): SD and HD
 - (7) KCTS+: SD
 - (8) TVW: SD
- (B) The City shall have the authority to utilize the above referenced PEG Access Channels (in both SD and HD) as determined in the City's sole discretion with respect to the content of PEG Programming to be carried on the PEG Access Channels, except for the regional PEG Access Channels described in subsection 6.2(C). Nothing in this subsection 6.2(B) shall create any third party rights in the PEG Access Channel capacity.
- (C) Regional PEG Access Channels. Grantee currently carries the following regional Channels as part of the PEG Access Channels identified in subsection 6.2(A): UWTV, KCTV and TVW. Grantee shall only be required to carry these regional Channels as long as it continues carriage of these Channels on any of Grantee's Cable Systems located in the Seattle metropolitan area.

- (D) At such time as all other Basic Service Channels (or its equivalent tier) excluding PEG Access Channels, are carried in HD, the SD PEG Access Channels will also be carried by Grantee in HD, at which time the SD PEG Access Channels will be discontinued and the maximum number of PEG Access Channels shall be eight HD Channels, subject to subsection 6.2(C). If Grantee no longer carries the three regional Channels identified in subsection 6.2(C), the Grantee shall provide the City, upon 160 days written request, one additional HD Channel for PEG Programming and the maximum number of PEG Access Channels shall be six.
- (E) PEG Access Channels provided pursuant to this section shall not in any way relieve Grantee of its Programming category requirements within any of the categories set forth in Section 5.

6.3 PEG Access Channel Assignments.

Channel assignments for PEG Access Channels shall be determined in accordance with the following criteria:

- (A) Except as otherwise agreed by the City, all PEG Access Channels shall remain on the Basic Service Tier or an equivalent entry level service tier offered by Grantee on its Cable System, and will at all times be available for viewing by all Subscribers regardless of the Tier.
- (B) The City acknowledges that Grantee may determine Channel placement at its sole discretion; however, Grantee shall work with the City, other Cable Operators, and Designated Access Managers to establish and coordinate City-wide PEG Access Channel assignments. Nothing in this section shall limit Grantee, Designated Access Managers, or other Cable Operators from agreeing upon other Channel assignments.
- (C) Grantee shall cooperate with the City, Designated Access Managers and other Cable Operators to establish common, logically related additional Channel assignments in accordance with this section.
- (D) Grantee shall make reasonable efforts to coordinate the cablecasting of all Programming on the Cable System on the same Channel designations as such Programming is currently cablecast in the Franchise Area as of the Effective Date. If at any time during the duration of this Franchise, Grantee reassigns the location of a PEG Access Channel on the Cable System, Grantee shall provide at least 60 days advance notice to the City and the Designated Access Managers. Unless prohibited by applicable state or federal law, Grantee shall make best efforts to place the PEG Access Channels within reasonable proximity of the Channel locations for Grantee's network affiliates if PEG Access Channels are relocated. Unless prohibited by applicable state or federal law, Grantee shall also make best efforts to assign the HD PEG Access Channel a number near the other HD local broadcast stations if such Channel positions are not already taken, or if that is not possible, near HD news/public affairs Programming Channels if such Channel

positions are not already taken, or if not possible, as reasonably close to HD local broadcast stations as available Channel numbering will allow. Grantee shall ensure that Subscribers are notified of such reassignment in accordance with the notice requirements in SMC 21.60.820.E. In conjunction with any reassignment of any SD PEG Access Channels, unless such reassignment is mandated by applicable state or federal law, Grantee shall provide either (1) a reimbursement up to \$10,000 to the affected Designated Access Manager for actual costs associated with the change, or (2) \$20,000 of in-kind airtime on advertiser supported Channels for the purpose of airing multiple 30 second public service announcements produced by a Designated Access Manager. The City shall cooperate with the Designated Access Manager and Grantee for such airing. All reimbursement, whether in cash or in-kind, shall be paid or provided on a per-event basis, regardless of the number of PEG Access Channels affected by the change.

6.4 PEG Funding.

- (A) Grantee shall remit to the City an amount equal to 0.4 percent of Gross Revenues paid monthly based upon revenues for that month in support of PEG Access ("PEG Fee"). Grantee's PEG Fee obligation begins on the Effective Date and continues for as long as Grantee continues to operate under Franchise, provided, however, the City agrees that no audit of the PEG Fee payment shall take place until at least 60 days after the Effective Date. As of the Effective Date of the Franchise, the City collects a 4.4 percent Franchise Fee pursuant to municipal ordinance. To the extent allowed by law, the PEG Fee may be itemized on Subscriber billing statements and recovered from Subscribers in any manner consistent with applicable law. If the City permits the Dominant Cable Operator to pay a PEG Fee that is less than the PEG Fee paid by Grantee pursuant to this subsection 6.4(A), Grantee shall be entitled to reduce its PEG Fee payment to match the amount paid by the Dominant Cable Operator. If upon renewal, the City permits the Dominant Cable Operator to pay a PEG Fee that is less than the PEG Fee paid by Grantee pursuant to this subsection 6.4(A), Grantee shall be entitled to reduce its PEG Fee payment to match the amount paid by the Dominant Cable Operator.
- (B) In the event the City increases the Franchise Fee pursuant to municipal ordinance, Grantee may then request information from the City and its Designated Access Managers to verify use of the PEG Fee in accordance with federal law. Grantee will identify the relevant financial records of the City and the Designated Access Managers that Grantee wants to review. The City and the Designated Access Managers shall provide any requested information to the Grantee within a reasonable time.
- (C) Nothing in this section shall prevent the Designated Access Manager for PEG Access or the City from engaging in general public fundraising activities to provide additional support for PEG Access or Grantee from voluntarily providing training grants or other financial support for PEG Access, in accordance with federal law.

6.5 PEG Access Programming.

The City shall ensure that all Programming transmitted over PEG Access Channels shall be non-commercial in nature. Program material to be distributed on PEG Access Channels shall contain no advertising or commercial content for which consideration is received by the City or an Access Programmer. Grantee and City agree that City or an Access Programmer may include acknowledgments for Persons which sponsor or underwrite Access Programming in a manner substantially similar to the sponsorship information provided on the Public Broadcasting System.

6.6 PEG Access Interconnections.

- (A) Grantee shall continue to provide, at no cost to the City or any of its Designated Access Managers, all interconnections of Grantee's Cable System with the Cable System of the Dominant Cable Operator that are in place on the Effective Date for the purpose of receiving PEG Access Channels, unless otherwise authorized or directed by the City. Grantee shall make all of City's PEG Access Channels available to all Subscribers.
- (B) Grantee shall not degrade the quality of signals provided to it throughout the duration of this Franchise.
- (C) Notwithstanding SMC 21.60.060.B.3, Grantee shall not be required to interconnect with any Cable Operator with which it does not already interconnect as of the Effective Date.

6.7 Changes in Technology.

Except for those technical changes specifically mandated by law or regulation, in the event any change is made in the Cable System and related equipment and Facilities, or in the signal delivery technology of Grantee's Cable Services that materially degrades the signal quality or transmission of PEG Access Programming, Grantee shall, at its sole expense and free of charge to the City, take necessary steps or provide necessary technical assistance, including, but not limited to, the acquisition of all necessary equipment, to ensure that the capabilities of the Designated Access Managers, PEG Access Programmers, or program offerings (quality of Channel or video) are restored.

- (A) Interactivity. In the event Grantee provides commercial interactive services on the Cable System and at such time as Subscribers subscribe to such interactive services, Grantee shall make available to the City equivalent interactive capabilities on its PEG Access Channels in accordance with subsection 6.2; provided that any such services will be provided with respect to PEG Access Channels only on the same basis as such interactive services are otherwise being provided with respect to other programming services. By way of example, if a commercial local broadcast station or a cable network pays for the equipment and the installation of such equipment needed for interactive services on such programming services, then Grantee shall have no obligation to provide interactive services with respect to PEG Access Channels unless the cost of necessary equipment and the installation thereof is paid for by the City or the Designated Access Managers or PEG Access Programmers.

Any Subscriber equipment necessary to use interactive features on such PEG Access Channels shall be made available to Subscribers on the same terms as for commercial uses. For purposes of this subsection, "interactive services" means two-way communication over the Cable System in which the Subscriber interacts with the program being viewed, but does not include use of a remote or secondary device (e.g. smartphone or tablet PC) for the purpose of calling up information of any kind, searching for and selecting programming, and/or merely ordering and receiving pay-per-view, video on demand, or other Cable Services.

- (B) Grantee shall ensure that PEG Access Channels have adequate bandwidth capacity to transmit any commercially available future technologies utilized by Grantee within the Franchise Area. Grantee shall bear any costs associated with equipment on its side of the PEG Demarcation Point necessary for the use of such technologies. The Designated Access Managers shall bear all costs necessary to deliver PEG Access Channels utilizing all future technologies to Grantee.

6.8 Technical Quality.

- (A) The Grantee shall not unreasonably discriminate against PEG Access Channels with respect to accessibility, functionality and the application of any applicable FCC Rules and Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall distribute the PEG Access Channel signal without degradation. There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD PEG Access Channels so long as the requirements of this Franchise are otherwise met. Grantee may implement HD carriage of PEG Access Channels in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the Subscriber that is comparable and functionally equivalent to similar commercial SD or HD Channels carried on the Cable System.
- (B) Grantee shall provide routine maintenance and shall repair and replace all of its transmission equipment, including Grantee's transmitters/receivers, associated cable and equipment in use upon the Effective Date of this Franchise, necessary to carry a quality signal to and from the Demarcation Point at the City's or Designated Access Manager's facilities.
- (C) Grantee shall continue to provide all current and future activated Downstream Channels for PEG Access use in a SD or HD or equivalent format in Grantee's Basic Service level as specified herein. Grantee shall carry all components of the SD or HD PEG Access Channel signals provided by the Designated Access Managers including, but not limited to, formatting coding information or data associated with any such signal, closed captioning, stereo audio and other elements associated with the Programming. The Designated Access Manager shall be responsible for providing the PEG Access Channel signal in a SD or HD or equivalent format (as specified herein) to the Demarcation Point at the designated

point of origination for the PEG Access Channel. Grantee shall be responsible for costs associated with the transport and distribution of the SD or HD PEG Access Channel on its side of the Demarcation Point.

- (D) Grantee, at its sole cost, shall provide up to 25 hours of Video On Demand ("VOD") content, selected by the City and Designated Access Managers, per Access Channel for PEG Access over Grantee's VOD platform. The hardware and software utilized to provide VOD services shall be in all respects of the same or better technical quality as the hardware and software utilized by Grantee in the provision of any other video on demand services offered over the Cable System, and shall be upgraded at Grantee's cost, when new hardware or software is utilized on Grantee's Cable System for other video on demand services. Grantee shall provide reasonable technical assistance to allow for proper use and operation when encoding hardware or software is installed and/or upgraded at City's or Designated Access Managers' facilities. After installation or Upgrade, the Designated Access Manager, at its sole cost and expense, must provide standard VOD packages (VOD asset, metadata ADI file, and poster art) that meet Grantee's requirements.
- (E) Grantee shall facilitate carriage of PEG Access Channels program listings on the interactive Programming guide, provided that the City shall hold Grantee harmless should the City or PEG providers fail to provide correct or timely information to the interactive guide Programmers. The City or Designated Access Managers shall bear all costs of this guide service.

6.9 Complimentary Service.

- (A) Grantee agrees to continue to voluntarily furnish, at its sole cost, Basic Service and expanded Basic Service (or its future equivalent), including any required terminal equipment ("Complimentary Cable Service"), to all Schools, libraries, and buildings that it currently serves. After the Effective Date, Grantee agrees to install, maintain, and furnish Complimentary Cable Service to additional Schools, libraries, and buildings in the Franchise Area owned and operated by the City for public purposes and not residential use (residential areas of fire and police stations excepted). The City shall use its best efforts to fairly allocate Complimentary Cable Service to ensure the pro rata distribution among franchised wireline providers (taking into account any technical limitations of franchised wireline providers). After the Effective Date, Grantee's provision of Complimentary Cable Service installations shall be subject to Standard Installation.
- (B) Grantee shall provide, free of charge, Complimentary Cable Service to all PEG origination locations in the City (which may include Designated Access Managers) ("Origination Locations") for the purpose of enabling such Origination Locations to monitor the PEG signals carried on Grantee's Cable System in the City. Grantee may meet this obligation by providing Origination Locations with a "Slingbox" or similar technology, free of charge.

6.10 PEG Access Channel Viewership Information.

- (A) Survey Data. Upon written request, Grantee will share with the City any data it obtains in its normal course of business about PEG Access Channel viewership and demographics.
- (B) Ratings. Upon written request, Grantee shall promptly provide copies of any ratings information it obtains on a regular basis in its normal course of business from a third party concerning viewership of PEG Access Channels to the City (for Cable Services provided on any Governmental or Educational Channel) and to the Designated Public Access Manager (for Cable Services provided on any Public Access Channel); provided, however, that with respect to any such ratings, Grantee shall redact any personally identifiable information prior to providing such information to the City or Designated Access Managers, as applicable. The preceding sentence shall not apply to any information Grantee receives from an ascertainment it has commissioned in connection with the renewal of the Franchise or to any information Grantee generates on its own in connection with such renewal.

6.11 PEG Information for Subscribers.

- (A) Once every 12 months from the Effective Date, with a minimum of 60 days prior written notice from the City, Grantee shall make available at walk-in customer facilities, a newsletter or other similar publication provided by the City regarding PEG Programming and activities. The City will provide this information free of charge.
- (B) Grantee shall include information about PEG Programming and activities in materials provided to Subscribers at the time of Cable Service installation.
- (C) The Grantee shall include appropriate designation of the PEG Access Channels on Channel cards and other Channel listings provided to Subscribers.

6.12 Cost Treatment of PEG Costs.

The Grantee and the City acknowledge that the commitments provided in this section are in recognition that the current Franchise Fee is less than the federal statutory maximum. If the City elects to raise the Franchise Fee pursuant to municipal ordinance, the Grantee and the City each reserve all rights under applicable federal law. However, the Grantee agrees that its voluntary provision of Complimentary Service under subsection 6.9 will not be considered to be a voluntary commitment unless or until the City increases the Franchise Fee pursuant to municipal ordinance to the federal statutory maximum.

SECTION 7. GENERAL CABLE SYSTEM REQUIREMENTS

7.1 Cable System Characteristics.

Grantee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

- (A) Industry-accepted Equipment. The Cable System shall use equipment generally used in high-quality, reliable, modern systems of similar design, including, but not limited to, backup power supplies rated at a minimum of 12 hours at the Headend and two hours at each Fiber Optic node located throughout the Cable System. In addition, the Cable System's electronics shall be capable of passing through the signals received at the Headend without degradation (thus, for example, the System shall include components so that a signal received at the Headend in color may be received by a Subscriber in color and a stereo signal in stereo). The Facilities and equipment on the Cable System must be able to deliver high quality signals that meet or exceed FCC technical quality standards regardless of the particular manner in which the signal is transmitted. Grantee shall comply with all applicable laws and regulations concerning Cable System compatibility with Subscribers' television receivers and/or recording devices.
- (B) Grantee shall comply with all FCC regulations regarding scrambling or other encryption of signals.
- (C) No Deterioration to Access Signals. The Cable System shall be so constructed and operated that there is no significant deterioration in the quality of PEG Access Channels or Leased Access Channels, either Upstream or Downstream, as compared with any other Channels on the Cable System; however, Grantee shall not be required to alter a PEG Access Channel or Leased Access Channels if the Channel or signal received by Grantee is of poor quality. Deterioration refers to any signal problem, including, but not limited to, ghost images and other interference and distortions.
- (D) Parental Control. Grantee shall ensure that means are available to enable Subscribers to completely block out audio and video on any undesired Channels on the Cable System.
- (E) Program Security. The Cable System shall include equipment so that any pay-per-view Programming can only be activated by the positive action of a Subscriber using, for example, a private identification number or other individual selection procedure.
- (F) Service to Persons with Disabilities. The Cable System shall transmit closed captions for all Programming that includes a closed caption signal. In addition, Grantee must have means available, and a publicly listed telephone number for such means, that will allow hearing or speech-impaired persons to contact the Grantee.

7.2 Cable System Functionality.

(A) The City and Grantee agree that Grantee's Cable System has the following characteristics:

- (1) bandwidth of at least 750 MHz on all active and passive components;
- (2) no more than 1,500 homes passed on the average served from any fiber node; and
- (3) bidirectional capability.

7.3 Emergency Alert System.

At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System ("EAS"), consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Washington State Emergency Alert System Plan requirements.

SECTION 8. UPGRADE & EXTENSION PROJECT SPECIFICATIONS

8.1 Introduction.

Any Cable System Upgrade project shall be designed so as to minimize Cable Service interruptions and inconvenience to Subscribers. Subscribers will be informed of the impending Upgrade project and the benefits of the new Cable System. Grantee will maintain a toll-free telephone number during construction, so that Subscribers may call with questions or complaints.

8.2 Construction Plan and Practices Submittals and Approvals.

Upon written request by the City, the Grantee will allow the City to view current copies of its applicable construction procedures and Fiber Optics manuals. Grantee will supply copies of these manuals to all contractors engaged by Grantee for projects including construction of Fiber Optics, and ensure through routine inspections that all contractors comply with such practices. Upon written request by the City, Grantee will provide periodic updates, as specified by the City, of its construction plans.

8.3 Compliance with Construction and Safety Standards.

Grantee will construct and maintain its Cable System using applicable City codes and the following safety codes and construction standards in its construction practices:

- (A) NEC – National Electrical Code
- (B) NESC – National Electrical Safety Code
- (C) OSHA – Occupational Safety and Health Act
- (D) WISHA – Washington Industrial Safety and Health Act

Nothing herein shall preclude Grantee from raising any and all defenses it may have under applicable codes, including the argument that its Cable System may be grandfathered under prior provisions of such applicable codes.

8.4 Quality of Work.

Grantee will construct its Cable System in compliance with generally accepted industry standards, consistent with subsection 13.5.

8.5 Quality of Service.

During Upgrade, Grantee agrees to provide Cable Service at a level consistent with current FCC standards.

8.6 Construction and Work Permits, Licenses and Permission.

Grantee agrees to file for and secure any required permits and/or licenses prior to commencement of any activity in the public Right of Way that would require permits or licenses. Consistent with the requirements of any permit or license, Grantee shall notify the City when permitted work is completed to facilitate inspection.

8.7 Construction Area Safety and Cleanup.

Grantee agrees to inspect its contractor(s) on a regular basis and ensure that both its personnel and contractor(s) provide clean-up of all workplaces and adhere to industry safety as well as all state and local safety standards. Upon written request of the City, Grantee shall provide specified periodic reports of its inspections to the City.

8.8 Component and Cable System Tests, Records and Test Points.

Grantee will test all active components before installation into the Cable System, consistent with subsection 9.3.

8.9 Service Cutover Process.

Grantee agrees to adopt the necessary procedures to ensure minimal disruption of Cable Service to Subscribers when activating and converting Subscribers after an Upgrade.

SECTION 9. TECHNICAL OPERATION AND MAINTENANCE STANDARDS AND REQUIREMENTS

9.1 Technical and Safety Standards.

Grantee will construct and maintain its Cable System using applicable City codes and the following safety codes and construction standards:

- (A) NEC – National Electrical Code
- (B) NESC – National Electrical Safety Code

- (C) OSHA – Occupational Safety and Health Act
- (D) WISHA – Washington Industrial Safety and Health Act

Nothing herein shall preclude Grantee from raising any and all defenses it may have under applicable codes, including the argument that its Cable System may be grandfathered under prior provisions of applicable codes.

9.2 Network Monitoring and Repair.

Grantee shall monitor all power supplies and fiber nodes, utilizing the then-current industry standard status monitoring techniques and will effect repairs within a 24 hour time period as required by applicable FCC rules and regulations.

9.3 Routine Maintenance and Performance Testing.

The technical standards used in the operation of the Cable System shall comply, at a minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. Grantee will maintain the Cable System by providing routine maintenance and performance testing to meet such standards.

9.4 Spare Parts.

Grantee shall have immediately available a sufficient supply of spare parts to effect repairs in accordance with the requirements of this Franchise.

9.5 Testing Notification.

Grantee shall notify the City in advance of testing for compliance with FCC signal standards. The City, at its sole cost and expense, may have a representative present to observe such tests and may designate one location to be tested. Upon written request, Grantee shall provide the City with a report of results of testing for compliance with FCC standards in accordance with subsection 17.2(K) of this Franchise and upon request (but not more than twice a year). Such report shall state, in pertinent part, that the Cable System is in full compliance with FCC rules and regulations or, in the alternative, setting forth with specificity and in detail all areas of non-compliance, their actual or likely scope and causes, and a plan for instituting corrective measures to immediately and permanently correct the non-compliance.

9.6 NESC Records.

Upon written request by the City, Grantee shall provide, consistent with subsection 17.1, any records that may be required by the NESC rules that apply to the construction and maintenance of Grantee's Cable System in the City.

9.7 Service Connections.

- (A) Standard Installation for an unwired Dwelling Unit. Standard Installation of an unwired Dwelling Unit shall be installation of wiring to enable provision of Cable Service to the Subscriber's Dwelling Unit located up to and including 125 feet from the existing distribution system, plus additional inside wire and at least one outlet sufficient to receive Cable Services.
- (B) Standard Installation for a prewired Dwelling Unit. Standard Installation of a prewired Dwelling Unit shall be installation of Cable Service to the Demarcation Point located on the Subscriber's property up to and including 125 feet from the Subscriber's property line, sufficient to receive Cable Services and where the prewired equipment will allow the Cable System to meet all FCC technical requirements.
- (C) Non-Standard Installations. Any installation of Cable Service that requires the installation of Facilities from a point more than 125 feet from the Subscriber's property line to: (1) in the case of a prewired Dwelling Unit, the Demarcation Point; or (2) in the case of an unwired Dwelling Unit, a point not less than 12 inches from the exterior wall of the Dwelling Unit. Non-standard installation also means any underground installation in an area where plant Facilities are not underground; any installation calling for multiple outlets in a Dwelling Unit; or a commercial or MDU installation.
- (D) Rates and Charges. Charges for Standard Installations may not exceed the Grantee's published rates. Charges for Non-Standard Installations including costs incurred for any boring, shall not exceed the Grantee's reasonable and nondiscriminatory hourly service charge for non-standard transactions, and may be applied only to that portion of the installation defined as a Non-Standard Installation in subsection 9.7(C) above.

SECTION 10. SUBSCRIBER AND SERVICE STANDARDS

10.1 Subscriber Service Standards, Complaint Procedure, Reporting, and Credits.

Subject to subsection 1.5, Grantee shall comply with the customer service standards, procedures, and requirements as set forth in SMC 21.60.820, SMC 21.60.830, SMC 21.60.840, and SMC 21.60.850 for the provision of Cable Services to its Subscribers. Grantee may substitute its internal system of customer credits and reimbursements for the credits and reimbursements set forth in SMC 21.60.850, so long as the categories of violations and credit amounts are materially equivalent. The City agrees that it will not seek Liquidated Damages before the second reporting period of the Franchise based on the customer service standards, procedures, or requirements set forth in SMC 21.60.820, SMC 21.60.830, SMC 21.60.840, and SMC 21.60.850.

10.2 Subscriber Rights.

- (A) **Discrimination Prohibited.** Grantee shall comply at all times with all applicable laws, rules, and regulations including the terms of the Franchise relating to non-discrimination.
- (1) All Grantee rates and charges shall be published and non-discriminatory. Except as provided hereunder or under federal law, Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of type of Dwelling Unit, race, color, religion, age, sex, gender identity, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental, or physical handicap; or geographic location to the extent required by applicable law within the Grantee's Franchise Area. Nothing in this subsection shall be construed to prohibit the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns to Subscribers or discounted rates for the provision of Cable Services to Multiple Dwelling Unit buildings.
- (2) Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers or Access Programmers on the basis of type of Dwelling Unit, race, color, religion, age, sex, gender identity, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within the Grantee's Franchise Area.
- (3) The Grantee shall not take any retaliatory action against a Subscriber because of the Subscriber's exercise of any right it may have under federal, state, or local law, nor may the Grantee require a Subscriber to waive such rights as a condition of service.
- (B) **Privacy.** Grantee shall comply with the Subscriber privacy regulations set forth in 47 U.S.C. § 551 and any lawful state or local laws pertaining to Cable Services privacy.
- (C) **Services to People with Disabilities.** The Grantee shall make Cable Service available to person with disabilities in accordance with the Cable Code, SMC 21.60.
- (D) **Permission of Property Owner or Tenant for Installation.** Grantee shall not install or attach any of its Facilities to any Dwelling Unit or other property without first securing the written permission of the owner or tenant of any property involved, or of such other person who has the apparent right to approve or disapprove the installation or attachment (authorized party), except if there is an existing utility easement. Grantee shall make a reasonable effort to verify that such other person has such approval rights. If such permission or easement is later revoked in a writing received by Grantee, the Grantee, at the request of the authorized party, shall promptly remove any of its Facilities and promptly restore any portion of the

property affected by the Facilities to its original condition at Grantee's expense. Grantee shall perform all such installations and removals in compliance with state and local law and shall be responsible for any damage to residences or other property caused by the installation or the removal. Provision of Cable Service may not be conditioned on any right of entry agreement that requires an exclusive, long-term service commitment. However, the preceding sentence does not affect the Grantee's right to furnish additional consideration in exchange for such a right of entry agreement.

SECTION 11. COMPENSATION AND AUDITING

11.1 Amount of Compensation.

In consideration of permission to use the Rights of Way of the City, the Grantee shall pay annually as a Franchise Fee to the City, throughout the duration of this Franchise, an amount of up to five percent of Grantee's Gross Revenues. The Franchise Fee shall be set by ordinance passed by the City Council. If during the term of this Franchise, the FCC, federal or state government, or the courts allow the City to impose a Franchise Fee greater than the five percent authorized by federal law, the City shall have the right to increase the Franchise Fee to take full advantage thereof. Any change in Franchise Fee percentage shall be subject to the provision of subsection 1.4 of this Franchise.

11.2 Effect of Additional Commitments on Franchise Fees.

Except as specifically provided in this Franchise or permitted by federal or state law, no term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay the Franchise Fee. Although the total sum of Franchise Fee payments and additional financial and other obligations of this Franchise may exceed five percent of Grantee's Gross Revenues in any 12month period, Grantee agrees that the sole Franchise Fee provided for in this Franchise is the Franchise Fee called for in subsection 11.1 and that no other obligation of Grantee under this Franchise constitutes a Franchise Fee, nor shall any such obligations be offset or credited against any Franchise Fee payments due to the City, except pursuant to this Franchise, other City Ordinance, or federal or state regulation or law, including the FCC's 621 Order.

11.3 Payment of Franchise Fees on Bundled Services.

- (A) In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with Non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue, including late fee revenue, no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.
- (B) This subsection is not intended to apply to reductions in Franchise Fees that result from other causes such as changes in the law, Subscriber losses, Subscriber service

downgrades, Force Majeure, or short-term promotional activities (i.e., premium channel discounts or sales).

- (C) The City shall have the right to audit records regarding the allocation of revenues derived from bundles involving Cable Services and Non-Cable Services. Upon the City's written request, Grantee will meet with a designated City representative following reasonable advance notification, of not less than 30 days, to explain the methodology Grantee is using to allocate revenues generated from bundled services. If the City reasonably believes Grantee is allocating bundled revenues contrary to the provisions of subsection 11.3, the City may submit the matter to Judicial Arbitration and Mediation Service for mediation. The cost of the mediation shall be shared equally between the City and the Grantee. Participation in mediation shall not prejudice the right of either party to bring the matter to a court of competent jurisdiction or pursue any other remedies available to them in this Franchise or by law.

11.4 Payments and Monthly Reports.

- (A) **Payments.** Grantee's Franchise Fee and PEG Fee payments to the City shall be computed monthly following the Effective Date of this Franchise. Each payment shall be due and payable at the same time as the Utility Business and Occupation Tax payment for the same period. If requested by the City in writing, the Franchise Fee and PEG Fee payments shall be issued separately.
- (B) **Monthly Reports.** Grantee shall also provide a written report to the City, verified by an officer of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in form and substance satisfactory to the City and shall include revenue by product category.

11.5 Interest on Late Payments.

Payments not received within 45 days from the quarter ending date shall be assessed interest compounded at the rate of one percent per month from the due date or the highest rate allowed by law, whichever is greater, but not to exceed 18 percent in any event.

11.6 Acceptance of Payment and Recomputation.

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or any other claim or right. All amounts paid shall be subject to audit and recomputation by the City, provided that such audit and recomputation is completed, and any claim made by the City, within six years of the date payment was due. If the City requests in writing that the Grantee provide, or cause to be provided, any Documents reasonably within the scope of the audit, and the Grantee fails within 30 days of receipt of the request to provide such Documents or cause it to be provided, then the six year period shall be extended by one day for each day or part thereof beyond 30 days that Grantee's failure to provide the Document continues and Grantee shall pay Liquidated Damages in accordance with subsection

19.2. If the City requests information for the audit that is not prepared in the ordinary course of business, Grantee shall provide such additional information within 60 days of the request or provide an explanation of the timeframe for producing the requested information.

11.7 Audits.

- (A) The City reserves the right to conduct audits relating to matters arising under this Franchise or to retain an independent Certified Public Accountant to conduct such audits. In the event an audit results in a determination that Grantee has underpaid any Franchise Fee arising under this Franchise by five percent or more, or materially misstated financial information in any report furnished to the City, Grantee shall reimburse the City for the reasonable and customary costs of the audit.
- (B) Grantee shall pay to the City any amounts any audit indicates are owed following an independent review of such audit. Such payment shall be made whether or not the Grantee's obligation for such payment arose before or after the Effective Date of this Franchise.

11.8 Compensation for Non-Cable Services.

Nothing in this Franchise should be construed as a limitation or expansion of the City's authority to require compensation for the use of its Rights of Way for the provision of Non-Cable Services to the extent permitted by applicable law.

11.9 No Offset or Credit Against Franchise Fees.

The City and Grantee agree that any utility tax, business and occupation tax, or similar tax shall be in addition to any Franchise Fees required herein and there shall be no offset or credit against Franchise Fees for any utility tax, business and occupation tax, or similar tax, subject to applicable law.

SECTION 12. INDEMNIFICATION, INSURANCE, BONDS AND SECURITY FUND.

12.1 Indemnification.

- (A) General indemnification. Grantee shall indemnify, defend, and hold the City, its officers, agents, and employees harmless from any claim for injury, damages, loss, liability, cost or expense arising in whole or in part from, incident to or connected with any act or omission of the Grantee, or its Parent Corporation, their agents, contractors or subcontractors, or any of their employees, including without limitation any construction, operation, maintenance, excavation, reconstruction, or any other act done under this Franchise by or for Grantee, its Parent Corporation, their agents, contractors, subcontractors or their employees, and including any neglect or omission to keep the Cable System in a safe condition. Grantee's obligation to indemnify, defend and hold the City harmless includes the obligation to pay attorneys' fees, expert fees, and all other costs of defending any indemnified claim, and all such costs incurred in recovering against Grantee under this

indemnity provision. To the maximum extent permitted by law, Grantee's indemnity obligation shall not be extinguished or reduced in the event that an act or omission of the indemnified parties is a concurrent or contributing cause of the claim, but no indemnity shall be owed in the event that the cause of any claim is the sole negligence of the City or a willful act or omission of the City in violation of this Franchise. Grantee shall consult and cooperate with the City in the conduct of the City's defense. The City shall fully cooperate with the Grantee in said defense.

- (B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust, or relocate any of its Facilities located on City property or Right of Way in a timely manner in accordance with subsections 13.3, 13.4, and 13.5 and a relocation schedule furnished to Grantee by the City in writing, unless Grantee's failure arises directly from the City's negligence or willful misconduct, or failure of necessary third parties to cooperate with such relocation.
- (C) Duty to Give Notice and Tender Defense. The City shall give the Grantee timely written notice of the making of any claim or of the commencement of any action, suit, or other proceeding covered by this indemnity. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the right and duty to accept the tender and thereafter to defend, settle, or compromise any claims arising hereunder and the City shall cooperate fully therein.
- (D) Exception to Duty to Tender Defense. Notwithstanding the above, the City shall have no obligation to tender a defense as a condition of the indemnity where there is a material conflict between the interests of the Grantee and the City.

12.2 Insurance.

- (A) Grantee shall maintain on file with the City a certificate of insurance that includes an additional insured endorsement with the minimum coverage and limits of liability specified below; as respects the scope of such coverage, Grantee specifically acknowledges that the limits of liability requirements specified shall neither be construed as a limitation of Grantee's liability nor shall it be construed to inure to the benefit of any insurer by serving as a limitation or cap of any insurer's limits of liability that would otherwise apply.
- (B) Grantee shall maintain:
 - (1) Commercial General Liability (CGL) insurance written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability: \$5,000,000 per Occurrence, \$5,000,000 Premises/Operations, Products/Completed Operations Aggregate, Personal/Advertising Injury

Liability and Independent Contractors Liability. The CGL insurance shall not exclude XCU/Subsidence perils or any similar perils;

- (2) Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased, or hired vehicles, as applicable, with a minimum limit of \$5,000,000 each accident for bodily injury and property damage;
 - (3) Workers Compensation insurance for Washington State as required by Title 51 RCW Industrial Insurance; and
 - (4) \$5,000,000 Each Accident/Each Disease/ Policy Limit Employers Liability/Washington Stop Gap.
- (C) If the City's risk exposure increases due to an unforeseen circumstance or event, the City may increase the minimum policy limits and coverage to adequately protect the City and the public, but no more than two times during the term of the Franchise.
- (D) The CGL insurance and Excess or Umbrella liability insurance, if any, shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds subject to a standard "Separation of Insureds" or "severability" clause, and shall be primary and non-contributory with any insurance or self-insurance coverage maintained by the City.
- (E) Grantee specifically acknowledges that the limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by the Grantee, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by the Grantee regarding this Franchise, nor (2) construed as limiting the liability of any of the Grantee's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies. Each insurance policy shall be issued by an insurer rated A-VII or higher in the A.M. Best's Key Rating Guide, unless procured as a surplus lines placement by a licensed Washington State surplus lines broker, or as may otherwise be approved by the City. Each policy shall provide for at least 30 days' notice to the City of any material change, cancellation, or lapse thereof. Grantee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Franchise.
- (F) Grantee's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City from coverage or asserting a claim under Grantee's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Grantee's insurance policy shall not include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of

Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion with respect to any additional insured, and (f) any type of punitive, exemplary or multiplied damages exclusion.

- (G) The term "insurance" and "insurer(s)" under this subsection 12.2 shall apply to self-insurance and self-insurer(s). Should Grantee maintain self-insurance (except that subject to a deductible endorsement provision that specifies that the nonpayment of deductible amounts by the named insured shall not relieve the insurer from payment of claims), it shall disclose in writing details of such self-retained limit(s). Should such self-insurance not be fronted by an insurance company, Grantee shall issue a letter stating that it will cover the City as an additional insured for the required coverages as if a commercial insurance policy applied and will specify how and to whom a tender of claim should be directed.
- (H) Certification of insurance, notice of cancellation and any other written communication under this subsection 12.2 shall be addressed to: the Seattle Department of Information Technology, Office of Cable Communications (see address in subsection 20.9).
- (I) Evidence of insurance shall be in an ACORD form that includes an additional insured endorsement documenting that the City of Seattle is covered as an additional insured under Grantor's CGL Insurance.

12.3 Construction Bond.

Before beginning any construction work in or under the City streets requiring a street opening permit, Grantee shall furnish a construction bond to the City as is required for street opening permits pursuant to SMC Title 15, including but not limited to SMC 15.04.44.

12.4 Performance Bond.

- (A) No later than 30 days following the Effective Date of this Franchise, Grantee shall deliver to the City for approval, a good and sufficient bond in the penal sum of not less than \$100,000, and maintain such bond continuously in effect. The bond shall be executed by a surety company authorized and qualified to do business in the state as a surety or by other sureties acceptable to the City and in a form approved by the City Attorney. The bond shall stipulate that Grantee shall strictly comply with each and every condition and covenant of its Franchise. The City shall file the approved bond with the City Clerk.
- (B) If at any time during the Franchise period the City determines that the conduct of Grantee warrants a higher assurance under the bond, as evidenced by a breach of this Franchise, then the City may require Grantee to furnish a new or additional bond in such amount as may be specified, and with such sureties as are acceptable to the City. Grantee shall upon demand furnish such new or additional bond and maintain it continuously in effect.

12.5 Security Fund or Letter of Credit.

- (A) Amount. The Grantee's Franchise shall not become effective until the Grantee posts with the City a security fund in the form of a cash security deposit or an irrevocable letter of credit, or a combination of the two in an amount equal to \$1 per Subscriber in the Franchise Area, but in no event less than \$20,000. It is the Grantee's responsibility to maintain this security fund throughout the Franchise term. Before any letter of credit provided to satisfy the security fund obligation expires, the Grantee must renew it or replace that letter of credit with a cash deposit, letter of credit, or combination of the two in an amount and in a form that satisfies its obligations under this subsection 12.5(A).
- (B) Use. In the event the City has a good faith belief that Grantee has breached the Franchise, the City shall have the right to draw on the security fund to ensure the Grantee's faithful performance of the Franchise in accordance with applicable law, and as security for the payment of any penalties, fees, charges, or credits as provided for under SMC 21.60.800-850, where applicable. If Grantee fails to perform its obligations under the Franchise in any respect, including making any payment to the City required by this Franchise or by applicable law, including Liquidated Damages and reimbursable costs incurred by the City, the City may, after ten days prior written notice to the Grantee, withdraw that amount from the security fund, plus interest for the period between any loss and the withdrawal. The City shall notify the Grantee in writing of the amount and date of the withdrawal.
- (C) Restoration of Fund. Within 30 calendar days after the City gives Grantee written notice that an amount has been withdrawn from the security fund, the Grantee must deposit a sum of money in the security fund sufficient to restore it to the original amount. If Grantee fails to do so, such failure to restore shall be a material breach of this Franchise.
- (D) Return of Fund. If the Franchise terminates for any reason, and the Grantee has ceased to provide Cable Service in the City, the balance of the security fund that remains following termination of the Franchise and satisfaction of all of Grantee's obligations secured by the fund shall be returned to Grantee. The City shall be under no obligation to return funds until a reasonable time, but no longer than 180 days, has elapsed for the City to determine that all such obligations have been satisfied.
- (E) Letter of Credit. Any letter of credit used to satisfy any portion of the security fund requirement must:
- (1) Be issued by a bank licensed to do and doing business in the State of Washington;
 - (2) Be irrevocable;
 - (3) Provide for automatic renewal of the letter unless the bank has given the City written notice by certified mail at least 60 days prior to expiration of the letter;

- (4) Provide that the City may draw against the letter at any time prior to expiration of the letter, subject to the process set forth in this subsection 12.5;
 - (5) Provide that the City may draw against the letter, in an amount not in excess of what the City claimed, and hold the funds in escrow after termination of the Franchise:
 - (a) if the City has filed a lawsuit;
 - (b) if the City has sought to draw against the letter prior to termination and Grantee has filed a lawsuit to contest the action or to appeal the notice and order; or
 - (c) if the bank or the Grantee has filed a lawsuit to challenge or appeal the draw.
- (F) Cash Security Deposit.
- (1) Any cash security deposit used to satisfy any portion of the security fund requirement shall be placed in an account, the terms and conditions of which are acceptable to the City, and in a financial institution acceptable to the City. The City shall have an unrestricted right to draw on the account to ensure the Grantee's faithful performance of the Franchise, in accordance with applicable law, or if Grantee fails to perform any of its obligations under this Franchise. Additionally, the City shall have the right to withdraw all funds from the account and hold the funds in escrow after termination of the Franchise:
 - (a) if the City has filed a lawsuit;
 - (b) if the City has sought to withdraw funds from the account prior to termination and Grantee has filed a lawsuit to contest the action or to appeal the notice and order; or
 - (c) if the Grantee has filed a lawsuit to challenge or appeal the withdrawal.

SECTION 13. GENERAL USE OF AND CONSTRUCTION IN RIGHT OF WAY

13.1 Relationship with Other Laws.

Construction work and maintenance of any and all Facilities within the City's Rights of Way shall be done in accordance with the Seattle Municipal Code, including, but not limited to, SMC Title 11, SMC Title 15, and SMC 21.60; City of Seattle Standard Specifications for Road, Bridge and Municipal Construction; City of Seattle Standard Plans for Municipal Construction; City of Seattle Traffic Control Manual for In-Street Work; Director's Rules regarding Seattle Street and Sidewalk Pavement Opening and Restoration; any other applicable ordinance, rule or policy, and any

amendments thereto. The provisions of Section 13 are meant to be supplemental to the above referenced City laws and rules. In the event of a conflict between the above referenced laws and rules and this Franchise, the above laws and rules shall prevail.

13.2 Construction.

- (A) All construction and maintenance of any and all Facilities within the City's Rights of Way incident to Grantee's Cable System shall be and remain the Grantee's responsibility regardless of who performs the construction for and on behalf of Grantee. Grantee shall apply for and obtain all permits necessary for construction or installation of any Facilities, and for excavating and laying any Facilities, within the City's Rights of Way. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to Grantee, and shall pay all inspection fees and other costs incurred by the City as a result of work authorized by such permit.
- (B) Before beginning any construction, Grantee shall provide the City with a construction schedule for work in the City's Rights of Way. As Grantee's construction of Facilities in the City's Rights of Way is completed or its location subsequently altered during the term of the Franchise, Grantee shall make available to the City's Office of Cable Communications maps in sufficient detail for it to determine the location of the Facilities in the City's Rights of Way as set forth in subsection 4.1(C) of this Franchise.
- (C) Before beginning any work in the City's Rights of Way, Grantee shall apply for and obtain appropriate permits from the City, and give appropriate notices to any other franchisees, licensees, or permittees of the City, or other units of government owning or maintaining pipes, wires, conduits, or other facilities which may be affected by the proposed excavation.
- (D) When Facilities pass over or under private or publicly owned property, it shall be Grantee's sole responsibility to obtain all necessary permission from the owner thereof before commencing work, and to notify all utility companies and property owners who may be subject to damage or inconvenience during such work.

13.3 Relocation.

The City shall have the right to the extent allowed by law to require Grantee to change the design or location of any of Grantee's Cable System within the City's Rights of Way when the public convenience or public interest would be served by such a change, and the expense thereof shall be paid by Grantee to the extent allowed by law, including but not limited to RCW 35.99.060 and SMC 15.32.120. Should Grantee fail to remove or relocate or redesign any such Facilities by the date reasonably established by the City, the City may effect such removal or relocation or redesign, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its Facilities located within the City's Rights of Way, the City shall provide Grantee with an alternate location within the City's Rights of Way. Nothing herein shall prevent Grantee from participating in any alternative funding

for relocation.

13.4 Restoration of City's Rights of Way.

Whenever Grantee disturbs the surface of any Right of Way for any purpose, the City shall be responsible for restoration of the City's Right of Way and its surface within the area affected by the excavation unless the City authorizes the Grantee in the street use permit to perform such restoration work. The cost of all restoration work, including the cost of inspection and supervision shall be paid by the Grantee. All excavations made by Grantee in the City's Rights of Way shall be properly safeguarded in accordance with legal requirements for the prevention of accidents.

13.5 Maintenance and Quality of Work.

- (A) Grantee's Cable System shall be constructed and maintained so as not to interfere with sewers, water pipes, conduits, or any other property of the City, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the City's Rights of Way by or under the City's authority.
- (B) Grantee shall operate its Cable System so as to prevent injury to the City's property or property belonging to any Person located within the City. Grantee, at its own expense, shall repair, renew, change and improve its Facilities from time to time as may be necessary to accomplish this purpose.
- (C) Grantee shall not construct its Cable System in any manner that requires any Subscriber to install any cable, wire, conduits, or other facilities, under or over a Right of Way.

13.6 Acquisition of Facilities.

Upon Grantee's acquisition of Facilities in any City Right of Way, or upon the addition or annexation to the City of any area in which Grantee owns or operates any Facility in any City Rights of Way, the Grantee shall, at the City's written request, submit to the City a statement and plans describing all existing Facilities, whether authorized by franchise, permit, license, or other prior right, and depicting the location of all such Facilities with such specificity as the City may reasonably require. Such Facilities shall immediately be subject to the terms of this Franchise, and shall be brought into compliance with it as soon as practicable. In the event the new Facilities or annexed area have characteristics that make literal application of any term of the Franchise inappropriate, the parties will negotiate in good faith to modify the Franchise solely with respect to such characteristics and only to the extent necessary to achieve consistency with the purposes of this Franchise.

13.7 Reservation of City Right of Way Rights.

Nothing in this Franchise shall prevent the City from constructing, maintaining, or repairing any City Right of Way, or public work or improvement in the City's Rights of Way. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's Cable System will interfere with the construction, maintenance, or repair of any City Right of Way or public work or improvement in

the City's Rights of Way, at its own expense the Grantee shall remove or relocate its Cable System as the City directs. Should the Grantee fail to remove, adjust, or relocate its Facilities by the date established by the City Engineer's written notice to Grantee the City may effect such removal, adjustment, or relocation and recover the cost thereof from the Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

13.8 Reservation of Rights and Privileges.

Nothing in this Franchise shall deprive the City of any rights or privileges that it now has, or that may hereafter be conferred upon it, including any rights to exercise its police powers in the regulation, control, and use of the Right of Way.

13.9 Street Vacation.

If any street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated street, Grantee shall, without delay or expense to the City, remove its Facilities from such street and the expense thereof shall be paid by Grantee.

13.10 Discontinuing Use of Facilities.

Whenever Grantee intends to discontinue using any Facility within the City's Right of Way, Grantee shall submit for the approval of the authorizing City department a complete description of the Facility and the date on which the Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place. Notwithstanding the Grantee's request that any such Facility remain in place, the City may require the Grantee to remove the Facility from the City's Right of Way or modify or maintain the Facility to protect the public health and safety or otherwise serve the public interest. The City may require the Grantee to perform a combination of modification, maintenance, and/or removal of the Facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the Facility as directed by the City, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the City's Right of Way, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

13.11 Hazardous Substances.

- (A) Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Cable System in the City's Right of Way. For purposes of this subsection 13.11, "Hazardous Substances" shall be all substances so characterized in RCW 70.105D.020(13).
- (B) Grantee shall maintain and inspect its Facilities located in the City's Right of Way and immediately inform the City of any release of Hazardous Substances. Upon reasonable written notice to Grantee, the City may inspect Grantee's Facilities in the City's Right of Way to determine if any release of Hazardous Substances has occurred, from or related to Grantee's Facilities. In removing or modifying

Grantee's Facilities as provided in this Franchise, Grantee shall also remove all residue of Hazardous Substances related thereto; provided, however, if it is determined that Grantee's owned Facilities did not cause the release of Hazardous Substances, Grantee shall have no duty to remove such substances.

- (C) Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of Hazardous Substances arising from, connected to or incident to Grantee's Facilities in the City's Right of Way.

13.12 Undergrounding of Cable.

Grantee is strongly encouraged to locate and construct its present and future cables and other Facilities underground. Grantee shall install its cables or other Facilities underground wherever and at the same time existing utilities in the immediate vicinity are installed underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the City or applicable state law, or in the event that a telecommunications utility or a public utility decides to underground its facilities on a voluntary basis, unless the City grants an exception.

13.13 Construction Codes.

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

13.14 Construction and Use of Poles.

- (A) Grantee shall negotiate and enter into pole attachment agreements with utilities maintaining poles in the Grantee's Franchise Area on terms acceptable to Grantee and the affected utilities and in compliance with SMC 15.32; provided, any obligations to provide fiber or capacity that might be imposed on Grantee under SMC 15.32 and any amendments thereto, shall be deemed fully satisfied for the term of this Franchise and any extensions by Grantee's agreement to install, at the time of Grantee's own construction, fiber for the City in accordance with the following provisions:
- (B) In the course of Grantee's own construction of its optical fiber system Grantee shall include at the City's request additional fiber for the City's exclusive use for governmental purposes. Such purposes shall not include any lease, license, or other transfer to any third party of the right to use such fiber and shall not include any commercial use. However, such purposes may include the following uses, for which the City may receive payment to defray its costs of installation and maintenance:

- (C) The City may share use of the fiber with other governments for governmental purposes where signals are mixed with City signals in the same transmission system; and
- (D) The City may make fibers available to Schools as distinctly leased fibers or as part of a shared transmission system as described above.
- (E) The City shall bear the incremental cost of adding the additional fiber during Grantee's construction and the incremental cost, if any, of maintenance.

SECTION 14. TRANSFER OR ASSIGNMENT

The Grantee shall comply with Section 21.60.110 of the Cable Code upon any sale, transfer, or fundamental corporate change of Grantee or the Cable System. In no event shall a transfer or assignment be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City, including, but not limited to, any adequate guarantees or other security instruments in form and substance acceptable to the City Attorney as set forth in Attachment A of the Franchise.

SECTION 15. PROCEDURES IN THE EVENT OF EXPIRATION, TERMINATION, REVOCATION, OR NON-RENEWAL

Sections 21.60.120 and 21.60.125 of the Cable Code shall govern the procedures in the event of expiration, termination, revocation, or non-renewal of this Franchise.

SECTION 16. REGULATION OF RATES AND CHARGES

16.1 City Regulation.

To the extent consistent with state and federal law, Grantee's rates and charges shall be subject to City regulation and approval.

16.2 Filing of Rates and Charges.

- (A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete and current schedule of all rates and charges related to providing Cable Services under this Franchise, in a form satisfactory to the City.
- (B) Upon written request by the City, Grantee shall provide a complete schedule of rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels. Upon the City's request, Grantee shall furnish additional detail or explanation in writing.

16.3 Changes in Rates and Charges.

- (A) In accordance with 47 C.F.R. § 76, Grantee shall provide written notice to the City and Subscribers at least 30 days in advance of any proposed changes in rates and charges.
- (B) Grantee shall be entitled to increase regulated rates only as provided in this Franchise. Grantee and the City shall follow the process for establishing increases in rates and charges set forth in the City's Cable Code, SMC 21.60, as now constituted or hereafter amended. Grantee shall provide all information reasonably requested in writing by the City.

16.4 Reasonable Discounts Provided.

Grantee shall, at a minimum, provide reasonable discounts on Cable Services of not less than the amount provided by the Dominant Cable Operator serving the City as of the Effective Date of this Franchise, to Subscribers with low incomes as qualified in the City's Utility Discount Program or living in low-income subsidized housing. Determination of qualification and identification of any persons entitled to such discount shall be the City's sole responsibility, and shall be at the City's sole cost and expense. This subsection shall not prohibit Grantee from providing a larger discount or offering the discount to other economically or physically challenged Subscribers.

16.5 Multiple Dwelling Unit Buildings.

Grantee shall ensure that rates charged by Grantee to residents of Multiple Dwelling Unit buildings do not exceed the charges paid by residents of single family homes. Grantee may not condition provision of services to Multiple Dwelling Unit buildings on any requirement not imposed on other Subscribers. Subject to subsection 10.2(D), Grantee may not condition provision of services to Multiple Dwelling Unit buildings on an exclusive use agreement with Grantee. Where the agreement is with a building owner, Grantee may offer the building owner the option of a long-term agreement in return for installation and maintenance of internal wiring or other telecommunications improvements unique to the building, but Grantee must offer the alternative of a no term agreement to building owners who wish to contract directly for installation by a contractor approved by Grantee and in accordance with Grantee's generally applicable technical standards. The foregoing does not restrict, condition, or inhibit Grantee's ability to negotiate longer-term right of entry agreements prior to offering service to Multiple Dwelling Unit building residents for the purpose of maintaining Grantee's on-site signal and Facilities. For purposes of this subsection 16.5, a "right of entry agreement" means any agreement that permits Grantee access to the building to extend its distribution cable from the Cable System in the Right of Way or public easement to the utility closet or other Demarcation Point in the Multiple Dwelling Unit building.

16.6 Downgrade Charges.

- (A) Grantee may impose Downgrade Charges only if the Subscriber has been notified, at the time of initiating Cable Services, and annually thereafter, of Grantee's Downgrade Charges.

- (B) Affected Subscribers shall have 30 days after a retiering or increase in rates to downgrade their Cable Service without charge.

16.7 Reserved City Authority.

Subject to subsection 16.1, the City reserves all regulatory authority arising from the Cable Television Consumer Protection and Competition Act of 1992, as now in effect or hereafter amended.

SECTION 17. RECORDS AND REPORTS

17.1 Open Records.

- (A) Grantee shall maintain Records of its operations accessible to the City upon written request. The City shall have the right to inspect such Records of the Grantee as are reasonably necessary to monitor compliance with the Franchise at a location in the City during Normal Business Hours and upon reasonable advance written notice. Such notice shall specifically reference the section of the Franchise that is under review, so that the Grantee may organize the necessary Records for access by the City. Such notice shall not apply to the Public Records File required by the FCC. If any such Records are considered by Grantee to be confidential, under the control of an Affiliated Entity or a third party, or are stored in a computer, Grantee shall promptly take steps to secure access to such Records as are reasonably necessary for the City's inspection. Alternatively, Grantee may, at its sole option, choose to pay the reasonable travel costs of the City's representative to view the Records at the appropriate location. Nothing in this subsection shall allow the City to charge Grantee for the City's inspection of Grantee's Records.
- (B) Grantee acknowledges that information submitted to the City is subject to the Washington Public Records Act, RCW 42.56, and is open to public inspection except where an exemption to RCW 42.56 applies.
- (C) Grantee may identify documents submitted to the City that Grantee believes are non-disclosable, such as trade secrets. Grantee shall prominently mark any document, or information within a document, for which it claims confidentiality with the mark "Confidential," prior to submitting such document to the City. The City shall treat any document so marked as confidential and will not disclose it to Persons outside of the City, except as required by law and as provided herein. If the City receives a request for any document or parts of documents that Grantee has marked as "Confidential," the City shall provide the Grantee with written notice of the request, including a copy of the request. While it is not a legal obligation, the City, as a courtesy, will allow Grantee up to ten business days to obtain and serve the City with a court injunction to prevent the City from releasing the documents. If Grantee fails to obtain a court order and serve the City within the ten business days, the City may release the documents. The City will not assert an exemption from disclosure on Grantee's behalf.

- (D) The City agrees to require its consultants to execute a reasonable Non-Disclosure Agreement governing proprietary and/or confidential information.

17.2 Annual Reports.

Grantee shall annually submit a written report to the City (the "Annual Report"). Grantee shall submit the Annual Report no later than 120 days after the close of its fiscal year. The Annual Report shall include information for the Grantee's operations within the City for the immediately preceding year, including, but not limited to:

- (A) System structural and operating information;
- (B) Changes, additions or deletions made in the Cable System since the last Annual Report. The City may request a copy of Grantee's Cable System route maps annually or as needed to update the City's maps;
- (C) System ownership organization chart;
- (D) An organization chart for Grantee, listing its officers, directors, and department heads for major activity centers by category including names, positions, and business addresses;
- (E) Cable Services provided on Grantee's Cable System, including services begun or dropped during the previous year;
- (F) A schedule of all Grantee's rates and charges with notations of changes occurring during the year and the dates of such changes;
- (G) For Grantee's Cable System in the City: (a) miles of system plant; (b) homes passed; (c) end-of-year total numbers of Subscribers, and total Subscribers with Basic Service, expanded Basic Service, and digital Subscribers; and (d) number of Subscribers with premium service;
- (H) A statistical summary of telephone responsiveness, identifying on a monthly average basis the percent of time the telephone system has all trunks busy, the number of callers to Grantee's Subscriber service or repair lines who fail to reach a Subscriber service representative in less than 30 seconds, and providing any other information the City reasonably deems necessary to determine if Grantee has met the performance standards of Section 10;
- (I) A summary of all Cable System outages in a form acceptable to the City. An outage includes a loss of one or more video or audio Channels, but does not include instances where the sound or video is lost prior to its receipt by the Cable System;
- (J) The current complaint procedures followed by the Grantee and the total number of Subscribers in the Franchise Area who received service credits from Grantee, sorted by reason code;

- (K) A statement warranting that all technical performance tests required by the FCC have been completed;
- (L) Copies of current form contracts between Subscribers and the Grantee;
- (M) Grantee's development or incorporation of new technology on Grantee's Cable System within the Franchise Area, such as addressability, interactivity, pay-per-view event Programming or other Cable Services;
- (N) A general summary of requests and usage patterns for Leased Access Channels, if any;
- (O) A description of the progress made in construction and completion of any Cable System Upgrade;
- (P) A list of all petitions, applications, communications, and reports having a direct and material effect on the Cable System, submitted by the Grantee and its Parent Corporations to the FCC, the Securities and Exchange Commission or any other federal or state regulatory agency. Grantee shall make copies of any such Documents and any non-confidential related communications with the respective agencies available to the City upon request;
- (Q) A copy of its equal employment opportunity plan and Form 396-C or other applicable EEO form filed with or submitted to the FCC; and
- (R) Financial information as follows:
 - (1) Profit and loss statements for Grantee's Seattle Area Cable System and, separately, for its Cable System within the City, prepared in accordance with GAAP. For purposes of this subsection, "Seattle Area Cable System" means the regional Cable System of which Grantee's Cable System serving the Franchise Area is a part;
 - (2) Such other financial Documents as the City may reasonably request;
 - (3) Planned construction, Upgrade activity of Grantee's Cable System within the City for the current year and the projected costs of such activity;
 - (4) Grantee's (or ultimate Parent Corporation's) annual corporate report, including their audited financial statement; and
 - (5) Statement describing joint ventures or partnerships in which the Grantee owns at least a five percent interest.

17.3 Public Hearing.

If directed by the City, the non-confidential and non-proprietary portions of Grantee's Annual Report shall be presented at a public hearing at which Grantee shall summarize the contents of the

Annual Report and members of the general public may comment thereon.

17.4 Reports of Regulatory Violations.

Grantee shall provide copies to the City of any report, order, consent decree, or other formal determination of any regulatory agency having jurisdiction over Grantee pertaining to any alleged violation by Grantee of any applicable rule or law of the agency regarding the Grantee's provision of Cable Services under this Franchise.

SECTION 18. EQUAL EMPLOYMENT

18.1 Non-Discrimination in Employment and Benefits.

During the performance of this Franchise, the Grantee agrees as follows:

- (A) Grantee shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, age, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Grantee will make affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, age, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but are not limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (B) Upon request, Grantee shall furnish a report to the City Purchasing and Contracting Services Director of the affirmative efforts taken by Grantee in implementing the requirements of this section, and, subject to the privacy requirements of applicable federal and state law, will permit access to Grantee's records of employment, employment advertisements, application forms, and other pertinent data and records required for investigation of compliance with the requirements of this section.
- (C) The Grantee shall substitute the name of the subcontractor wherever the word "Grantee" appears in provisions subsections 18.1(A) and (B) and insert these revised provisions in all subcontracts for work covered by this Franchise.
- (D) Grantee shall comply with SMC 20.45 and the City's Equal Benefit Program Rules, which require Grantee to provide the same or equivalent benefits to domestic partners of employees as Grantee provides to spouses of employees. At the City's request, Grantee shall provide information and verification of Grantee's compliance.

- (E) By acceptance of this Franchise, Grantee is affirming that it complies with all applicable federal, state, and local non-discrimination laws, including, but not limited to SMC Chapters 14.04, 14.10, 20.42 and 20.45.

18.2 Women and Minority Business Enterprises ("WMBE").

- (A) Grantee shall use good faith efforts to promote and seek utilization of women and minority businesses for subcontracting opportunities that arise in connection with this Franchise.
- (B) Efforts may include the use of solicitation lists, advertisements in minority community publications, breaking requirements into tasks or quantities that promote WMBE utilization, making other schedule or requirement modifications likely to assist WMBE firms to compete, targeted recruitment, and using minority community and public organizations to perform outreach.
- (C) Record-Keeping: Grantee shall maintain, for at least 24 months after the expiration or earlier termination of this Franchise, relevant records and information necessary to document all Grantee's solicitations to subcontractors and suppliers, all subcontractor and supplier proposals received, and all subcontractor and suppliers actually utilized in meeting Grantee's Franchise obligations. The City shall have the right to inspect and copy such records.
- (D) Grantee shall ensure that all employees, particularly supervisors, are aware of, and adhere to, their obligation to maintain a working environment free from discriminatory conduct, including, but not limited to, harassment and intimidation of women or minority businesses.
- (E) Non-Discrimination: Grantee shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

SECTION 19. REMEDIES FOR NON-COMPLIANCE

19.1 Termination.

The City may terminate this Franchise pursuant to SMC 21.60, including but not limited to the terms, conditions, and procedures set forth in SMC 21.60.120, subject to applicable law.

19.2 Liquidated Damages.

- (A) Amounts of Liquidated Damages. Because Grantee's failure to comply with provisions of the Franchise will result in injury to the City in amounts that will be difficult to quantify with reasonable certainty, the City and Grantee agree to the following Liquidated Damages for the following violations. These damages represent the parties' best estimate of the damages resulting from the specified

injury. The Liquidated Damage amounts are in 2017 dollars and shall be increased each year by the increase in the U.S. Consumer Price Index.

- (1) For any Transfer subject to the provisions of Section 14 without prior City approval: \$360 per day for each day the violation continues;
 - (2) For failure to comply with non-monetary requirements for PEG Access and use of the Cable System: \$1 per Subscriber for each month the violation continues, but not to exceed \$18,000 per month;
 - (3) For violation of applicable Subscriber service standards:
 - (a) For standards requiring a percentage performance, other than violations of call answering standards: \$1,800 per quarter for each percentage point below the required performance;
 - (b) For call answering standards requiring a percentage performance: \$1,800 per month for each percentage point below the required performance;
 - (c) For failure to maintain required Subscriber Service Centers: \$1.80 per Subscriber per month, but not to exceed \$9,000 per month;
 - (d) For other violations: \$360 per occurrence;
 - (4) For violation of any material technical performance standards: \$900 per occurrence; and
 - (5) For all other material violations: \$900 per occurrence.
- (B) Procedure for imposing Liquidated Damages.
- (1) Whenever the City believes that the Grantee has violated one or more terms, conditions, or provisions of this Franchise and Liquidated Damages will be sought, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have 30 days subsequent to receipt of the notice in which to correct the violation before the City may impose Liquidated Damages, unless (a) the violation is of such a nature so as to require more than 30 days and the Grantee proceeds diligently within the 30 days to correct the violation; or (b) the violation is of a call answering standard, for which Liquidated Damages shall be imposed on each month of violation and the 30 days for corrective action is not applicable.
 - (2) The Grantee may, within ten days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the City shall specify with particularity the

matters disputed by the Grantee. The dispute shall then be resolved pursuant to subsection 20.2.

- (C) Effect on Duty to Comply. The collection of Liquidated Damages by the City shall in no respect affect:
 - (1) Compensation owed to Subscribers; or
 - (2) The Grantee's obligation to comply with the provisions of this Franchise or applicable law.
- (D) Accrual. Liquidated Damages accrue from the end date of any applicable cure period pursuant to § 19.2(B).

19.3 Relationship of Remedies.

- (A) Non-Exclusivity of Remedies. Subject to applicable law, the remedies provided for in this Franchise and the Cable Code, as amended, are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the City at law or equity.
- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Security Fund (see subsection 12.5), or the recovery of amounts under the insurance, indemnity, bonding or Liquidated Damages provisions of this Franchise shall not be construed as a limit on the liability of the Grantee under the Franchise or an excuse of faithful performance of any obligation of the Grantee.

19.4 Non-Waiver.

Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

19.5 Cost Treatment of Fines, Liquidated Damages, Damages.

No cost to Grantee arising from a breach or violation of the Franchise shall be recovered from Subscribers as a line item or pass-through on the Subscriber bill; shall form the basis for any adjustment to Subscriber rates or other Subscriber Charges; or shall be offset against any sums due the City as a tax, Franchise Fee or otherwise regardless of whether the combination of Franchise Fees and said costs exceed five percent of Grantee's Gross Revenues in any 12 month period.

SECTION 20. MISCELLANEOUS PROVISIONS

20.1 Compliance with Laws.

- (A) Grantee shall comply with all applicable federal and state laws and City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's

lawful authority and other agreements or contracts entered into with the City that specifically make such agreements or contracts subject to the enforcement provisions of this Franchise.

- (B) Nothing in this Franchise is intended to authorize the City or the Grantee to engage in any activity that violates the law.

20.2 Arbitration.

- (A) All disputes relating to the interpretation, application, violation, or enforcement of this Franchise shall be arbitrated as provided in this subsection 20.2 except as provided below:

- (1) To the extent that any dispute otherwise arbitrable involves the interpretation or application of state or federal laws that govern the rights and obligations of the parties under this Franchise, such interpretation or application of federal or state law shall not be subject to arbitration, but shall be resolved judicially. This exception shall not extend to the application of the common law to legal issues arising in the arbitration, or to the application of statutes that generally affect the interpretation of contracts.

- (2) In the event that any material provision of the Franchise is determined to be invalid or unenforceable, and the parties are unable to agree upon appropriate modifications of this Franchise, this Franchise shall be modified by arbitration in accordance with this subsection 20.2; provided, however, to the extent either party establishes probable inconsistency between a proposed modification and federal or state law governing this Franchise, excluding common law or statutes governing contracts generally, the arbitration proceeding shall be stayed upon the request of either party made in a proceeding filed in federal court. In any event, either party shall have the right to seek judicial resolution of issues within subsection 20.2(A)(1) either before or after any arbitration proceeding.

- (3) In order to minimize the likelihood of a dispute regarding the arbitrability of specific questions under the previous subsections, the parties agree, by way of example and not limitation, that the following issues of law are not subject to arbitration, but shall be resolved judicially at the request of either party: (a) preemption under federal or state law and the interpretation and application of any federal or state laws that are determined to have preemptive effect; (b) the application of any federal or state law that governs the parties' relationship independently of the Franchise; and (c) injunctive relief.

- (B) Without limiting the generality of the arbitration provision, and subject to the exceptions stated above, the parties agree that disputes arising under the following provisions of this Franchise shall be arbitrable and the determination of the arbitrators shall be final and binding upon both the City and the Grantee, except to

the extent legal review is permitted hereunder: PEG Access Channel assignments; Franchise Fee modification; Franchise modification due to changes in the law; and ascertainment.

- (C) Either party may initiate arbitration by sending written notice to the other.
- (D) In the event an arbitration is initiated by either party, each party has 15 days from the date of receipt of written notice to provide to the other party in writing a list of six persons qualified to serve as arbitrators with no affiliation or relationship with either party that would tend to affect the person's ability to act as a neutral arbitrator, and acceptable to that party.
- (E) The City and Grantee shall mutually select three arbitrators from the list within five days after the exchange of proposed arbitrators' information. If the City and Grantee are unable to agree upon these arbitrators within the time specified herein, then the arbitrators shall be appointed by the Chief Judge of the Federal District Court for the Western District of Washington or, if said judge declines to act, by the Presiding Judge of the King County Superior Court.
- (F) After the arbitrators have been selected, they shall take an oath to serve neutrally and impartially. The arbitrators shall then schedule such discovery or other exchange of documents and information as is appropriate to the issue and a date, time and place for hearing the presentations of the City and the Grantee. The hearing shall occur not less than 100 days after the appointment of the arbitrators except for good cause shown. The arbitrators shall make a written report to the City and the Grantee on their final determination within 30 days after completion of the hearing. The determination of the arbitrators shall constitute a final arbitration determination.
- (G) The arbitration shall be conducted in Seattle, Washington, in accordance with the then-existing rules of the American Arbitration Association ("AAA"), except where inconsistent with this Franchise, but not under the auspices or control of the AAA unless the parties so agree. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction.
- (H) The cost of the arbitration shall be divided equally between the City and the Grantee. Each party shall be responsible for its own costs.

20.3 Severability.

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

20.4 No Recourse Against City.

Grantee's recourse against the City or its officials, boards, commissions, agents, or employees for

any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief, except where the Grantee's claim arises from acts or omissions of the City acting in a proprietary capacity, but only to the extent such relief is not prohibited by federal law. For purposes of this subsection, the City shall not be considered to be acting in a proprietary capacity in granting, modifying, denying, terminating, or enforcing franchises.

20.5 Action by Agencies or Courts.

Grantee shall promptly notify the City in the event that any agency of the federal government or the State of Washington or any court with competent jurisdiction requires the Grantee to act inconsistently with any provisions of this Franchise, and Grantee intends to change its actions to address the same.

20.6 Other Cable Franchises.

The City shall not be limited or prevented by any provision in this Franchise from issuing any franchise, permit, license, or other agreement of any kind for all of Grantee's Franchise Area or any portion thereof, to other Cable Operators. This provision shall not alter any rights of Grantee under subsection 1.4 of this Franchise.

20.7 Choice of Forum.

Any litigation between the City and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the King County Superior Court, and if in the federal courts, in the United States District Court for the Western District of Washington.

20.8 Force Majeure.

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

20.9 Notice.

Unless otherwise agreed to by the parties, any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City:

City of Seattle

If to the Grantee:

WaveDivision I, LLC

Department of Information Technology
Office of Cable Communications
P.O. Box 94709
Seattle, Washington 98124-4709

401 Kirkland Parkplace
Suite 500
Kirkland, WA 98033
Attn: General Counsel

IN WITNESS WHEREOF, and with an intention to be fully and legally bound, Grantee and the City hereby execute this Franchise, which shall become effective pursuant to the City legislation authorizing it:

WaveDivision I, LLC

By:
Title:

Date

City of Seattle

By:
Title:

Date

**ATTACHMENT A.
CORPORATE GUARANTY**

THIS AGREEMENT is made this ___ day of _____, 20___, between _____
_____ ("Guarantor"), the City of Seattle, Washington
("Franchising Authority"), and _____ ("Company").

WITNESSETH

WHEREAS, the Franchising Authority has entered into a cable television franchise agreement with the Company, authorized by Ordinance No. _____ ("Franchise"), pursuant to which the Franchising Authority has granted the Company a Franchise, to own, operate, and maintain a cable television system ("System"); and

WHEREAS, Guarantor is the parent company of the Company and has a substantial interest in the System and the conduct of the Company in complying with the Franchise and any and all amendments thereof and any agreements related thereto, which Franchise and amendments are hereby specifically referred to, incorporated herein, and made a part hereof;

WHEREAS, subsection 12.5 of the Franchise requires the Company, as principal, to furnish a letter of credit in the amount equal to \$1 per Subscriber to ensure the faithful payment and performance of the Company's obligations under the Franchise; and

WHEREAS, the Guarantor desires to provide its unconditional guaranty as part of such security fund.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby unconditionally guarantees the due and punctual payment and performance of all of the debts, liabilities and obligations of Company contained in the Franchise ("Indebtedness").

This Agreement, unless terminated, substituted, or canceled, as provided herein, shall remain in full force and effect for the duration of the term of the Franchise, except as expressly provided otherwise in the Franchise.

Upon substitution of another Guarantor reasonably satisfactory to the Franchising Authority, this Agreement may be terminated, substituted, or canceled upon 30 days prior written notice from Guarantor to the Franchising Authority and the Company.

Such termination shall not affect liability incurred or accrued under this Agreement prior to the effective date of such termination or cancellation.

The Guarantor will not exercise or enforce any right of contribution, reimbursement, recourse, or subrogation available to the Guarantor against the Company or any other Person liable for payment of the Indebtedness or any collateral security therefor, unless and until all of the Indebtedness shall have been fully paid and discharged.

The Guarantor will pay or reimburse the Franchising Authority for all costs and expenses

(including reasonable attorneys' fees and legal expenses) incurred by the Franchising Authority in connection with the protection, defense, or enforcement of this Agreement in any arbitration, litigation or bankruptcy or insolvency proceedings.

Whether or not any existing relationship between the Guarantor and the Company has been changed or ended and whether or not this Agreement has been revoked, the Franchising Authority may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Guarantor and without any notice to the Guarantor. The liability of the Guarantor shall not be affected or impaired by any of the following acts or things (which the Franchising Authority is expressly authorized to do, omit or suffer from time to time, without notice to or approval by the Guarantor): (i) any acceptance of collateral security, guarantors, accommodation parties, or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities, or other contractual terms applicable to any Indebtedness; (iii) any waiver or indulgence granted to the Company, any delay or lack of diligence in the enforcement of any Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, the Company or any other guarantor or other Person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Franchising Authority under § 1111(b)(2) of the United States Bankruptcy Code.

The Guarantor waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The Franchising Authority shall not be required first to resort for payment of the Indebtedness to the Company or other Persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty. The Guarantor will not assert, plead or enforce against the Franchising Authority any defense of discharge in bankruptcy of the Company, statute of frauds, or unenforceability of the Guaranty which may be available to the Company or any other Person liable in respect of any Indebtedness, or any setoff available against the Franchising Authority to the Company or any such other Person, whether or not on account of a related transaction.

Any notices given pursuant to this Agreement shall be addressed to the Guarantor and Company at _____, and to the Franchising Authority, Mayor and Members of the City Council, City of Seattle at _____.

IN WITNESS WHEREOF, the Company, Franchising Authority, and Guarantor have executed this Corporate Guaranty as of the day, month and year first above written.

GUARANTOR:

By:

Its:

COMPANY:

By:

Its:

FRANCHISING AUTHORITY:

CITY OF SEATTLE, WASHINGTON

By:

Its:

(To appear on Wave letterhead)

July 31, 2017

Mr. Tony Perez
Director, Office of Cable Communications
700 5th Avenue, Suite 2700
Seattle, WA 98124-4709

Dear Mr. Perez:

The purpose of this letter agreement is to set forth voluntary commitments by WaveDivision I, LLC ("Wave") to the City of Seattle, Washington ("City") that are in addition to the obligations contained in the Franchise Agreement, to be adopted by the City and executed by Wave, to take effect on November 11, 2017 (hereinafter the "Franchise"). The items set forth below have been negotiated in good faith and mutually agreed to by the parties. Other than in the event of a change in applicable law or regulation that expressly prohibits the arrangements described herein, Wave agrees that during the term of the Franchise it will not offset from franchise fee payments owed the City under the Franchise, or pass through as a separate line item on Subscriber bills, any costs associated with the voluntary commitments set forth within.

1. Internet connections to nonprofits

- a. Exhibit A to this letter sets forth the sites currently receiving complimentary Internet access service from Wave and considered to be Eligible Community Partner ("ECP") sites. Wave agrees, throughout the term of the Franchise, to continue to provide complimentary (i.e., free) high-speed Internet access service, as more particularly described herein ("Internet Service"), and necessary cable modems (but no other equipment) at such existing ECP sites. Wave also agrees to provide Internet Service to relocated or replacement ECP sites if any ECP sites move or are disconnected provided that such relocated or replacement sites are within Wave's then existing service area and are serviceable with a Standard Installation (as such term is defined in the Franchise). Notwithstanding any other provision hereof, in no event shall the total number of ECP sites to which Wave must provide complimentary Internet Services at any one time exceed One Hundred (100) (the "Aggregate Cap").
- b. Subject to the Aggregate Cap, the City may identify up to five (5) new ECP sites per calendar year during the term of the Franchise.
- c. For purposes of this letter, ECPs are limited to accredited schools, non-profit organizations, libraries or other community institutions, identified and determined by the City, that provide technology and/or digital literacy services to underserved

or low income, vulnerable populations. The City will require that the ECPs not be permitted to resell the Internet Service and that the ECPs shall provide any individuals served access to the Internet Service free of charge. City facilities or other sites receiving Cable Service or Internet Service through other agreements with Wave will not be counted against the City's allocation under this letter agreement.

- d. If an ECP currently pays Wave for Internet Service that ECP will be entitled to receive complimentary Internet Service once the ECP's current contract, if any, with Wave has expired. Upon written request to Wave, Wave will transition any such ECP to complimentary Internet Service at its then current site within thirty (30) days.
- e. The City will provide electronic copies of a site application form to Wave and Wave will acknowledge receipt of the site application. Standard Installation of serviceable sites will be completed within 30 days of receipt of the site application form. Wave will notify the City by email within 15 business days if a site is determined not to be serviceable and will provide an explanation. Wave will work cooperatively with the affected ECP's representative to identify the best location for the new installations. If sites require construction or are delayed for other reasons, Wave will communicate with the City as to the reason for delay and expected timeline for installation. Wave will send the City verification of the completed installation within 10 business days of completion. The City and Wave agree to maintain a common installation status tracking document.
- f. For purposes of this letter, "Internet Service" is defined as and shall consist of (i) a Standard Installation to the building; (ii) one connection to a room specified by the organization (provided that Wave shall not be required to install wiring within the walls of any building); (iii) in-person or telephonic technical and customer service support to ensure the service and equipment is in working order; (iv) up to 100 static IP addresses as requested; (v) necessary cable modems (but no other equipment); (vi) and Internet access. Each site location will receive Wave's mid-level business class Internet service (a minimum of 110Mbps down as of 2017). If Wave applies data caps to ECP accounts they shall not be less than 1 terabyte of data per month. Wave will notify the ECP and the City when data caps are to be applied and under what terms, with at least 30-days' notice. Wave will inform the ECP how it can verify their monthly bandwidth usage. If an ECP exceeds the monthly cap, Wave shall provide notice and a one-month grace period with no charges so that the ECP can reduce its bandwidth consumption. If, after notice and the application of a one-month grace period, an ECP continues to use data in excess of the applicable allocation established by Wave the ECP shall be responsible for paying for such excess data consumption at Wave's then standard rates.
- g. Each ECP will be responsible for monitoring or restricting usage of the Internet Service in accordance with established practices and requirements, and for equipment installed at ECP sites.

- h. Wave and the City will meet at least annually or as otherwise necessary to reconcile ECP site installation status and counts, review public awareness initiatives for the prior year and plan for the coming year, review bandwidth use, the number of members of the public accessing the Internet Service, and consider enhancements that reflect changes in technology over time.
2. **Internet discount program.** For the term of the Franchise, Wave shall, at a minimum, provide Internet Service at a cost the greater of: (a) not to exceed ten dollars (\$10) per month per customer, or (b) the amount charged for a similar service provided by the Dominant Cable Operator serving the City ("Discounted Internet Service"), to Qualified Low Income Persons. As used herein, "Qualified Low Income Persons" means all persons with low incomes as qualified in the City's Utility Discount Program or verified by the City as living in low-income subsidized housing. Determination of qualification and identification of any persons determined to be Qualified Low Income Persons and therefore entitled to Discounted Internet Service shall be the City's sole responsibility, and shall be at the City's sole cost and expense. This voluntary commitment shall not prohibit Wave from providing a larger discount or offering the discount to other economically or physically challenged customers. The throughput rate applicable for this Discounted Internet Service will, at a minimum, be 10 Mbps downstream and 1 Mbps upstream. Wave will periodically evaluate the low income discounted downstream and upstream speeds provided by the Dominant Cable Operator in the City and will consider adjusting the speeds provided by Wave. In addition to complimentary installation and troubleshooting Wave will supply a complimentary modem/wireless router to enable secured Wi-Fi within the premises of Qualified Low Income Persons for private and noncommercial use. Installation and service for Qualified Low Income Persons under this Internet discount program shall commence within 60 days after Wave receives a completed eligibility form from the City.
3. **Free airtime for Seattle Channel.** During the term of the Franchise, Wave will periodically meet with representatives of the Seattle Channel to discuss, and if mutually agreed, develop and implement activities and programs that promote awareness of Seattle Channel programming among Wave subscribers. By way of example, such activities and programs could include: use of ad avails, bill inserts with Seattle Channel promotional material, and web based video clips on Wave and WaveG networks.
4. **Wi-Fi Service.** During the term of the Franchise Wave will continue to provide Wi-Fi Service in the area along 23rd Avenue between Cherry Street and Union Street in accordance with the terms of that certain Agreement between the City and Wave, dated September 13, 2016. In the event Wave is unable to maintain, after using commercially reasonable efforts, the building access agreements needed to deploy the Wi-Fi equipment in the present locations, Wave will work in good faith with the City to determine an alternative location in which to deploy the Wi-Fi Service.

In addition to the foregoing voluntary commitments and Franchise obligations, Wave agrees to meet with the City annually over the term of the Franchise to explore provision

of additional commitments and benefits for the City and its residents taking into account its number of subscribers. The City and Wave understand that the voluntary commitments listed in this letter supplement the obligations contained in the Franchise.

Enforcement of the terms of this Letter of Agreement shall be consistent with the enforcement procedures set forth in the Franchise. Wave stipulates that a violation of these terms by Wave may be considered by the City as a violation of the Franchise and shall subject Wave to all remedies available to the City under the Franchise and pursuant to applicable law.

Acknowledged and agreed to this ___ day of _____, 2017.

WaveDivision I, Inc.

By: _____

Its: _____

City of Seattle, Washington

By: _____

Its: _____

Exhibit A

Community Center	Address	Zip	Contact
Chinese Information & Service Center (CISC)	611 S Lane St	98104	Karia Wong
Yesler Community Center	917 E Yesler Way	98122	Asfaha Lemlem
Special Technology Access Resource Center (STAR) Seattle Housing Authority	2121 26th Ave. S	98144	Oscar Esalante
Garfield Community Center	2323 East Cherry St	98122	Keller, Bill
Helping Link	1032 S. Jackson St., Suite C	98104	Minh Duc Nguyen
City of Seattle: Central Neighborhood Service Center	2301 S. Jackson ST Suite 208	98144	Derrick Hall
Reel Grrls	1409 21st Ave	98122	Ilona Rossman Ho
International District Community Center	719 8th Ave S	98104	Young Pham
SHA: International Terrace	202 6th Ave S. #103	98104	Ellen Zlontz
Urban League of Metropolitan Seattle	105 14th Ave	98122	Pamela Banks
Oromo Community Organization In Seattle & King County	2718 S. Jackson ST	98144	Galmesa Elemo
The Boys and Girls Club of King County Rotary Branch	201 19th Ave S.	98122	Charles Parris
Garfield Teen Life Center	428 23rd Ave	98122	Kevin Roberson
Eritrean Community In Seattle & Vicinity	2402 E. Spruce ST	98122	Abraham Gyesus
Tigrean Community Association Center	1902 Yesler Way	98122	Asfaha Lemlem
Wing Luke Asian Museum	719 S. King ST	98104	David Chattin- McNichols
Seattle Indian Center	611 12th Ave S Suite 300	98144	Carla Jo
Washington Cash: Ventures	1501 Pike Place Suite 521	98101	Gylan Green
Washington Community Alliance for Self-Help	2100 24th Ave S. Suite 380	98144	Gylan Green
Multimedia Resources and Training Institute	2301 S. Jackson ST Suite 103	98144	Assaye Abunie

Ex A Att 2 - Letter of Agreement
VI

Interlm Community Development Association	310 Maynard Ave S	98104	Andrea Akita
Hollow Earth Radio	2016 E. Union ST	98122	Garrett Kelly
Yesler Terrace Job Connection	825 Yesler Way, LL	98104	Andrew J Lofton
Columbia Legal Services	101 Yesler Way, Suite 300	98104	Mike Katell
Atlantic Street Center	2103 S. Atlantic Street	98144	Edith Elion
Denise Louie Education Center	801 S. Lane ST	98104	Katrina Paradine
The Colwell Apartments	111 Yale Ave N.	98109	Paul Lambros
Jefferson Community Center	3801 Beacon Ave S	98108	Ken Owens
Denise Louie Education Center	5333 15th Ave S		Katrina Paradine
Denise Louie Education Center	3327 Beacon Ave S		Katrina Paradine
Denise Louie Education Center	606 Maynard Ave Bld 101		Katrina Paradine
Nikkei Manor	700 6th Ave S.	98104	Nikkei Manor
Saint Charles Apartments	619 3rd Ave	98104	Paul Lambros
Gatewood Apartments	107 Pine Street	98101	Paul Lambros
Youth Tutoring Program(Yesler Terrace)	825 Yesler Way	98104	SIENG DOUANGDALA
Scargo/Lewiston Apartments	2209 1st Ave	98121	Paul Lambros
The Mockingbird Society	2100 24th Ave S. Ste 240	98144	Jim Theofelis
Casa Latina	317 17th Ave S	98144	Hilary Stern
Bryant Manor Computer Learning center	1801 E. Yesler Way	98122	Makini Magee
International District Housing Alliance	601 S. King ST Suite 305	98104	Andrea Akita
The Cal Anderson Apartments (Plymouth Housing Group)	400 Broadway	98122	Paul Lambros
Plymouth on Stewart (Plymouth Housing Group)	116 Steward St	98101	Paul Lambros
The Frye Hotel - LIHI	223 Yesler Way	98104	Tiffany Mueller
Connections - Downtown Emergency Service Center	505 3rd Ave	98104	Maria Metzler
Langston Hughes	104 17th Ave S.	98144	Royal Alley-Barnes
Northwest African American Museum	2300 S. Massachusetts ST	98144	Maurice Jones
Pike Market Senior Center	85 Pike Street Suite 200	98101	Jeannie Falls
Ernestine Anderson Place - LIHI	2010 S. Jackson ST	98144	Jill Davies

Ex A Att 2 - Letter of Agreement
VI

West African Community Council	1265 S. Main ST Suite 304	98144	Issa Ndiaye
Belltown Community Center	415 Bell ST	98121	Kerrie Stoops
Central Area Senior Center	500 30th Ave S.	98144	TySonia McClain
SHA: Center Park Resident Council	2121 26th Ave S.	98144	Maria Johnson
Josephinum Apartments	1902 Second Ave Suite 201	98101	Joan Widen
Central Area Youth Association	119 23rd Ave	98122	Joe Staton
Seattle Indian Center (Move)	1265 S. Main St Suites 104,105,106,107,108	98144	Michelle James
206 Zulu	153 14th Ave	98122	Kitty Wu
Coyote Central	2300 E. Cherry ST	98122	Claudia Stelle
Chief Seattle Club	410 2nd Ave Extension So	98104	Nina Butler
Ross Manor	1420 Western Ave(Community Room 2nd Floor)	98101	Ellen Ziontz
Full Life Care - Solstice Mental Health	2600 S. Walker ST (SE community bldg)	98144	Mike Pollack
Lazarus Day Center Computer Lab	416 2nd Ave Ext S	98104	
Denny Terrace Computer Lab	100 Melrose Ave E	98102	
FLC Solstice Mental Health	2600 S. Walker ST	98144	
Josephinum Apartments	1902 Second Ave	98101	

