

**City of Tacoma, Washington
and
Rainier Connect North, LLC,
D/B/A Rainier Connect**

Cable Franchise Ordinance

December 10, 2019

TABLE OF CONTENTS

	PAGE
SECTION 1. DEFINITIONS	1
SECTION 2. FRANCHISE	<u>66</u>
SECTION 3. OPERATION IN STREETS AND RIGHTS-OF-WAY	<u>1414</u>
SECTION 4. SYSTEM DESIGN AND CAPACITY.....	<u>1414</u>
SECTION 5. PROGRAMMING SERVICES.....	<u>1717</u>
SECTION 6. LEG USE OF THE SYSTEM.....	<u>1848</u>
SECTION 7. [RESERVED].....	<u>2222</u>
SECTION 8. REGULATORY PROVISIONS.....	<u>2222</u>
SECTION 9. REPORTING REQUIREMENTS	<u>2828</u>
SECTION 10. CUSTOMER SERVICE POLICIES	<u>3232</u>
SECTION 11. LINE EXTENSION POLICY	<u>3333</u>
SECTION 12. COMPENSATION AND FINANCIAL PROVISIONS.....	<u>3535</u>
SECTION 13. MISCELLANEOUS PROVISIONS.....	<u>3737</u>
EXHIBIT A SITES TO WHICH COMPLIMENTARY SUBSCRIBER CABLE TV DROPS ARE TO BE PROVIDED.....	A-1

RAINIER CONNECT CABLE FRANCHISE ORDINANCE

THIS CABLE FRANCHISE ORDINANCE (“Franchise”) is made and entered into this _____ day of _____, 2019, by and between the City of Tacoma, a municipal corporation operating under the laws of the State of Washington (hereinafter “City”), and Rainier Connect North, LLC, D/B/A Rainier Connect, a Washington limited liability company (the “Franchisee”). As used herein, the term “Party” shall refer to City and Franchisee individually as indicated by the context in which used.

WHEREAS, pursuant to Subtitle 16A of the Tacoma Municipal Code and in accordance with Section 546 of the Cable Communications Policy Act of 1984, as amended, (Pub. L. No. 98-549, 98 Stat. 2779 (codified at 47 U.S.C. § 521 et seq hereinafter “Cable Act”) Franchisee has a Franchise in the City; and

WHEREAS, the City is authorized to grant one or more nonexclusive cable franchises pursuant to Subtitle 16A and applicable state and federal law; and

WHEREAS, the City intends to exercise the full scope of its municipal powers to the extent not prohibited by state and federal law, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens of the City; and

WHEREAS, the City has identified the future cable-related needs and interests of the City and its community, has considered the financial, technical and legal qualifications of the Franchisee, and has determined that the Franchisee’s plans for its Cable System are adequate, in a full public proceeding affording due process to all Parties; and

WHEREAS, the City has found Franchisee to be financially, technically and legally qualified to operate the Cable System; and

WHEREAS, the City has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein and the Parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of this request for a Franchise the Franchisee hereby agrees to comply with the provisions of this Franchise and Subtitle 16A of the Tacoma Municipal Code.

SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein which are defined in Subtitle 16A, shall have the same meaning or be interpreted as provided in Subtitle 16A and if not defined there, shall be construed consistent with the Cable Act and if not defined there, shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the

future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. A reference to Subtitle 16A, Chapter 10.22, the City Code or to the City’s Charter refers to the same as amended from time to time. References to governmental entities (whether Persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

1.1 “Access,” “EG Access,” or “EG Use” refers to the availability of the Cable System for, Education or Government Use by various agencies, institutions, organizations, and groups, including the City and its Designated Access Providers, to acquire, create, and distribute programming not under Franchisee’s editorial control, including, but not limited to:

A. “Education Access” or “Education Use” means Access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and

B. “Government Access” or “Government Use” means Access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming.

1.2 “Access Channel” means a Channel set aside for EG Use.

1.3 “Access Facilities” means facilities designated for EG Use, and equipment, including, but not limited to, modulators, demodulators and transmitters, as well as production facilities and equipment for EG Use of EG Channels.

1.4 “Applicable Law” means any local law, or federal or state statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.

1.5 “Basic Service” means any service tier that includes the retransmission of local television broadcast signals.

1.6 “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

1.7 “Cable Service” means:

- A.** The one-way transmission to Subscribers of (1) video programming, or (2) other programming services; and
- B.** Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

1.8 “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming and which is provided to multiple Subscribers within a community; but, such term does not include:

- A.** A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- B.** A facility that serves Subscribers without using any Public Rights-of-Way;
- C.** A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)), to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on demand services;
- D.** An Open Video System that complies with 47 U.S.C. § 573; or
- E.** Any facilities of any electric utility used solely for operating its electric utility systems.

1.9 “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 Federal Communications Commission by regulation).

1.10 “City” means the City of Tacoma, a first-class city of the State of Washington, existing pursuant to its Charter, the Washington State Constitution, and the laws of the State of Washington.

1.11 “Code” means the City of Tacoma, Washington Municipal Code as may from time to time be amended.

1.12 “Commercial Use,” as applicable to Access Facilities, shall mean the use of such Access Facilities where the primary purpose is generating profit, and includes, by way of example, the selling of air-time, and any programming or use which, in whole or in part depicts, demonstrates, or discusses products, services, or businesses for the primary purpose of benefiting or enhancing a profit-making enterprise.

Commercial Use does not include by way of example, (a) programming and the identification of financial supporters similar to what is provided on public broadcasting channels; (b) the solicitation of financial support for the provision of EG Access by Designated Access Providers and for charitable, educational or governmental purposes; or (c) programming offered by accredited public educational institutions which may offer tele-courses over an educational EG Channel.

1.13 “Day,” unless otherwise specified, shall mean a calendar day.

1.14 “Designated Access Provider(s)” or “DAP” means the entity or entities that control, operate, manage or co-manage the use of any Access Facilities or part of any Access Facilities.

1.15 “Downstream” means the direction of signal transmission from the headend to Subscriber terminals.

1.16 “Effective Date” means the date of transfer of operational control pursuant to the terms and conditions of the Click! Business Transaction Agreement effective November 8, 2019 and approved by the City Council pursuant to Resolution No. 40468, which date shall occur no more than one hundred and twenty (120) Days following the date of adoption of this Franchise by the City, unless a different date is mutually agreed to by the parties in writing.

1.17 “EG Access Channel” means any Channel on a cable system set aside by a Franchisee for EG Use, including, by way of example and not limitation, an Access Channel as that term is defined in this Franchise.

1.18 “Expanded Basic Service” refers to the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

1.19 “Franchise” means this document executed between City and Franchisee, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.

1.20 “Franchise Area” means that area within the present and future corporate limits of Tacoma that Franchisee is authorized to serve.

1.21 “Franchisee” means Rainier Connect North, LLC, D/B/A Rainier Connect, a Washington limited liability company and permitted successors and assigns.

1.22 “Gross Revenues” means any and all revenue derived directly or indirectly by the Franchisee, or by any other entity that is a cable operator of the Cable System including Franchisee’s affiliates, from the operation of Franchisee’s Cable System to provide Cable Services in the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Service, any expanded tiers of Cable Service, optional Premium Services; pay-per-view services; installation, disconnection, reconnection and

change-in-service fees, Leased Access Channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the City, late fees and administrative fees, payments or other consideration received by the Franchisee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise fees required by Section 12.1 of this Franchise, revenue from interactive services to the extent they are considered Cable Services under Applicable Law; revenue from the sale or carriage of other Cable Services, and revenues from home shopping, and other revenue-sharing arrangements. Gross Revenues shall include revenue received by any entity other than the Franchisee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include (a) to the extent consistent with GAAP, bad debt, provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (b) the Capital Fee specified in Section 6.3 of this Franchise; or (c) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber or user by the state, City or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit. The Franchise fee is not such a tax.

The Parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing Applicable Law. However, the definition of Gross Revenue does not include Internet access services. If there is a change in federal law subsequent to the Effective Date of this Franchise, such change shall not impact this Gross Revenues definition unless the change specifically preempts the affected portion of the definition above or modifies the definition of what is considered a Cable Service under the Cable Act.

1.23 “Interconnect” or “Interconnection” means the linking of the Cable System with another cable system, communications system, or those portions of the Cable System outside the Franchise Area, including technical, engineering, physical, financial, and other necessary components to accomplish, complete, and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the interconnected facilities.

1.24 “Leased Access” means the use of Channel capacity designated for Commercial Use by Persons unaffiliated with Franchisee as defined in Section 532 of the Cable Act (47 U.S.C. § 532).

1.25 “Master Control Center” refers to the designated site located at 1224 S. Martin Luther King Jr. Way, where EG programming may be originated, produced, collected, switched, managed, processed and retransmitted by the City to Franchisee’s headend or other location.

1.26 “MVPD” means a multichannel video programming distributor, which is an entity engaged in the business of making available for purchase by Subscribers or customers, multiple Channels of video programming.

1.27 “Pay Service” or “Premium Service” refers to a Cable Service (such as movie Channels or pay-per-view programs) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.28 “Person” includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

1.29 “Rights-of-Way” or “Public Rights-of-Way” shall have the meaning set forth in Subtitle 16A, Section 16A.01.030.

1.30 “School” means accredited public or private, non-profit primary and secondary schools and colleges (which term includes all accredited post-secondary institutions, including, by way of example and not limitation, community colleges, technical colleges and universities).

1.31 “Subscriber” means the City, any government entity, or any Person who lawfully receives any Cable Service from Franchisee over the Cable System.

1.32 “Subscriber Network” means that portion of the Cable System used primarily by the Franchisee in the transmission of Cable Services to residential Subscribers.

1.33 “System” means the Franchisee’s Cable System.

1.34 “Subtitle 16A” refers to Subtitle 16A of the Tacoma Municipal Code, as amended from time to time.

1.35 “Title 10” refers to Title 10 of the Tacoma Municipal Code, as amended from time to time.

1.36 “Upstream” means the direction of signal transmission from Master Control Center toward the headend.

1.37 “Video Services” means programming provided by, or generally considered comparable to programming provided by, a cable operator as the term “cable operator” is defined in the Cable Act.

SECTION 2. FRANCHISE

2.1 Grant of Franchise.

A. The City hereby grants to Franchisee a non-exclusive Franchise authorizing Franchisee to occupy the City’s Public Rights-of-Way within the Franchise

Area to construct, repair and operate a Cable System to provide Cable Services. Provided, however, that such grant is subject to and must be exercised in strict accordance with the provisions hereof, Title 10 and Title 16A of the Code, and the Tacoma City Charter, including, but not limited to, the provisions set forth in Article VIII. Said Franchise shall constitute both a right and an obligation to provide the services of the Cable System in accordance with the provisions of this Franchise.

B. This Franchise does not authorize the provision of any service other than the services specified above, or in any way relieve the Franchisee of any obligation to obtain any authorizations, licenses or franchises to use the Rights-of-Way to provide other services, or to comply with any requirements with respect to the use of the Rights-of-Way or the provision of such services to the extent consistent with Applicable Law. The provisions of this Franchise are not a bar to the imposition of similar, different or additional conditions with respect to the use of the Rights-of-Way in connection with the provision of services other than Cable Services. Nothing herein shall be read to prevent Franchisee from providing other non-cable services to the extent consistent with Applicable Law.

C. No Public Rights-of-Way shall be used by Franchisee if the City, determines that such use is inconsistent with the terms, conditions or provisions by which such Public Rights-of-Way were created or dedicated, or presently used under Applicable Laws.

D. No rights shall pass to the Franchisee by implication. Without limiting the foregoing, by way of example and not limitation, the Franchise shall not include or be a substitute for:

1. Any other permit or authorization generally required under the Code for the privilege of transacting and carrying on a business within the City that may be required by the City;

2. Any permit, agreement or authorization generally required under the Code in connection with operations on or in public streets or property, including, by way of example and not limitation, street cut permits; or

3. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City, including the Tacoma Department of Public Utilities, or a private entity.

E. By way of further example, and without limiting the foregoing, this Franchise shall not be read to diminish, or in any way affect, the authority of the Tacoma Department of Public Utilities to control and charge for the use of the Light, Water, and Belt Line Divisions' real estate, fixtures or personal property. Therefore, if Franchisee desires to use such property it must obtain necessary agreements or consents for that purpose, as may be required by the City.

2.2 Acceptance of Franchise.

A. Franchisee shall execute and return to the City three (3) original countersigned copies of this Franchise together with all required documents and payments as set forth in this Section 2.2 within thirty (30) Days after the date of passage of the ordinance by the City Council. The countersigned ordinance and acceptance shall be returned to the City accompanied by the required evidence of insurance; a payment for publication costs; billable work order deposit, if one is not already in place; letter of credit; or any required security deposit. The Franchise rights granted herein shall not become effective until all of the foregoing are received in acceptable form. In the event Franchisee fails to submit the countersigned ordinance and acceptance as provided for herein, or fails to provide the required accompanying documents and payments, within the time limits set forth in this section, the grant of the Franchise shall be null and void.

B. By this acceptance, the Franchisee does not waive its rights to challenge the lawfulness or enforceability of any provision of Applicable Law.

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

2.3 Relation to Other Provisions of Law.

The Franchisee, through this Franchise, is granted the right to operate its Cable System using the Public Rights-of-Way within the Franchise Area in compliance with the Code, as may be amended periodically. The Franchisee specifically agrees to comply with the lawful provisions of the Code and lawful applicable regulations of the City, and subject to the police power exception below, in the event of a conflict between the lawful provisions of the Code or lawful applicable regulations of the City and this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to the Code or any regulation of City, except in the lawful exercise of City's police power. Franchisee acknowledges that the City may modify its generally applicable regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Franchisee agrees to comply with such lawful modifications. Franchisee reserves all rights it may have to challenge such lawful modifications whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

2.4 Franchise Term.

The term of the Franchise shall be twenty (20) years, unless extended by mutual agreement of the Parties or terminated sooner in accordance with this Franchise, the Code, or the City Charter.

2.5 Franchise Non-exclusive.

The grant of authority for use of the City's Public Rights-of-Way, as conferred herein, is not exclusive and does not establish priority for use over other franchise holders, permit holders and the City's own use of public property. Nothing in this Franchise shall affect the right of the City to grant to any other Person a similar franchise or right to occupy and use the Public Rights-of-Way or any part thereof for the erection, installation, construction, reconstruction, operation, maintenance, dismantling, testing, repair or use of a Cable System within the City. Additionally, the Franchisee shall respect the rights and property of the City and other authorized users of Public Rights-of-Way. Disputes between the Franchisee and other parties over the use, pursuant to this Franchise, of the Public Rights-of-Way shall be submitted to the City for resolution consistent with the requirements of the Code.

2.6 Competitive Equity.

A. New Video Service Provider. If any other wireline MVPD enters into any agreement with the City to provide Video Services to subscribers in the City, the City, upon written request of the Franchisee, shall permit the Franchisee to construct and/or operate its Cable System and provide Video Services to Subscribers in the City under the same agreement as applicable to the new MVPD. Within one hundred twenty (120) Days after the Franchisee submits a written request to the City, the Franchisee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the new wireline MVPD.

B. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a wireline MVPD to provide Cable Service or Video Service to Subscribers in the City, or that otherwise changes the nature or extent of the obligations that the City may request from or impose on a wireline MVPD providing Cable Service or Video Service to Subscribers in the City, the City agrees that if another wireline MVPD avails itself of such new law and provides Cable Service or Video Service in the City, upon Franchisee's written request, the City shall permit the Franchisee to terminate this Franchise and, subject to Applicable Law, provide Cable Service or Video Service to Subscribers in the City on the same terms and conditions as are applicable to the other wireline MVPD under the changed law. The City and the Franchisee shall implement the provisions of this section within one hundred twenty (120) Days after the Franchisee submits a written request to the City.

2.7 Periodic Public Review of Franchise.

Within sixty (60) Days of the fifth (5th), tenth (10th) and fifteenth (15th) annual anniversary of the Effective Date of this Franchise, the City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, the Franchisee continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance, local regulatory environment, community needs and interests, and other such factors. Both the City and Franchisee agree to make a full and good faith effort to participate in the review.

2.8 Transfers.

A. Every transfer shall be subject to the prior written approval of the City except as provided herein. A transfer means any transaction in which:

1. All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Public Rights-of-Way);

2. There is any change, acquisition, or direct or indirect transfer of control of the Franchisee of twenty percent (20%) or greater;

3. The rights and/or obligations held by the Franchisee under this Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or

4. The transfer of stock in a corporation so as to create a new controlling interest constitutes a transfer. The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

B. A transfer without the prior written approval of the City is a material violation of this Franchise and shall make the Franchise subject to termination by the City, as provided herein and in Subtitle 16A, Section 16A.01.110.

C. If Franchisee submits an application for approval of any transfer in accordance with federal regulations (47 C.F.R. § 76.502), the City shall process said application in accordance with those regulations. Applications for approval of any transfer shall also be filed, and the City shall process such applications, in accordance with procedures set out in Subtitle 16A, Section 16A.03.060, so long as they are not in conflict with Applicable Law.

D. Franchisee shall, within sixty (60) Days of the closing date of any transfer, file with the City Clerk a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by Franchisee. Every such transfer, whether voluntary

or involuntary, may be deemed void and of no effect by the City unless Franchisee files the required copy within the sixty (60) Day period.

E. In addition to the exceptions noted in Subtitle 16A, Section 16A.03.060.F, the requirements of this section shall not be deemed to prohibit the use of Franchisee's property as collateral for security in financing the construction or acquisition of all or part of the Cable System franchised hereunder. However, no such arrangement may be made if it would in any respect under any condition prevent the Franchisee or any successor from complying with the Franchise and Applicable Law, nor may any such arrangement permit a third party to succeed to the interest of the Franchisee, or to own or control the Cable System, without the prior consent of the City. No consent shall be required for intra-corporate reorganizations between or among entities or affiliates wholly owned and wholly controlled by Franchisee's parent company to the extent such transaction does not involve a change in the management or control of the Franchisee. However, in such case Grantee will notify the City within thirty (30) days after receiving notice of such a transaction. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of the City under this Franchise, and other Applicable Law. The City acknowledges that Franchisee is a closely held, family owned business and therefore City agrees that internal stock pledges between family members or between trusts held by such family members shall not trigger the transfer obligations set forth in this Section 2.8.

F. Franchisee shall promptly notify the City of any proposed change in, transfer of, or acquisition by any other Person of an ownership interest in Franchisee that results in a change in control of Franchisee within the meaning of this Section 2.8.A. However, if the proposed change in control merely results in a transfer from Franchisee to another entity that is one hundred percent (100%) owned by Franchisee's parent, and such parent provides any City mandated guaranty of performance of the Franchisee Affiliate's performance after the transfer, then such transfer shall not require the prior approval of the City, so long as all the conditions on Affiliate transfers set forth in Subtitle 16A, Section 16A.03.060.F are satisfied.

2.9 Continuity of Service.

In the event the City has declared a forfeiture for cause or otherwise revoked for cause the Franchise as provided herein, or in the event of expiration of the Franchise without the Franchise being renewed or extended (referred to below collectively as a "termination"), Franchisee shall, at the direction of the City expressed by ordinance, continue its operations for such reasonable period of time as is necessary to permit transition to another provider, which period may be established taking into account any appeal of the termination. During such period, Franchisee shall continue to be bound by all its obligations under the Franchise, Subtitle 16A and the Code. During this period, Franchisee shall not transfer any portion or all of its Cable System to any other Person, including parts of the System rented, leased, or lease-purchased; or significantly alter the Cable System or remove property from the City, or otherwise encumber the Cable System in any manner, without prior written consent of the City. The Franchisee's obligations to remove its facilities under Title 10, Section 10.22.190,

Abandonment and Removal of Facilities, shall be deferred for the period for which Franchisee is required to operate pursuant to this section.

2.10 Right to Require Removal of Property/Right to Remove Property.

A. The Franchisee shall be liable for removing the Cable System upon termination of the Franchise whether by action of the City or by passage of time, as may be required by the City consistent with Title 10, Section 10.22.190, Abandonment and Removal of Facilities, and shall be obligated to restore affected property to the same or better condition as existed just prior to such removal, in accordance with Title 10, Section 10.22.190, subject to any rights Franchisee may have to abandon property in place, as set out in Title 10, Section 10.22.190. In addition to such obligations as may be established by Title 10, Section 10.22.190, Franchisee agrees that if Franchisee fails to remove property that the City requires it to remove, the City may perform the work and collect the cost thereof from Franchisee. The City acknowledges that portions of the Cable System operated by Franchisee may not be directly owned by Franchisee and therefore the applicability of this Section 2.10 may be limited and will only impact facilities owned by Franchisee.

B. To the extent any portion of the Cable System in the Public Rights-of-Way or on any other public property is not removed by the Franchisee within the time period specified by Title 10, Section 10.22.190 or such other period as the City may establish, the property will be deemed abandoned and shall become the property of the City if the City wishes to own it. Provided, that, in no case shall the Franchisee be provided less than twelve (12) months to remove its facilities, measured from the date the Franchisee is ordered to remove its facilities.

C. Any order by the City issued pursuant to this Section 2.10 to remove the Cable System, in whole or in part, shall be sent by registered or certified mail to Franchisee not later than twenty-four (24) months following the date of Franchisee termination, or, if later, the final resolution of any appeal of the termination.

D. Franchisee shall file a written removal plan with the City not later than thirty (30) Days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

E. Nothing herein shall affect the City's authority to require Franchisee to remove its Cable System upon Franchisee termination, as provided in this Section 2.10 and Title 10, Section 10.22.190, nor does it affect the City's right to assume ownership of any portion of the Cable System that is abandoned. Within sixty (60) Days of a request by the City, the Franchisee shall execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances.

2.11 Subscribers Right to Obtain Service.

It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Franchisee are honored during the term of the Franchise or any continuation period. In addition to the obligations established under the other provisions of this Franchise, in the event that Franchisee elects to rebuild, modify, or sell the Cable System, Franchisee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstance.

2.12 Responsibility for Costs.

Except as expressly provided otherwise, any act that Franchisee is required to perform under this Franchise shall be performed at its cost. If Franchisee fails to perform work that it is required to perform within the time provided for performance, the City may perform the work and bill the Franchisee for documented costs. The Franchisee shall pay the amounts billed within thirty (30) Days. The Parties agree that any amounts paid pursuant to this section or Subtitle 16A, are not Franchise fees and fall within one (1) or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this section is intended to affect, in any way (by expansion or contraction), Franchisee's rights under Applicable Law governing rates.

2.13 Work of Contractors and Subcontractors

Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, Subtitle 16A, Title 10 and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Franchisee's behalf are familiar with the requirements of the Franchise, Subtitle 16A, Title 10 and other Applicable Laws governing the work performed by them.

2.14 Survival of Terms.

Upon the termination or forfeiture of the Franchise, Franchisee shall no longer have the right to occupy the Public Rights-of-Way for the purpose of providing Cable Service. However, Franchisee's obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms. By way of illustration and not limitation, Sections 2.10, 2.11, 2.12 and 2.13 of this Franchise shall continue in effect as to Franchisee notwithstanding any expiration, forfeiture, or revocation of the Franchise, except to the extent that a City-approved transfer of the Cable System is completed, and another entity has assumed full and complete responsibility for the Cable System or for the relevant acts or omissions.

SECTION 3. OPERATION IN STREETS AND RIGHTS-OF-WAY

3.1 Use of Public Rights-of-Way.

Franchisee may, subject to the terms of this Franchise and Subtitle 16A and other Applicable Laws, construct, operate and maintain a Cable System to provide Cable Services in Public Rights-of-Way. Without limiting the foregoing, Franchisee expressly agrees that it will construct, operate and maintain its System in compliance with, and subject to, the requirements of Subtitle 16A and Title 10 of the Code, including, by way of example and not limitation, those governing the placement of its Cable System, and with other applicable City Codes and will obtain and maintain all bonds and permits required by the same.

3.2 Construction, Operation or Repair.

Subject to Section 2.3 herein, in connection with the construction, operation or repair of the Cable System, Franchisee shall, in all cases, comply with the Code.

SECTION 4. SYSTEM DESIGN AND CAPACITY

4.1 Availability of Signals and Equipment. Franchisee shall, at a minimum:

- A.** Make available to Subscribers all signals that are required to be made available by the Federal Communications Commission (FCC) or as federal law provides.
- B.** Make available a minimum of seventy-five (75) activated Channels.
- C.** In addition to satisfying any obligations it may have under federal or state law, make available parental control devices to all Subscribers who request them. These devices should enable the Subscriber to block the video and audio portion of any Channel or Channels.
- D.** Upon written request, Franchisee will provide and install one (1) outlet of all Basic Service and Expanded Basic Service to: (1) any public safety facility in the City except for general prison/jail population use; (2) each School for education purposes in the City; and (3) all other local government buildings. The outlet and service shall be provided to all the buildings without monthly charge, and to all buildings without installation charge, except as provided below. However, in the case of Schools with multiple buildings on a single campus, the obligation to provide a drop to that School is satisfied by providing an outlet to a single building on that campus, designated by the School. In the case of a School with multiple campuses, this section requires one (1) outlet to be provided per campus. No free service drop shall be used for public viewing.
- E.** Notwithstanding anything to the contrary set forth in this section, Franchisee shall not be required to provide an outlet to such buildings unless it is technically feasible. The City and Franchisee agree that the provision of the outlets

contemplated hereunder to the locations listed in Exhibit A is technically feasible and will not so adversely affect the Cable System, unless some unforeseen and unanticipated event occurs, e.g., such as it becomes illegal or technically infeasible to provide the outlets.

F. If the drop line to such building exceeds a standard residential installation drop of one hundred twenty-five (125) feet, as specified by the FCC at 47 C.F.R. § 76.309, the Franchisee will accommodate the drop up to three hundred (300) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided, the City or other agency agrees to pay the incremental cost of such drop in excess of one hundred twenty-five (125) feet or the necessary distribution line extension of the Cable System, including the cost of such excess labor and materials. The recipient of the service will secure any necessary right of entry.

G. In the event Franchisee is legally permitted, in accordance with Applicable Law, to offset the value of the services set forth in this Section 4.1 against Franchise fees payable to the City, the Franchisee agrees that it will do so only after providing City with a minimum of one hundred twenty (120) Days' prior written notice. Upon written notice from the Franchisee, the City shall be given ample time to review the list of outlets receiving such complimentary service and shall have the right to suspend or discontinue receipt of all or a portion of the outlets receiving such complimentary service provided by Franchisee in the event Franchisee elects to offset the value of complimentary services as set forth in the preceding sentence.

4.2 Equal and Uniform Service.

Franchisee shall provide access to equal and uniform Cable Service throughout the Franchise Area.

4.3 System Characteristics.

A. To the extent required by Applicable Law, and at all times during the term of this Franchise, Franchisee's Cable System shall be capable of delivering high quality signals that meet or exceed FCC technical quality standards at 47 C.F.R. § 76 Subpart K. To the extent required by Applicable Law, Franchisee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise.

B. Franchisee shall install or maintain equipment so that all closed captioned programming received by the Cable System shall include the closed caption signal and shall be transmitted to Subscribers so long as the closed caption signal is provided consistent with FCC standards.

C. Franchisee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

D. Franchisee acknowledges that the minimum Cable System design and performance requirements set forth in this Franchise are enforceable, to the extent allowed by law.

E. Emergency Alert Capability.

1. Franchisee shall install and maintain for use by the City an Emergency Alert System (“EAS”) meeting all applicable requirements of federal law.

2. Franchisee’s System shall include the capability for the City to access the EAS using non-location-specific technology, without the assistance of the Franchisee, in the event of emergency or for reasonable tests, to override at least the audio on all Channels on Franchisee’s System to utilize the federally mandated EAS in accordance with applicable state or local plans or with broadcaster preemption or override of individual signals.

3. Franchisee shall broadcast all EAS messages initiated by the City or Pierce County.

F. Standby Power. Franchisee shall provide standby power generating capacity for the Cable System. Franchisee shall maintain standby power System supplies, rated at least at two (2) hours duration at each of the nodes. Standby power must be in place as the System is upgraded and throughout the term of the Franchise. In addition, Franchisee shall have a plan in place throughout the Franchise term, and all resources necessary for implementation for dealing with power outages of more than two (2) hours.

4.4 Technical Standards.

Franchisee shall be responsible for insuring that the Cable System is designed, installed, maintained, repaired and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter 1 of Title 47 of the Code of Federal Regulations as revised or amended from time to time to the extent required by Applicable Law. The City shall have the right to obtain a copy of tests and records related to the standards upon request, and shall have the authority to enforce compliance with such standards, except as may be prohibited under federal law and regulation.

4.5 Performance Testing.

A. The following requirements and the requirements of Subtitle 16A shall be met by Franchisee, to the extent that federal law does not prohibit the City from enforcing them.

B. To the extent required by Applicable Law, Franchisee shall perform all System tests at the intervals required by Section 76.601 of the FCC Rules and Regulations, Part 76, Subpart K (Technical Standards). Upon request by the City, Franchisee shall provide copies of completed FCC reports within seven (7) working days of the request. These tests shall include, without limitation:

1. initial proof of performance for any construction;
2. semi-annual compliance tests.

C. In addition to the rights to inspect provided for in Subtitle 16A, for initial and semi-annual FCC proof-of-performance tests, the City shall be given the opportunity by Franchisee to review test sites. Upon request, the tests shall be witnessed by representatives of the City. Upon request, Franchisee shall notify the City of the time and place of the next scheduled test and shall cooperate in facilitating the City's witnessing at the time of the tests. The City may at any time, at its own expense, conduct independent visual inspections of the System, but the City shall not have the right to access the System without Franchisee's express consent.

D. Franchisee shall be required to take promptly such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Franchisee's failure to correct deficiencies identified through this testing process shall be an independent violation of its obligation to maintain the Cable System. Sites shall be re-tested following correction.

E. It shall be the responsibility of the Franchisee to document that the System and its operation are in compliance with FCC technical specifications and performance requirements. If the City has received Subscriber complaints regarding the performance of the Cable System and the City determines that the most efficient or only reasonable way to determine a question of Franchisee compliance involves specific electronic testing of the System in addition to tests required by the FCC, the Franchisee shall, upon written notice by the City, perform such testing, give the City an opportunity to witness the testing and provide the City with documentation of the testing results. If the test results indicate that Franchisee is not in compliance with this Franchise or other Applicable Law, the City shall have all enforcement remedies available under this Franchise.

4.6 Interconnections

The City shall be permitted to Interconnect the System with any other communications system at the Master Control Center for EG Access. Franchisee agrees that any EG Access programming routed to the Master Control Center via Franchisee's System, or otherwise, may be processed there and distributed to any destination for EG Access.

SECTION 5. PROGRAMMING SERVICES

5.1 Changes in Video Programming Services.

No category of video programming may be deleted by Franchisee without written notification to the City as required by Applicable Law, subject to any rights the Franchisee may have to modify the requirements under 47 U.S.C. § 545. The City reserves the right to regulate to the fullest extent permitted by law to insure that the mix,

level, and quality of service are maintained or increased, as permitted in 47 U.S.C. §545 (a).

5.2 Obscenity and Program Control.

Subject to Applicable Law, Franchisee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States; provided, however, Franchisee shall in no way be responsible for or exercise control over EG Access programming.

SECTION 6. EG USE OF THE SYSTEM

6.1 Franchisee Responsibilities.

A. Franchisee shall dedicate six (6) Channels for educational and governmental use by the City. Use of the EG Channels shall be determined in City's sole discretion. At such time as Franchisee first provides Cable Service to its first Subscriber in the City, Franchisee carry four (4) of the EG Channels in high-definition ("HD") format and two (2) channels in standard-definition ("SD") format. For purposes of this Franchise, HD format shall mean a display resolution of at least 1080 lines (progressive) that is supported by Franchisee on the Cable System, including the Franchisee's terminal device(s) provided to Subscribers for HDTV use. If Franchisee supports more than one (1) such HD resolution, the City shall have the right to specify which of those formats supported by Franchisee shall be used for the EG Channels.

B. Franchisee shall ensure that any EG Channels carried in HD format pursuant to subsection (A) can also be viewed in standard definition (non-HD) format by Subscribers who do not receive HD service or do not have HD equipment, with the same quality and functionality as commercial channels of the same format, whether through simulcasting the programming in SD and HD, or by means of another technical solution used by Franchisee for other commercial programmers carried on the channel lineup.

C. At any time during the term of this Franchise, the City may at its sole discretion, upon one-hundred (120) Days' advance written notice to Franchisee, require Franchisee to carry one (1) or both of the two (2) SD EG Channels referenced in subsection (A) in HD format subject to the same requirements as set forth in subsections (A) and (B) above.

D. Franchisee shall maintain the existing fiber connection, which will in no way degrade the technical quality of the EG Access Channels, from the City's Master Control Center, currently located at the Municipal Services Center, 1224 Martin Luther King Jr. Way, or in the alternative the Tacoma Public Utilities NW Hub (or another mutually agreed upon alternate location) to the Franchisee's Cable System on which all EG Access Channels shall be transported for distribution on Franchisee's Subscriber Network ("EG Return Path"). To the maximum extent permitted by Applicable Law, Franchisee shall provide the EG

Return Path to the City free of charge, with no transport costs or other fees imposed. If the City determines to relocate Master Control Center and constructs its own return line to the Franchisee's headend, the Franchisee will accept the signal and will cover all costs associated with bringing the signal into Franchisee's headend facility. Franchisee shall not impose any other costs or ongoing fees to the City related to this obligation. If the Franchisee determines to relocate Franchisee's existing fiber connection from the Tacoma Public Utilities NW Hub to a new connection point, the Franchisee will cover all costs associated with bringing the EG Access Channel signals into Franchisee's headend facility. Franchisee shall not impose any other costs or ongoing fees to the City related to such relocation.

E. All EG Access Channels may be delivered by City to Franchisee in a digital format. Any and all costs associated with any modification of the EG Access Channels or signals after the EG Access Channels/signals leave the City's Master Control Center shall be provided free of charge to the City and borne by the Franchisee.

F. All EG Channels required under this Franchise shall be carried by the Franchisee on the Basic Service tier and in a manner consistent with Applicable Law, without special expense, except by separate agreement between the Parties.

G. Notwithstanding the foregoing, on or after January 1, 2023, the City shall have the right, so long as sixty (60) Days advance written notice is provided to Franchisee, to mandate that Franchisee provide one (1) additional HD EG Access Channel, for a total of seven (7) HD EG Access Channels, on Franchisee's System. On or after January 1, 2026, the City shall have the right, so long as sixty (60) Days advance written notice is provided to Franchisee, to mandate that the Franchisee provide one (1) additional HD EG Access Channel, for a total of eight (8) EG Access Channels on Franchisee's System.

H. Franchisee shall not cause any programming to override EG Access Channels programming on any EG Access Channel, except by oral or written permission from the City, with the exception of EAS signals.

I. Franchisee will maintain TV Tacoma on Channel 12 unless a local broadcast must carry issue requires a change or other channel location as agreed to by the City.

J. Franchisee will place EG Access Channels dedicated for educational and governmental use in a consecutive block of Channel numbers. The EG Access Channels will be located reasonably close in proximity to other local broadcast Channels and/or other commercial video Channels, excluding Pay Service programming offered by Franchisee in the City. The Franchisee agrees that EG Access Channels located immediately below Channel # 1 are not considered in reasonably close proximity. The Franchisee agrees not to encrypt the EG Access Channels any differently than other commercial Channels available on the System. In conjunction with any occurrence of EG Access Channel(s) relocation, Franchisee shall provide a

minimum of nine thousand dollars (\$9,000.00) of in-kind air time on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City's pre-produced thirty (30) second announcement explaining the change.

K. Franchisee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the EG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Law so that Subscribers will have ready access to EG Access Channels. This shall not be construed to require Franchisee to pay any third (3rd) party fees that may result from this obligation. To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital channel guide, Franchisee will make available to City the ability to place EG Access Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Franchisee utilizes to provide the guide service. Franchisee will be responsible for providing the designations and instructions necessary for the EG Access Channels to appear on the EPG. All costs and operational requirements for the EPG provider shall be the responsibility of the City. Franchisee is not responsible for operations of the EPG provider. Franchisee shall, to the maximum extent possible, make available to the City any price discounts Franchisee may have in place with third party vendors that offer such programming guide services. The City's cost of this guide service may be funded from the EG capital fee set forth in Section 6.3 of this Franchise unless prohibited by Applicable Law.

L. Franchisee shall provide the City the following "confidence feeds:" 1) the City's Master Control Center, currently located at the Municipal Services Center, 1224 Martin Luther King Jr. Way; 2) the City Council Chambers; 3) the Study Session location (TMBN 16); and 4) the Tacoma Public Utilities Auditorium Control Room. Each of these confidence feeds shall consist of a convertor box (if necessary) and the video /audio feed of the EG Channels provided by the City under this Franchise. The purpose of each "confidence feed" is to allow the City to verify the video, audio and technical quality of the EG signals carried on Franchisee's Cable System. No other Video Programming services need be provided over the confidence feed and the parties believe the costs associated with the provision of such a confidence feed to be de minimis.

6.2 City Responsibilities.

A. City shall ensure EG Access Channels and signals leaving the Master Control Center(s) are in compliance with applicable FCC technical standards so that they can be processed in Franchisee's headend and retransmitted onto the Subscriber Network.

B. City shall not allow Commercial Use or lease of EG Access Channels without the express written permission of Franchisee.

C. The City may select DAPs execute DAP Agreements with rules for operating EG Access Channels and authorize itself to be a DAP. Franchisee shall

operate and maintain its Cable System to insure the uninterrupted operation of EG Access Channels.

6.3 Financial Support for EG Access.

A. Franchisee shall pay to the City as capital support for Access Facilities, one percent (1%) of Gross Revenues, payable monthly with Franchise fees. The City may use EG capital support provided by Franchisee for the capital costs, pursuant to Applicable Law.

B. Should Franchisee continue to provide Cable Service after the scheduled expiration of the Franchise, until and unless this Franchise is superseded by a renewed Franchise in accordance with Applicable Law, Franchisee shall continue to make monthly capital support payments for, and in support of EG Access Facilities as specified hereinabove.

C. Any EG Access capital support amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the *Wall Street Journal* on the day the payment was due, whichever is greater.

D. Franchisee agrees that support for EG Access required by the Franchise is not intended to be a Franchise fee within the meaning of 47 U.S.C. § 542(g) and falls within one (1) or more of the exceptions thereto. To the extent consistent with Applicable Law, the Franchisee agrees that it will not offset or reduce its payment of past, present or future Franchise fees required pursuant to Section 12.1 of this Franchise, as a result of its obligation to remit the EG contribution required by Section 6.3 of this Franchise.

6.4 Technical Quality.

A. Franchisee shall maintain its System so that EG signals, and any Interconnections of EG signals, are at the same level of technical quality and reliability as other commercial signals carried by Franchisee, so long as the signal comes to Franchisee at that level of quality. There shall be no significant deterioration in signal from the point of origination Upstream to the point of reception Downstream. All processing equipment used by Franchisee for processing EG signals will be of similar quality to the processing equipment used for other commercial Channels.

B. Within twenty-four (24) hours of a written request from City to the Franchisee identifying a technical problem and requesting assistance, Franchisee will provide technical assistance or diagnostic services to determine whether or not a problem with an EG signal is the result of matters for which Franchisee is responsible, and, if so, Franchisee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the Parties shall meet with engineering

representation from Franchisee and the City in order to determine the course of action to remedy the problem.

6.5 Change in Technology.

In the event Franchisee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change, Franchisee shall, at its own expense, purchase such equipment as may be necessary.

6.6 [Reserved]

6.7 Pass-through of EG Access Capital Support.

The City recognizes that the capital support for EG Access required in Section 6.3.A above and any Interconnections in Section 4.6, represent obligations, created under the terms of the Franchise. To the extent provided for in Applicable Law, such costs and fees paid by Franchisee may be passed through to Subscribers and itemized on Subscriber bills.

SECTION 7. [RESERVED]

SECTION 8. REGULATORY PROVISIONS

8.1 Intent.

The City shall have the right to administer and regulate activities of the Franchisee up to the fullest extent of the law. The failure to reserve a particular right to regulate, or reference a particular regulation in this Franchise, shall not be interpreted by negative implication or otherwise to prevent the application of a regulation or any other Applicable Law to Franchisee. Without limiting the foregoing, the Franchisee agrees as follows in Section 8.2.

8.2 Regulation of Rates and Charges.

A. Right to Regulate. The City shall have the right to regulate Franchisee's rates and charges to the maximum extent permitted by Applicable Law.

B. Notice of Change in Rates and Charges. Franchisee agrees to provide notices of changes in rates as required by Applicable Law.

C. Rate Discrimination Prohibited.

1. Franchisee agrees that it will not discriminate among Subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, or neighborhood of residence; and shall comply with the non-discrimination requirements of applicable federal, state and local laws.

2. Franchisee shall be permitted to establish discounted rates and charges for providing Cable Service to qualified low-income handicapped or low-income elderly Subscribers and other discounts Franchisee is entitled to establish under federal law so long as the discounts are available in a uniform and consistent manner to similarly situated Subscribers.

8.3 Franchise Breaches; Termination of Franchise.

A. Procedure for Remedying Franchise Violations. If City believes that Franchisee has failed to comply with any material terms of the Franchise or has failed to perform in a timely manner, City shall notify Franchisee in writing with specific details regarding the exact nature of the alleged noncompliance or default. Upon receipt of such notice, Franchisee shall:

1. Respond to City within ten (10) Days contesting City's assertion that a default has occurred and requesting a hearing in accordance with paragraph B, below;

2. Within thirty (30) Days cure the default; or

3. Notify City, as soon as commercially practicable that Franchisee cannot cure the default within the thirty (30) Day cure period because of the nature of the default. In the event the default cannot be cured within thirty (30) Days, Franchisee shall promptly take all reasonable and commercially practicable steps to cure the default and notify City in writing and in detail as to the exact steps that will be taken and the projected completion date. Upon five (5) Days' prior written notice, either City or Franchisee may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, City may set a hearing in accordance with paragraph B below.

4. If the default relates to any of the following situations, Franchisee shall respond or cure the default as set forth above within ten (10) Days:

(a) if Franchisee does not pay an undisputed Franchise fee payment, in accordance with Section 12.1.A; or

(b) if Franchisee does not provide the EG Channels or the EG capital support to the City, in accordance with Section 6.3.A.

B. If Franchisee does not cure the alleged default within the cure period stated above, or by the projected completion date under paragraph A.3, or denies the default and requests a hearing in accordance with paragraph A.1, or City orders a hearing in accordance with paragraph A.3, City shall set a public hearing at which Franchisee will be provided an opportunity to present evidence to contest the alleged violation. City shall notify Franchisee of the hearing in writing and such hearing shall take place no less than seven (7) Days after Franchisee's receipt of notice of the hearing. The Franchisee may request that the hearing be conducted by a hearing

examiner, in accordance with Chapter 1.23 of the Code. At such a hearing the Franchisee shall have all due process rights set forth in Chapter 1.23 of the Code, as specifically determined by the hearing examiner. The determination as to whether Franchisee is in default of this Franchise shall be within City's sole discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be taken within thirty (30) Days of the issuance of the determination of the City. City shall receive notice from Franchisee of any appeal concurrent with any filing to a court of competent jurisdiction.

C. If, after the hearing, City determines that a default still exists, City shall order Franchisee to correct or remedy the default or breach within fourteen (14) Days of City notification or within such other reasonable timeframe as City shall determine. In the event Franchisee does not cure within such time to City's reasonable satisfaction, City may:

1. Assess and collect monetary damages in accordance with this Franchise;

2. Revoke this Franchise in accordance with Section 8.5 herein; or

3. Pursue any other legal or equitable remedy available under this Franchise or Applicable Law.

D. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the City, its officers, officials, Boards, commissions, agents, or employees under federal, state, or local law, including, by example, Section 635A of the Cable Act. The Franchisee shall not have any monetary recourse against the City, or its officers, officials, Board, commissions, authorized agents or employees for any loss, costs, expenses or damages arising out of any provision, requirement of this Franchise or the enforcement thereof, subject to Applicable Law.

8.4 Assessment of Liquidated Damages and Letter of Credit.

A. Franchisee shall maintain an irrevocable and unconditional letter of credit, in a form and substance acceptable to the City, from a national or state bank subject to reasonable approval by the City, in the amount of fifty thousand dollars (\$50,000.00).

B. The letter of credit shall provide that funds will be paid to the City and in an amount for liquidated damages charged pursuant to this section, in payment for any monies owed by the Franchisee to the City as a result of defaults by the Franchisee pursuant to this Franchise.

C. In addition to the recovery of any monies owed by the Franchisee to the City, the City, in its sole discretion, may, after notice and opportunity to cure as

provided in Section 8.3, charge to and collect from the letter of credit the following liquidated damages.

1. For failure to provide data, documents, reports or information or to cooperate with the City during an application process or Cable System review or as otherwise provided herein, the liquidated damages shall be two hundred fifty dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

2. For failure of Franchisee to comply with construction, operation or maintenance standards or the provision of the return line as provided in Section 6.1.D, the liquidated damages shall be two hundred dollars (\$200.00) per Day for each Day, or part thereof, such failure occurs or continues.

3. For failure to provide the EG Channels and/or EG capital support payments required by this Franchise, the liquidated damages shall be two hundred fifty dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

4. For failure to comply with any of the material provisions of this Franchise or customer service standards, or other applicable portion of the Code for which a liquidated damages is not otherwise specifically provided pursuant to this paragraph C, the liquidated damages shall be one hundred fifty dollars (\$150.00) per Day for each Day, or part thereof, such failure occurs or continues.

D. Each violation of any material provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. Any liquidated damages for any given violation shall be imposed upon Franchisee for a maximum of one hundred twenty (120) Days. If after that amount of time Franchisee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

E. The City may not assess any liquidated damage if the Franchisee has cured or commenced to cure, as may be appropriate in accordance with Section 8.3. In the event Franchisee fails to cure or commence to cure, or fails to refute the alleged breach, the City may assess liquidated damages and draw from the letter of credit and shall inform Franchisee in writing of the assessment.

F. If any subsequent letter of credit delivered pursuant to this Franchise expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in paragraph A of this section.

G. The City and the Franchisee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of the Franchisee's breach of this Franchise. Accordingly, instead of

requiring such proof of actual loss, the City and the Franchisee agree that the Franchisee shall pay to the City the sums set forth above for each Day that the Franchisee shall be in breach of the specific provisions of this Franchise. Such amounts are agreed by both Parties to be a reasonable estimate of the actual damages the City would suffer in the event of the Franchisee's breach of such provisions of this Franchise.

H. The letter of credit, referred to in Section 8.4.A, may be drawn upon by the City for breach of a material provision after notice and opportunity to cure as set forth in Section 8.3.

I. The City shall give Franchisee written notice of withdrawal under this subsection. Within seven (7) Days following receipt of such notice, Franchisee shall restore the letter of credit to the amount required under this Franchise. Franchisee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Franchisee or to limit the liability of Franchisee to the amount of the letter of credit or otherwise to limit the City's recourse to any other remedy available at law or in equity.

J. Franchisee shall have the right to appeal to the City Council for reimbursement in the event Franchisee believes that the letter of credit was drawn upon improperly. Franchisee shall also have the right of judicial appeal if Franchisee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Franchisee, with interest from the date of withdrawal.

K. The assessment of liquidated damages does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Franchisee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise once the one hundred twenty (120) Day period has expired.

L. Franchisee's maintenance of the letter of credit required herein shall not be construed to excuse unfaithful performance by the Franchisee of this Franchise, to limit liability of the Franchisee to the amount of the security, or to otherwise limit the City's recourse to any other remedy available at law.

8.5 Revocation

A. This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured, pursuant to Section 8.3, or in the event that:

1. Franchisee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;

2. Franchisee makes a material misrepresentation of fact in the negotiation of this Franchise;

3. Franchisee abandons the Cable System, or terminates the Cable System's operations;

4. Franchisee fails to restore service to the Cable System after three (3) consecutive Days of an outage or interruption in service; except in the case of an emergency or during a force majeure occurrence, or when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the Cable System); or

5. Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Franchisee's creditors, or all or part of the Franchisee's Cable System is sold under an instrument to secure a debt and is not redeemed by Franchisee within thirty (30) Days from said sale.

B. Additionally, this Franchise may be revoked one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of the Franchisee (at the option of the City and subject to Applicable Law), whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless directed otherwise by a court of competent jurisdiction.

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

1. City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

2. The purchaser has covenanted and agreed with City to assume and be bound by all of the terms and provisions of this Franchise.

8.6 Failure to Enforce.

Franchisee shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in Franchisee's conduct.

8.7 Force Majeure.

Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Franchisee's control; the unforeseeable unavailability of labor or materials; labor stoppages or slowdowns or power outages exceeding

back-up power supplies. The acts or omissions of Affiliates are not beyond the Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. The Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

8.8 Alternative Remedies.

Where the City elects to pursue liquidated damages pursuant to Section 8.4, that election shall constitute the City's sole and exclusive remedy for one hundred twenty (120) Days. Thereafter, the City shall have available any other remedy under this section. For those violations where the City elects not to pursue liquidated damages, no provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of Title 10 or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by Franchisee, once the one hundred twenty (120) Days has expired where the remedy of liquidated damages has been exercised, or to seek and obtain judicial enforcement of Franchisee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy available at law or in equity.

SECTION 9. REPORTING REQUIREMENTS

9.1 Monthly and Annual Reports.

A. Along with monthly Franchise fee payments, Franchisee shall submit an annual written report to the City, which shall contain a listing of all categories of Gross Revenues earned by Franchisee and the revenue associated with such categories, in sufficient detail and with sufficient explanation to enable the City to understand the report and to verify the accuracy of the payments. The report shall include an explanation of any deductions made from Gross Revenues in the calculation of payments.

B. Franchisee shall provide written annual reports no later than one hundred twenty (120) Days after the end of its fiscal year containing such information as may be required from time to time by the City, and at least the following, unless the City waives the requirement:

1. A summary of the previous year's activities in the development of the Cable System, including descriptions of services begun or discontinued and the number of Subscribers gained or lost for each category of Cable Service;

2. A summary of the number of service calls (calls requiring a truck roll), received by type;
3. A summary of the number and type of outages known by the Franchisee affecting more than ten (10) Subscribers specifying the following: the duration; the geographical area; the number of Subscribers affected; and, if known, the cause;
4. A summary of complaints for which records are required under Subtitle 16A, Section 16A.03.030.C.1, identifying both the number and nature of the complaints received and an explanation of their dispositions;
5. A gross revenue report from the previous calendar year for the Cable System;
6. An ownership report, indicating all Persons who, at the time of filing, control or own an interest in the Franchisee of ten percent (10%) or more;
7. A list of officers and members of the Board of Directors of the Franchisee and any Affiliates directly involved in the operation or the maintenance of the Cable System;
8. An organizational chart showing all corporations or partnerships with more than a ten percent (10%) interest ownership in the Franchisee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified, and so on, until the ultimate corporate and partnership interests are identified;
9. An annual report of each entity identified in Subtitle 16A, Section 16A.03.030.B.2(f), which issues an annual report;
10. A complete report on its plant, which shall state the physical miles of plant construction and plant in operation during the prior calendar year categorized as aerial and underground, identify any cases where Subscribers contributed to plant extension, and report the results of appropriate electronic measurements to show conformity with FCC technical standards;
11. A report showing, for each cable customer service standard in force, the Franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where Franchisee concludes it did not comply fully, the Franchisee will describe the corrective actions it is taking to assure future compliance; and
12. Once the information required by this Section 9.1.C.4-5 has been filed, it need be re-filed only if it changes.

C. Franchisee shall at all times maintain:

1. Records of all complaints received with information sufficient to allow the Franchisee to prepare the reports required in this Section 9.1. The term “complaints” as used herein and throughout this Franchise refers to complaints about any aspect of the Cable System or Franchisee’s operations, including, without limitation, complaints requiring service calls, and complaints about employee courtesy, billing, prices, programming, outages and signal quality;

2. Records of outages known to the Franchisee, with information sufficient to allow a Franchisee to prepare the reports required in this Section 9.1.

3. Records of service calls for repair and maintenance indicating the date and time service was requested; the date of acknowledgment; date and time service was scheduled, if it was scheduled; the date and time service was provided; and, if different, the date and time the problem was solved; and

4. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

9.2 Other Reports and Records.

A. Franchisee shall at all times maintain and upon request of City provide once annually:

1. Maps of Franchisee’s trunk and distribution facilities within the Franchise Area and located in the Rights-of-Way in a standard geographic information system (GIS) format;

2. A copy of all FCC filings on behalf of Franchisee, its parent corporations or Affiliates that directly relate to the operation of the Cable System in the Franchise Area;

3. A list of Franchisee’s Cable Services, rates and Channel line-ups, and Franchisee shall notify City of any new rate information and/or Channel line-up changes, at least thirty (30) Days prior to such new rates and/or Channel line-ups becoming effective;

4. A compilation of Subscriber complaints, actions taken and resolution, and a log of service calls.

5. Any additional records or information required to verify Franchisee’s compliance with the terms and provisions of the Franchise.

B. Upon written request, Franchisee shall submit to City copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Franchisee or its Affiliates to any federal, state or local courts, regulatory agencies and other government bodies if such documents directly relate to the

operations of Franchisee's Cable System within the Franchise Area. Franchisee shall submit such documents to City no later than thirty (30) Days after receipt of City's request. Franchisee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. With respect to all other reports, documents and notifications provided to any federal, state or local regulatory agency as a routine matter in the due course of operating Franchisee's Cable System within the Franchise Area, Franchisee shall make such documents available to City upon City's written request.

9.3 Franchisee's Records

A. Throughout the term of this Franchise, the Franchisee agrees that the City, upon thirty (30) days prior written notice to the Franchisee, may review, during normal business hours, such of the Franchisee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Franchisee's compliance with the provisions of this Franchise. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Franchisee for a minimum period of six (6) years. The Franchisee shall not deny the City access to any of the Franchisee's records on the basis that the Franchisee's records are under the control of any parent corporation, affiliated entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Franchisee shall provide such copies within thirty (30) Days of the receipt of such request. One copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Franchisee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Franchisee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Franchisee's local offices or at one of Franchisee's offices more convenient to City or its duly authorized agent. If any books or records of the Franchisee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Franchisee.

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

9.4 Preservation of Confidential Information.

Franchisee may choose to provide any confidential books and records that it is obligated to make available to the City pursuant to this Franchise, by allowing the City, or its designated representative(s), to view the books and records at a mutually agreeable location and without City obtaining its own copies of such books and records.

Alternatively, confidential or proprietary information may be disclosed pursuant to a reasonable non-disclosure agreement, to the extent permitted under Applicable Law, whereby the information required to be disclosed under this Franchise will be provided only to City's representative(s). The intent of the Parties is to work cooperatively to insure that all books and records reasonably necessary for City's monitoring and enforcement of Franchise obligations are provided to City. To the extent that Franchisee insists that records must be reviewed on site, and City's designated representative(s) must travel or otherwise incur costs to be able to review such information, Franchisee shall pay all reasonable costs incurred by City's representative(s) in so doing. To the extent that Franchisee does provide books or records directly to the City, City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under Applicable Law. If City receives a demand from any Person for disclosure of any information designated by Franchisee as confidential, City shall, so far as consistent with Applicable Law, advise Franchisee and provide Franchisee with a copy of any written request by the party demanding access to such information within a reasonable time. If Franchisee believes that the disclosure of such documents by the City would interfere with Franchisee's rights under federal or state law, Franchisee may institute an action in the Pierce County Superior Court to prevent the disclosure by the City of such documents. Franchisee shall join the Person requesting the documents to such an action. Franchisee shall defend, indemnify and hold the City harmless from any claim or judgment as well as any costs and attorneys' fees incurred in participating in such proceeding.

SECTION 10. CUSTOMER SERVICE POLICIES

10.1 Customer Service Standards.

Franchisee shall, throughout the Franchise term, comply with FCC Customer Service Standards as set forth in 47 C.F.R. §76.309(b), the Customer Service Standards set forth in Subtitle 16A; and the customer service policies set forth herein. In the event of a conflict, the stricter standard shall apply unless the City expressly provides otherwise. To the extent consistent with Applicable Law, nothing herein shall prohibit Franchisee from recovering the costs associated with the obligations of this section.

10.2 Response to Customers and Cooperation with City.

Without limiting the foregoing, Franchisee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Franchisee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

10.3 Customer Service Agreement and Manual.

A. Franchisee shall provide to Subscribers a “Welcome Kit” that includes an accurate, comprehensive service agreement and a customer manual for use in establishing Subscriber service, in accordance with 47 C.F.R. §76.1602.

B. Upon request by the City, the Franchisee shall provide the City a current copy of the Welcome Kit.

C. A copy of the customer service manual shall be provided to each Subscriber at the time of initial hookup and any reconnection hookup (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the manual is requested by the Subscriber. Within sixty (60) Days following material policy changes, information regarding the changes will be provided to Subscribers. No provision of the customer service agreement shall be valid or enforceable to the extent that it is inconsistent with this Franchise or Applicable Law; provision of service may not be conditioned on waiver of rights by any Subscriber. Copies of the customer service manuals and the contract, and any updates, provided to Subscribers shall be provided to the City upon request.

SECTION 11. LINE EXTENSION POLICY

11.1 Standard Installation.

A. Service shall be provided to any potential Subscriber upon request. Franchisee shall make service available at standard installation rates and standard service rates, for every potential Subscriber:

1. Whose dwelling is one of a minimum of twenty (20) dwelling units per one (1) aerial cable mile or a minimum of forty (40) dwelling units per one (1) underground cable mile, or five (5) dwelling units per one-quarter (1/4) aerial mile, or ten (10) dwelling units per one-quarter (1/4) underground cable mile measured from the nearest existing point on the Cable System from which service could be extended; or

2. Whose dwelling is situated such that cable constructed from the nearest point on the Cable System from which service could be extended would pass or is projected to pass (in the case of a development) an average of twenty (20) dwelling units per one (1) aerial cable mile, or an average of forty (40) dwelling units per one (1) underground cable mile; or Where connection to the potential Subscriber’s dwelling from cable plant constructed as required under this Franchise requires no more than a one hundred twenty-five (125) foot aerial drop or a sixty (60) foot underground drop (whichever would be required in order to comply with the applicable City Code) measured from the nearest cable plant or the Public Rights-of-Way, whichever is closer.

B. Upon receiving a request for service where Franchisee proposes to require the potential Subscriber to pay for the cost of extension, Franchisee shall

promptly prepare an estimate of the cost of extension, and the amount the potential Subscriber would be required to pay under this section.

11.2 Isolated Areas.

A. Potential Subscribers requesting service but requiring service extended beyond the standard installation and service provisions under Section 11.1 shall be provided service under the following provisions:

1. In any case where the standard in Section 11.1.A.3 is not satisfied, the potential Subscriber may be required to pay the additional cost of constructing a drop beyond one hundred twenty-five (125) feet aerial or sixty (60) feet underground from the nearest point on the Cable System or the nearest point on the Public Rights-of-Way, whichever is closer.

2. Where a potential Subscriber and Franchisee reach an independent agreement for the provision of service, so long as the agreement does not involve any violation of the requirements and standards of this Franchise, and provided the potential Subscriber is apprised of its rights under the Franchise.

11.3 Annexed Areas.

A. In the event that the City annexes any area which is being provided Cable Service by an operator other than Franchisee, nothing in this Franchise shall obligate Franchisee to provide service to that area, so long as the other operator provides facilities and services comparable to the facilities and services provided for under this Franchise. Provided, however, that:

1. If Franchisee does not provide service throughout such annexed area within six (6) months of annexation (or such longer period as the City may prescribe by regulation, where the City concludes extension is not feasible within six (6) months), the City may limit the Franchise Area so it does not include the annexed area;

2. If Franchisee files to be exempted from rate regulation on the grounds that it faces effective competition in any way related to the operation of the cable operator serving the annexed area, it must extend service into the annexed area upon request from a potential Subscriber; or

3. If Persons in such annexed area request service from Franchisee, so that Franchisee has requests for service such that it would have an average of eight (8) Subscribers per mile if it extended service into the annexed area to serve such Persons, Franchisee shall extend its Cable System to serve such Persons.

SECTION 12. COMPENSATION AND FINANCIAL PROVISIONS

12.1 Payments.

A. Franchise Fee Amount. In partial consideration for the right to occupy Public Rights-of-Way to provide Cable Service, during the term of the Franchise and any extensions, Franchisee shall pay City five percent (5%) of its Gross Revenues as a Franchise fee. In the event Franchisee 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, Franchisee agrees that for the purpose of calculation of the Franchise fee, it shall allocate to Cable Service 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. Franchise Fee No Limitation. The payment by Franchisee of a Franchise fee, as required under Section 12.1.A, shall not alter Franchisee's obligation to continue to pay the City's business and occupation tax levied pursuant to Tacoma City ordinances. By way of example and not limitation, no deductions, including current nor previously paid Franchise fees, shall be subtracted from the Gross Revenue amount upon which Franchise fees are calculated and due for any period, nor shall copyright fees or other license or Franchise fees paid by Franchisee be subtracted from Gross Revenues for purposes of calculating Franchise fees.

C. Manner of Payment. Franchise fees shall be paid monthly and to the City Treasurer or to such bank account of the City, as may be designated by the City Treasurer. The Franchisee shall file with the City a written statement the form of which shall be approved by the City and signed by an officer or authorized representative of the Franchisee, which identifies in detail the sources and amounts of each category of Gross Revenues collected by the Franchisee during the previous month for which payment is made, and any allowable deductions and showing the manner in which the Franchise fee is calculated. Franchisee agrees that no acceptance of any payment shall be construed as an accord that the amount paid is, in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

D. Late Payments. Franchise fees shall be due within twenty-five (25) Days of the end of each calendar month. Franchisee shall remit payment no later than forty-five (45) Days from the end of each calendar month before it shall be subject to interest for late payment. If the Franchise fee is paid later than forty-five (45) Days interest shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published daily in the *Wall Street Journal*, on the day the payment is due but unpaid, whichever is greater.

E. Period of Limitations. The period of limitation for recovery of any Franchise fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, subject to tolling as provided as a matter of law or equity. Subject to such tolling or as provided as a matter of law or equity, unless within six (6) years from and after the due date for a particular payment, the City makes written request to review Franchisee's records with respect to such Franchise fee payment (either individually or as part of a broader request) recovery shall be barred with respect to such payment and the City shall be stopped from asserting any claims whatsoever against Franchisee relating to any alleged deficiencies in that particular payment.

F. Uses of Funds for EG. In order to utilize EG Access Channels and capital support, and accomplish the provision of EG Access for the City's residents, the City requires services, including, but not limited to, Channel operation, Access center management and staffing, playback and cablecasting, training, promotion and community outreach. It is the City's intention to utilize a portion or all of the Franchise fees paid by Franchisee to provide for such services. However, should the City decide not to utilize Franchise fees for EG Access purposes, Franchisee's obligation to pay Franchise fees shall not be altered.

12.2 Performance Bond.

A. Prior to the Effective Date of the Franchise, Franchisee, shall, in addition to any other bond or security fund obligations required under the Franchise and Title 10, furnish to the City, a joint performance bond, issued by a bonding company licensed to do business in the state of Washington, in the amount of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) for the purpose of guaranteeing the full and faithful performance of each and every requirement of the Franchise and applicable provisions of Subtitle 16A and shall be effective for the term of the Franchise, including any extensions, and thereafter until Franchisee or any successor or assign of Franchisee has liquidated all of its obligations with the City that may have arisen from the acceptance of the Franchise by Franchisee or from its exercise of any privilege herein granted.

B. Neither the provisions of this section nor any performance bond accepted by the City pursuant hereto, nor any damages or other amounts recovered by the City under such performance bond shall be construed to excuse faithful performance by Franchisee or to limit liability of Franchisee under this Franchise either to the full amount of the insurance provided or otherwise.

12.3 Indemnification by Franchisee.

A. Franchisee agrees to indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the City, its trustees, elected and appointed officers, agents, and employees, arising out of, or by reason of, or resulting from or of

the acts, errors, or omissions of the Franchisee, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the Cable System.

B. Franchisee agrees that the covenants and representations relating to the indemnity provided in this Section 12.3., above, shall survive the term of its Franchise and continue in full force and effect as to the Franchisee's responsibility to indemnify.

12.4 Franchisee Insurance.

A. During the course and performance of the services herein specified, Franchisee shall at all times comply with the insurance requirements in the City Code, including Title 16A, as may be amended from time to time.

B. Failure by City to identify a deficiency in the insurance documentation provided by Franchisee or failure of City to demand verification of coverage or compliance by Franchisee with these insurance requirements shall not be construed as a waiver of Franchisee's obligation to maintain such insurance.

C. Franchisee shall maintain, throughout the term of the Franchise, adequate insurance insuring Franchisee, its officers, employees, and agents, to protect the City, its trustees, elected and appointed officers, agents, and employees against claims and damages that may arise as a result of the construction, operation or repair of the Cable System.

SECTION 13. MISCELLANEOUS PROVISIONS

13.1 Posting and Publication.

Franchisee shall assume the cost of posting and publication of this Franchise, as such posting and publication is required by law and such is payable upon Franchisee's filing of acceptance of the Franchise.

13.2 Guarantee of Performance.

Franchisee shall agree that it enters into the Franchise voluntarily in order to secure, and in consideration of, the grant from the City of a twenty (20) year Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by Franchisee.

13.3 Governing Law and Venue.

The Franchise shall be governed by and construed in accordance with the laws of the State of Washington, and any action brought relative to any dispute related to a violation of this Franchise shall be initiated in the Superior Court of Pierce County, or in the district court of the United States in which the City is located.

13.4 No Recourse.

Without limiting such immunities as the City or other Persons may have under Applicable Law, Franchisee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss or damage arising out of the City's exercising its authority to regulate Franchisee pursuant to the Cable Act.

13.5 Notice.

Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the City or Franchisee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by mail, postage prepaid. The notices or responses to the City shall be addressed as follows:

City of Tacoma
Municipal Services Center
1224 MLK JR WAY
Tacoma, WA 98405
Attn.: MCO – Franchise Services Manager

The notices or responses to Franchisee shall be addressed as follows:

Rainier Connect North, LLC
104 Washington Ave. North,
PO Box 639, Eatonville,
WA 98328
Attention: Franchise Department

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than one address, and the address must be within the City, except by mutual agreement.

13.6 Responsibility for Cost of Franchise Requirements.

Unless otherwise specified in this Franchise, Franchisee shall bear the cost of meeting the requirements of the Franchise. Franchisee shall be permitted to pass through to Subscribers such costs of meeting Franchise requirements as are among those permitted to be passed through under federal law and regulation, in accordance with applicable federal regulations.

13.7 Third Party Beneficiary.

Nothing in this Franchise shall be construed to confer third (3rd) party beneficiary status on any other Person or member of the public to enforce the terms of this Franchise.

13.8 FCC Preemption.

In the event Franchisee is legally permitted, in accordance with Applicable Law, to offset the value of any non-monetary obligation contained in this Franchise against Franchise Fees payable to the City, the Franchisee agrees that it: 1) will do so only after providing City with a minimum of one hundred twenty (120) days prior written notice; and 2) will treat City in the same manner as Franchisee treats all other franchising authorities in areas where Franchisee provides Cable Service. The purpose of the one hundred twenty (120) day notice is to allow the parties to determine if the Franchise obligation in question should be maintained or if the Franchise should be modified to eliminate or reduce the need for any legally permitted offset by Franchisee against Franchise Fees.

13.9 Form of Service.

Franchisee intends to migrate the existing cable TV service to a streaming service. Under the Franchisee's intended streaming service, Franchisee anticipates that there will be no head end or channels as those may exist upon the Effective Date of this Franchise. Franchisee agrees to provide and make available the EG programming currently carried on the EG Access Channels as part of the streaming service but anticipates there may not be any particular order of channels or programming on the streaming service. Neither the City nor the Franchisee waive any rights each may have under Applicable Law regarding the enforceability of this Franchise to any future streaming service offered by Franchisee. The City and Franchisee agree to meet and discuss the requirements of this Franchise at an appropriate time in the future to determine if the Parties can reach mutual written agreement regarding any changes that may be required to accommodate any streaming service made available by Franchisee.

13.10 Effective Date.

This Ordinance shall be effective on the Effective Date. Provided, however, that if Franchisee does not accept this Franchise pursuant to Section 2.2 and comply with all conditions for such acceptance set forth therein, the grant of the Franchise to Franchisee shall be null and void.

RAINIER CONNECT NORTH, LLC

D/B/A RAINIER CONNECT

AGREEMENT AND ACCEPTANCE

This confirms that as of this date, _____, 2019 we accept the Franchise granted to us by Ordinance _____, adopted _____, 2019. We have carefully read the terms and conditions of this Franchise and unconditionally accept all of the terms and conditions of the Franchise including the limitations established thereunder, and agree to abide by the same. In accepting the Franchise, we have relied upon our own investigation of all relevant facts, and have had the assistance of counsel. We were not induced to accept this Franchise against our will, and voluntarily and knowingly accept it. We understand that and agree that this Franchise represents the entire agreement between Franchisee and the City, and we accept all risks related to the interpretation of this Franchise.

RAINIER CONNECT NORTH, LLC

D/B/A RAINIER CONNECT

BY: _____

ITS: _____

RAINIER CONNECT NORTH, LLC

D/B/A RAINIER CONNECT

BY: _____

ITS: _____

EXHIBIT A

SITES TO WHICH COMPLIMENTARY SUBSCRIBER NETWORK CABLE DROPS ARE TO BE PROVIDED

Complimentary cable drops are to be provided to each of the buildings listed on this exhibit upon written request. The drops are to be brought into the building and the outlet located at a point designated by the user.

School/Library/Government Building	Address	Zip	Phone
Main Library	1102 Tacoma Avenue South	98402	(253) 591-5666
Fire Communications Center (Old Command Center)	415 Tacoma Avenue South	98402	
Police Headquarters	3701 South Pine St.	98409	5513
Police Harrison Range	101 McMurray Road	98422	5513
Police/Fleet Warehouse	3639 South Pine Street	98409	5513
Norpoint (Northeast) Substation	4731 Norpoint Way NE	98422	5513
North Substation	5136 N. 26th Street	98406	5513
Central Substation	1524 MLK Jr. Way	98405	5513
South Substation	1501 So. 72nd Street	98408	5513
Stewart Heights Substation	400 East 56th Street	98404	5513
Beacon Senior Center	415 South 13th Street	98402	(253) 591-5083
Cheney Stadium	2526 Bantz Blvd.	98405	(253) 752-7707
Municipal Services Center	1224 Martin Luther King Jr.	98405	(253) 591-5727
Pierce County Annex LESA	2401 South 35th Street	98409	(253) 591-5400
Solid Waste Management	3510 South Mullen Street	98409	(253) 593-7728
Street Maint. Asphalt Plant/Concrete Bldg.	3210 Center Street	98405	
Streets and Grounds	2324 South "C" Street	98402	
Streets and Grounds	2324 South "D" Street	98402	
Tacoma Dome	2727 East D Street	98421	(253) 272-3663
Tacoma Municipal Building	747 Market Street	98402	(253) 591-5291
Tacoma Municipal Building North	733 Market Street	98402	(253) 591-5291
Park District Headquarters	4702 South 19th Street	98405	(253) 305-1083
Peoples Community Center	1602 Martin Luther King Jr. Way	98405	(253) 591-5321
Portland Avenue Community Center	3513 Portland Ave East	98404	(253) 591-5321
South End Neighborhood Center	7802 South L Street	98408	(253) 591-5321
South Park Community Center	4851 South Tacoma Way	98409	(253) 591-5299
Lincoln High School	701 South 37th Street	98408	(253) 571-6700
Mount Tahoma High School	6229 South Tyler Street	98409	(253) 571-3800
Stadium High School	111 North "E" Street	98403	(253) 571-3100

School/Library/Government Building	Address	Zip	Phone
Wilson High School	1202 North Orchard	98406	(253) 571-6162
Baker Middle School	8320 South "I" Street	98408	(253) 571-5000
Giaudrone Middle School	4902 South Alaska Street	98408	(253) 571-5811
Gray Middle School	3109 South 60th Street	98408	(253) 571-5200
Mason Middle School	2812 North Madison Street	98407	(253) 571-7000
First Creek Middle School	1801 East 56th Street	98404	(253) 571-2700
Meeker Middle School	4402 Nassau Avenue NE	98422	(253) 571-6500
Birney School Elementary School	1202 South 76th Street	98408	(253) 571-4600
Edison Elementary School	5830 South Pine Street	98409	(253) 571-1700
Fern Hill Elementary School	8442 South Park Avenue	98444	(253) 571-3888
Jefferson Elementary School	4302 North 13th Street	98406	(253) 571-2261
Lister Elementary School	2106 East 44th Street	98443	(253) 571-2900
Mann Elementary School	5211 South "K" Street	98408	(253) 571-6300
McKinley Elementary School	3702 McKinley Avenue	98404	(253) 571-2070
Point Defiance Elementary School	4330 North Visscher St.	98407	(253) 571-2265
Roosevelt Elementary School	3550 East Roosevelt Avenue	98404	(253) 571-4400
Sheridan Elementary School	5317 McKinley Avenue	98404	(253) 571-2076
Sherman Elementary School	North 38th & Cheyenne	98407	(253) 571-2255
Stafford Elementary School	1615 South 92nd Street	98444	(253) 571-4300
Whitman Elementary School	1120 South 39th Street	98408	(253) 571-2077
Central Administration Building Annex	708 South G Street	98405	(253) 571-4270
Madison/Transportation	3110 South 43rd Street	98409	(253) 571-1000
Pearl Street Center	815 South Pearl Street	98465	(253) 396-5800
Union Street Site (B&G, Purchasing, Food Service, P&C)	3321 South Union Avenue	98409	
Bates Technical College (Downtown Campus)	1101 South Yakima	98405	(253) 680-7000
Bates Technical College (South Campus)	2201 South 78th Street	98409	(253) 680-7400
Bates Technical College (Mohler Campus)	2320 South 19th Street	98405	(253) 680-7700
Evergreen State College (Tacoma Campus)	South 12th Street and MLKing Jr. Way	98405	(253) 680-3000
Tacoma Community College (Main Campus)	6510 South 19th Street	98466	(253) 566-5000
Tacoma School of the Arts (SOTA)	1950 Pacific Avenue	98402	(253) 571-7900
University of Washington (Tacoma Campus)	1900 Pacific Avenue	98402	
University of Puget Sound	1500 North Warner Street	98416	