

TOWN OF WOODWAY  
COUNCIL MEETING AGENDA

Meeting held virtually due to the Governor's Stay-at-Home order

MONDAY, SEPTEMBER 21, 2020  
6:00 P.M.

- |           |      |   |
|-----------|------|---|
| 6:00 P.M. |      | Call to Order, Flag Salute, Roll Call   |
| 6:00 P.M. | I    | Presentation: Shawn Frederick, Administrative Officer at Snohomish Health District  |
| 6:30 P.M. | II   | Ratify Previously Approved Payments – <i>September 8, 2020 Claims</i><br>Approval of Payments – <i>September 21, 2020 Claims, August 2020 Payroll</i> |
| 6:40 P.M. |      | Public Comments*  |
| 6:45 P.M. | III  | Council Reports   |
| 6:50 P.M. | IV   | Mayor's Report  |
| 6:55 P.M. | V    | Town Administrator's Report   |
| 7:00 P.M. | VI   | Interlocal Agreement with Snohomish Health District   |
| 7:05 P.M. | VII  | Woodway Municipal Code Chapter 4.04 Cable Communications Franchises Update  |
| 7:15 P.M. | VIII | Comcast Cable: Franchise Renewal & Side Letter  |
| 7:25 P.M. | IX   | Budget-Revenue Discussion   |
| 7:45 P.M. |      | General Council Discussion-Choice of Subjects   |
| 7:50 P.M. |      | Adjournment   |

\* *Public comments: Those who wish to submit public comments for the September 21 Town Council meeting need to send them to Heidi Napolitano, Clerk-Treasurer at [heidi@townofwoodway.com](mailto:heidi@townofwoodway.com). Comments received by noon on September 21 will be provided to the Council electronically for consideration at that evening's meeting. Comments received after that deadline will be provided to the Council after the meeting.*

*Council agendas are subject to change before or during the council meetings upon motion. All times are approximate.*

*Anyone with a disability requiring special accommodations should contact the Town Clerk's Office at Town Hall or call (206)542-4443 before 1:00 p.m. the Thursday preceding the Council Meeting. For TDD relay service, call (206)587-5500, or outside the Seattle area #1-800-833-6388.*



**Supporting & Fostering  
Healthy, Thriving Communities**

Town of Woodway Presentation  
Shawn Frederick, Administrative Officer  
Snohomish Health District



September 21, 2020

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**COVID-19  
RESPONSE**

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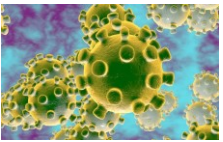

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**Novel Coronavirus (COVID-19)**

- Situation continues to evolve, with guidance and information shifting accordingly.
- Encourage following [www.snohd.org/covid](http://www.snohd.org/covid) and social medial channels (Facebook, Twitter and Instagram) for latest information.

Snohomish Health District

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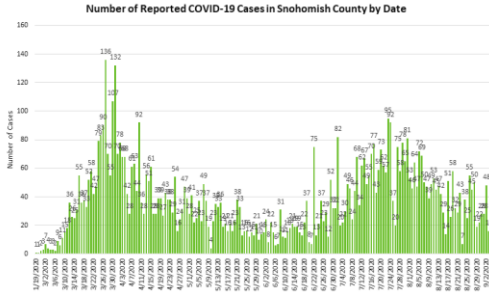
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# COVID-19 Cases

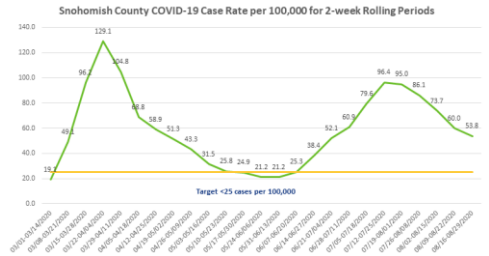


As of September 3, 2020

Snohomish Health District

4

# Rolling 2-week Case Rate



As of September 3, 2020

Snohomish Health District

5

# Snapshot & Weekly Reports



Snohomish Health District

6

**Key Priorities**

- ✓ Testing capacity
- ✓ Case investigations & contact tracing
- ✓ Long-term care facilities, first responders, schools, child cares and employer notifications
- ✓ PPE availability and healthcare capacity
- ✓ Mid- and long-range planning
- ✓ Ongoing communications
  - ✓ Translated materials & expanding outreach

Snohomish Health District

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**In Our  
COMMUNITIES**

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**Day-to-Day Work Continues**



**4,500+**  
Inspections on restaurants, grocery stores, espresso stands, caterers and mobile food vehicles



**1,000+**  
Complaints addressed (food, pools, septic, and solid waste)



**~500**  
Permits for pools and spas that we routinely inspect



**200+**  
Public and private schools with kitchen permits and required safety inspections

Snohomish Health District

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## Resources for Local Businesses

PLEASE WEAR A CLOTH FACE COVER  
HELP PROTECT OUR EMPLOYEES AND CUSTOMERS BY WEARING A CLOTH FACE COVER, BANDANA, OR SCARF.

SPREAD KINDNESS, NOT COVID-19

PLEASE WASH YOUR HANDS  
WITH SOAP & WARM WATER FOR 20 SECONDS.

Spread Kindness. Not COVID-19.

Spread Kindness. Not COVID-19  
6FT  
Please Keep Your Distance

Snohomish Health District 10

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## Outreach While Social Distancing

Working to develop more curriculum and toolkits that schools, child cares and community groups can use remotely

Exploring ways to engage with the community on important health topics & needs virtually

Snohomish Health District 11

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# Moving FORWARD

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## Continuing Essential Work

- ✓ Issuing birth and death certificates
- ✓ Tracking and responding to other communicable diseases like tuberculosis, whooping cough & STDs.
- ✓ Supporting children's health needs
- ✓ Inspecting food establishments, pools & spas, etc.
- ✓ Reviewing permit applications
- ✓ Providing refugee health screenings
- ✓ Responding to complaints and violations

Snohomish Health District 13

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## Implementing Our Strategic Plan

**Mission**  
Spearhead efforts to protect, promote and advance the collective health of our community.

**Goals**

- Reduce the rate of communicable disease and other notifiable conditions
- Prevent or reduce chronic diseases and injuries
- Provide high-quality environmental health services
- Improve maternal, child, and family health outcomes
- Provide legally required vital records
- Address ongoing, critical public health issues
- Support increased access to medical, oral, and mental health care
- Build a more sustainable organization



**2020 Strategic Plan**

Snohomish Health District 14

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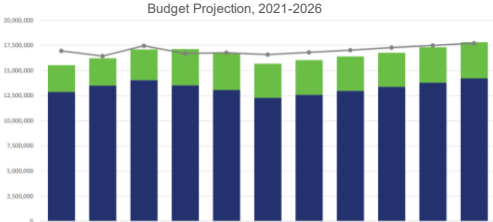
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## Monitoring Budgets & Projections

- 2020 budget was balanced, with \$16.75 million in revenues/expenditures.
- Current budget includes 113 full-time equivalent positions.

Budget Projection, 2021-2026



	2020 Actual	2021 Actual	2022 Actual (Estimated)	2023 Budget	2024 Budget	2025 Budget	2026 Budget	2027 Budget	2028 Budget	2029 Budget	2030 Budget
Non-Labor	2,663,993	2,702,840	3,059,261	3,053,305	3,086,519	3,255,488	3,453,110	3,630,907	3,809,400	3,992,758	4,181,945
Labor	12,880,052	13,505,860	14,031,042	13,516,791	13,097,646	12,306,408	12,578,770	12,870,231	13,374,873	13,799,774	14,239,214
Revenue	16,942,300	16,448,023	17,474,124	16,680,927	16,754,605	16,358,910	16,813,801	17,036,668	17,343,208	17,494,100	17,780,200

Snohomish Health District 15

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## Per Capita Contributions

- Naloxone purchase & coordination for cities
- Support general fund activities not covered by other funding:
  - Data & Reports
    - Community Health Assessment & Improvement Plans
  - Healthy Communities
    - Suicide Prevention
    - Safe Routes to School/Complete Streets
    - Healthy Housing
    - Health Fairs & Community Events
  - Child Care Health Outreach

Snohomish Health District 16

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## Public Health Foundation



- Working over the last year to research feasibility & models
- Ad hoc committee met since April to provide recommendations to Board of Health.
- Now recruiting foundation board members.

*Purpose: To provide support for priorities identified in community health assessments, community health improvement plans, and/or emerging public health issues in Snohomish County.*

Snohomish Health District 17

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## Stay in touch

### Blog & Newsletters



Latest blog  
(click to read)

Sign up for our blog, newsletters, alerts and more at [www.snohd.org/NotifyMe](http://www.snohd.org/NotifyMe)

### Social Media



Follow us on Facebook, Twitter, YouTube, and Instagram

Snohomish Health District 18

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**Thank you**

**contact information**  
For more info, please contact:

**Shawn Frederick, MBA**  
**Administrative Officer**  
425.339.8687  
SFrederick@snohd.org

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TOWN OF WOODWAY  
CLAIMS APPROVAL

“I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein and that the claim is a just, due, and unpaid obligation against the Town of Woodway, Snohomish County, Washington, and that I am authorized to authenticate and certify to said claims.”

\_\_\_\_\_  
Clerk Treasurer

The following transactions are approved for 2020 payment:

Claims checks #13167 through 13182 and EFT #1220.....\$9,209.51

This 8<sup>th</sup> day of September 2020.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
Councilmember

\*The three largest charges on the credit card bill are:

1. Toilet installation: \$397.44
2. Permit Tech Certification renewal – H. Napolitano: \$115.00
3. Fuel: \$354.97 (PD - \$59.54; PW - \$286.43)



TOWN OF WOODWAY  
CLAIMS APPROVAL

“I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein and that the claim is a just, due, and unpaid obligation against the Town of Woodway, Snohomish County, Washington, and that I am authorized to authenticate and certify to said claims.”

\_\_\_\_\_

Clerk Treasurer

The following transactions are approved for 2020 payment:

Claims checks #13183 through 13192.....\$25,138.91

This 21<sup>st</sup> day of September 2020.

\_\_\_\_\_

Mayor

\_\_\_\_\_

Councilmember

\_\_\_\_\_

Councilmember

\_\_\_\_\_

Councilmember



TOWN OF WOODWAY  
PAYROLL APPROVAL

“I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein and that the claim is a just, due, and unpaid obligation against the Town of Woodway, Snohomish County, Washington, and that I am authorized to authenticate and certify to said claims.”

\_\_\_\_\_

Clerk-Treasurer

The following August 2020 Payroll transactions are approved for 2020 payment:

EFT Transactions #1178 through 1196.....\$54,817.41

This 31<sup>st</sup> day of August 2020

\_\_\_\_\_

Mayor

\_\_\_\_\_

Councilmember

\_\_\_\_\_

Councilmember

\_\_\_\_\_

Councilmember

## **INTERLOCAL AGREEMENT**

### **BETWEEN THE SNOHOMISH HEALTH DISTRICT AND THE TOWN OF WOODWAY**

#### **PER CAPITA CONTRIBUTION FOR HEALTH DISTRICT SERVICES**

This Interlocal Agreement for Per Capita Contribution for Health District Services is entered into by and between the SNOHOMISH HEALTH DISTRICT, a Washington Municipal Corporation (the District) and TOWN OF WOODWAY a municipal corporation of the State of Washington (the Town) – collectively (the Parties), for the purpose of providing for a per capita contribution by the Town for Health District Services.

#### **RECITALS**

WHEREAS, This Agreement is made pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW; and

WHEREAS, to promote the public health in Snohomish County, Washington, the Board of County Commissioners of Snohomish County, Washington, established a Health District on January 1, 1959, embracing all of the territory within Snohomish County, Washington, and all cities and towns therein; and

WHEREAS, in 1966 the Snohomish Health District became the first local health jurisdiction in the state to organize a city-county cooperative health program with cities indicating a willingness to participate financially in support of Health District programs; and

WHEREAS, on January 1, 1967, eleven of 18 cities and towns agreed to voluntarily contribute \$0.50 per capita to the Health District in return for public health services; and

WHEREAS, per capita contributions from towns and cities continued and in 1986, with such contributions ranging from \$1.60 to \$2.70 per capita until the early 1990s; and

WHEREAS, in 1993, counties assumed exclusive financial responsibility for public health relying on Motor Vehicle Excise Tax (MVET) revenues; and

WHEREAS, in 2000, the Washington State Legislature repealed MVET and backfilled only 90% of lost public health funds; and

WHEREAS, state funding for local public health has decreased 65.7% from a peak of \$27.29 per capita in 2000 to \$9.36 per capita in 2014; and

WHEREAS, the Health District ranks 34th out of 35 local health jurisdictions in the state for public health expenditures per resident; and

WHEREAS, the Health District's ability to perform its most essential functions have been severely compromised since the great recession; and

WHEREAS, the Health District serves an essential public safety function whether ensuring safe food, schools, and septic systems, responding to disasters, or preventing and responding to disease outbreaks; and

WHEREAS, threats to the public's health in the form of foodborne illness such as E.coli and salmonella, communicable diseases such as pertussis, tuberculosis, measles, Zika, and Ebola and natural disasters such as the Oso/SR530 mud slide respect no municipal boundaries; and

WHEREAS, public health is a shared responsibility and regional public health threats require regional responses and close partnerships with every city and town in Snohomish County; and

WHEREAS, consistent with RCW 70.05, the Snohomish County Council is responsible for establishing the Snohomish Health District Board of Health, with jurisdiction coextensive with the boundaries of the county, to supervise all matters pertaining to the preservation of life and health of the people within its jurisdiction; and

WHEREAS, an effective, regional public health response to the threats to public health in Snohomish County requires the cooperation, participation and support of Snohomish County and all of the cities and towns in Snohomish County; and

WHEREAS, the Snohomish County Board of Health adopted Resolution 19-25 in November 2019, declaring its intent to take on naloxone distribution and coordination for law enforcement and city partners; and

WHEREAS, Snohomish County and the cities and towns therein seek to improve and sustain healthy years of life of their residents by engaging in an enhanced partnership with the Health District. This partnership will provide stable funding for public health priorities that would be established to meet the unique needs of each community.

NOW, THEREFORE, in consideration of the agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the District agree as follows:

1. Purpose.

A. The recitals set forth above are incorporated herein by this reference.

- B. The purpose of this Agreement is to establish and define the terms and conditions for the cooperative efforts to be undertaken by the Town and the District to promote, facilitate, and undertake various programs and activities.
2. Term. The initial term of this Agreement shall be from January 1, 2020 to December 31, 2020. The term may be extended by mutual written agreement of the parties.
  3. Scope of Services.

- A. Responsibilities of the Town. The Town shall contribute \$1.00 per capita of Town population, based on the Office of Financial Management April 2019 Official Population Estimate of 1,350, for an amount not to exceed One Thousand Three Hundred Fifty and No/00 Dollars (\$1,350) to the Health District commencing January 1, 2020. Payment may be made in one lump sum or quarterly payments on or before December 31, 2020.

The Town will provide a list to the District of personnel by department that should be equipped with naloxone kits. The Town will provide the information necessary for the District to track, rotate, and replenish kits as needed.

- B. Responsibilities of the Health District. The Health District shall provide basic essential public health services and functions such as ensuring safe food, and inspecting septic systems, responding to disasters, or preventing and responding to disease outbreaks.

The District shall provide naloxone kits to personnel, as requested by the Town. Inventory will be tracked, rotated, and replenished as needed.

The District will partner with the Town to coordinate substance use related trainings and community outreach events.

The Health District will provide reports to the Town identifying services provided to Woodway residents and businesses.

The Health District will provide signage, posters, and other materials related to COVID-19 that the Town can use, as well as share with its residents and businesses.

Additional specific services provided by the Health District to the Town may be developed jointly by the parties.

4. Legal Requirements. Both parties shall comply with all applicable federal, state, and local laws in performing this Agreement.
5. Public disclosure laws. The Town and the District each acknowledge, agree, and understand that the other party is a public agency subject to certain disclosure laws, including, but not limited to Washington's Public Records Act, chapter 42.56 RCW. Each party understands

that records related to this Agreement and the District's performance of services under this Agreement may be subject to disclosure pursuant to the Public Records Act or other similar law.

6. Insurance. Each party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and /or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying part to the indemnified party(s). Each party shall provide the other with a certificate of insurance or letter of self-insurance as the case may be upon request.
7. Indemnification. The District shall protect, save harmless, indemnify and defend the Town its elected officials, officers, employees and agents, from and against any loss or claim for damages of any nature whatsoever, including claims by third parties or District employees against which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission of the District in performance of this Agreement, its elected or appointed officials, officers, employees or agents, except to the extent the loss or claim is attributable to the negligence or willful misconduct of the Town, its elected officials, officers, employees or agents.

The Town shall protect, save harmless, indemnify and defend the District, its elected and appointed officials, officers, employees and agents from and against any loss or claim for damages of any nature whatsoever, including claims by third parties or Town employees against which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission of the Town in performance of this Agreement, its elected or appointed officials, officers, employees or agents, except to the extent the loss or claim is attributable to the negligence or willful misconduct of the County, its elected or appointed officials, officers, employees or agents.

8. Notices. Any notice/payment to be given to the District under this Agreement shall be either mailed or personally delivered to:

**Snohomish Health District**  
3020 Rucker Avenue, Ste 306  
Everett, WA 98201

Any notice/invoice to the Town shall be mailed or hand delivered to:

**Town of Woodway**  
23920 113th Place W  
Woodway, WA 98020

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

9. Venue. The laws of the State of Washington shall apply to the construction and enforcement of this Agreement. Any action at law, suit in equity, or judicial proceedings for the enforcement of this agreement or any provision hereto shall be in the Superior Court of Snohomish County, Everett, Washington.
10. Disputes. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.
11. No third-party beneficiaries; no joint venture. This Agreement is for the sole benefit of the Town and District and shall not confer third-party beneficiary status on any non-party to this Agreement. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture, or other joint enterprise between the parties. County employees who provide services under this Agreement shall at all times be acting in their official capacities as employees of Snohomish County.
12. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by written agreement executed by both parties. Both parties recognize that time is of the essence in the performance and the provisions of this Agreement.
13. Severability.
  - A. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
  - B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.
14. Filing. As provided by RCW 39.34.040, this Agreement shall be filed with the Snohomish County Auditor, or, alternatively, posted on the website of each party.



15. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

16. Effective Date. January 1, 2020

**Town of Woodway**

**Snohomish Health District**

\_\_\_\_\_  
Carla Nichols, Mayor

\_\_\_\_\_  
Shawn Frederick, Administrative Officer

ATTEST:

ATTEST:

\_\_\_\_\_  
Town Clerk-Treasurer

\_\_\_\_\_  
Clerk of the Board

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Greg Rubstello, Town Attorney

\_\_\_\_\_  
Grant Weed, Health District Attorney

## MEMORANDUM

DATE: September 21, 2020  
TO: Woodway Town Council  
FROM: Emily Miner, Office of the Town Attorney  
RE: Amendments WMC 4.04 “Cable Communications Franchise”

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### **Background**

On behalf of the Town, Elana Zana and Emily Miner, attorneys at Ogden Murphy Wallace, have been assisting the Town with negotiations with Comcast. In reviewing the Town’s cable franchise code during negotiations, several provisions were identified as being outdated or superfluous due to changes in both industry standards and state and federal regulations.

### **Analysis**

The primary code revisions are as follows:

- Revise all references of “City” to “Town”
- Update definitions to track with changes in federal law
- Clean-up cross references to other provisions of the code
- Streamline provisions to create better consistency and clarity throughout the code

### **Next Steps and Recommendation**

This reading is an opportunity to review the code amendment and ask questions. Staff will then bring back the code, franchise, and side letter at the October 5, 2020 meeting for final action.

The Town Attorney Office’s recommendation is that the code amendments ensure compliance with revised state and federal laws in addition to bringing the code up-to-date with industry standards and thus should be approved.

EFM:efm

# TOWN OF WOODWAY

## ORDINANCE 2020-617

AN ORDINANCE OF THE TOWN OF WOODWAY AMENDING WOODWAY MUNICIPAL CODE (“WMC”) CHAPTER 4.04 CONCERNING CABLE COMMUNICATIONS FRANCHISES AND RELATED MATTERS; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND AUTHORIZING SUMMARY PUBLICATION BY ORDINANCE TITLE ONLY.

WHEREAS, WMC Chapter 4.04 provides rules and regulations related to cable communications franchises; and

WHEREAS, many of the Federal and state rules and regulations regarding cable communications have been amended since WMC Chapter 4.04 was first enacted; and

WHEREAS, the Woodway Town Council desires to amend WMC Chapter 4.04 in order to update and revise certain provisions to ensure compliance with Federal and state regulations as well as industry practices; and

WHEREAS, the Woodway Town Council reasonably believes that adoption of this Ordinance is in the best interest of the health, safety, and welfare of the citizens of the Town, all as set forth in Exhibit A.

NOW, THEREFORE, the Town Council of the Town of Woodway does hereby ordain as follows:

Section 1. Findings. The Town Council adopts the forgoing recitals as findings in support of this Ordinance.

Section 2. Amendment. Chapter 4.04 of the Woodway Municipal Code is hereby amended as set forth this Ordinance and in Exhibit A, attached and incorporated herein.

Section 3. Corrections. The Town Clerk-Treasurer and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or the constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Publication. The Town Clerk-Treasurer is hereby directed to publish the title of this Ordinance which is approved as a summary of the Ordinance.

Section 6. Effective Date. This ordinance shall be in full force and effect five days after its passage and publication as provided by law.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_ 2020 by the Town Council of the Town of Woodway.

TOWN OF WOODWAY

\_\_\_\_\_  
Carla A. Nichols, Mayor

ATTEST:

\_\_\_\_\_  
Heidi K. S. Napolitano, Clerk-Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
Greg Rubstello, Town Attorney

Date Passed by the Town Council:

Date Published:

Effective Date:

# TOWN OF WOODWAY

## ORDINANCE 2020-617 | EXHIBIT A

### AMENDED WOODWAY MUNICIPAL CODE CHAPTER CHAPTER 4.04: CABLE COMMUNICATIONS FRANCHISES

Sections:

- 4.04.010 Definitions.
- 4.04.020 Authority to grant franchises or licenses for cable television.
- 4.04.030 Incorporation by reference.
- 4.04.040 Nature and extent of the franchise.
- 4.04.050 Length of the franchise.
- 4.04.060 Application.
- 4.04.070 Franchise issuance.
- 4.04.080 Acceptance.
- 4.04.090 Police powers.
- 4.04.100 Rules and regulations by the ~~city~~Town.
- 4.04.110 Construction standards.
- 4.04.120 Notice of entry on private property.
- 4.04.130 Emergency repairs.
- 4.04.140 Restoration of property.
- 4.04.150 Location of cable facilities.
- 4.04.160 Undergrounding.
- 4.04.170 Construction in right-of-way.
- 4.04.180 Safety requirements.
- 4.04.190 Tree trimming.
- 4.04.200 Rates.
- 4.04.210 Cable availability.
- 4.04.220 Franchise fee.
- 4.04.230 Nondiscrimination.
- 4.04.240 ~~Continuity of service.~~Repealed.
- 4.04.250 Transfer of ownership.
- 4.04.260 ~~Removal and a~~Abandonment of property of franchisee.
- 4.04.270 Revocation for cause.
- 4.04.280 Effect of termination for noncompliance.
- 4.04.290 Indemnity and hold harmless.
- 4.04.300 Insurance.
- 4.04.310 ~~Equalization of civic contributions.~~Performance bonds/security fund.
- 4.04.320 Inconsistency.

**4.04.010 DEFINITIONS.**

- A. The "Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and any subsequent amendments.
- B. "Applicant" means any person or entity that applies for a franchise.

- C. "Basic cable service" is the lowest level of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.
- D. "Cable facilities" means equipment and wiring used to transmit audio and video signals to subscribers.
- E. "Cable services" means:
1. The one-way transmission to subscriber of video programming or other services; and
  2. Subscriber interaction, if any, which is required for the selection or use by the subscriber of such video programming or other services.
- F. "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:
1. A facility that serves only to retransmit the television signals of one or more television broadcast stations; or
  2. A facility that serves subscribers without using any Town right-of-way; or
  3. A facility of a common carrier that 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. Section 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; or
  4. An open video system that complies with 47 U.S.C. Section 573; or
  - 2.5. Any facilities of any electric utility used solely for operating its electric utility systems.
- ~~F.G. "Channel" means a portion a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof, of the electromagnetic frequency spectrum which is capable of delivering a television signal.~~
- ~~G.H. "CityTown" means the town of Woodway, a municipal corporation of the state of Washington.~~
- ~~H. "Cable communication system" means a system which may provide audio, video and data transmission to subscribers.~~
- I. "Council" means the cityTown of Woodway council acting in its official capacity.
- ~~J. "Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hospitals, hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes within mobile home parks, extended care facilities and other multiple family residential units.~~
- ~~K.J. "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.~~
- ~~L.K. "Franchise" means the initial authorization, or renewal thereof, issued by the franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the cable communication system for the purpose of offering cable service or other service to subscribers.~~

~~M.L.~~ "Franchisee" or "operator" means the person, firm or corporation to whom or which a franchise is granted by the council under this chapter and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in cityTown ordinance.

~~M.~~ "Franchise area" means the geographical area of the Town that a cable operator is authorized to serve by the terms of its franchise or by operation of law.

~~N.~~ "Gross revenues" means any and all revenues (as that term is defined by generally accepted accounting principles) received directly or indirectly which arise out of or are derived from the operation of a franchisee's cable system in the cityTown as further described in the Franchise. ~~When the revenue of the franchisee includes gross revenue from sources outside of the city, a franchisee shall prorate the gross revenues among its sources by multiplying such gross revenues by a fraction the numerator of which is the number of franchisee's subscribers in the city and the denominator of which is the total number of all a franchisee's subscribers. "Gross revenues" shall not include the following:~~

- ~~1. 1. Fees and payments from subscribers who do not live in the city;~~
- ~~2. 2. Taxes on services furnished by a franchisee, which are imposed on any subscriber or used by any governmental unit, agency or instrumentality and which are collected by a franchisee for such entity;~~
- ~~3. 3. Bad debt write-offs;~~
- ~~4. 4. Revenue from the sale of equipment or other assets of the cable system to persons not purchasing services from the cable system;~~
- ~~5.1. 5. Revenue from transactions involving real property owned or leased by the franchisee;~~
- ~~6. 6. Amounts collected from subscribers as a franchise fee to be paid to city.~~

~~O.~~ "Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

~~O.~~ P"Installation" means the connection of the cable communication system from feeder cable to subscribers' terminals.

~~P.~~ Q"Property of franchisee" means all property owned, installed or used by a franchisee in the conduct of its business in the cityTown.

~~Q.~~ R"Proposal" means the response, by an individual or organization, to a request by the cityTown regarding the provision of cable services; or an unsolicited plan submitted by an individual or organization seeking to provide cable services in the cityTown.

~~R.~~ S"Public right-of-way" or "street" means the land owned, dedicated or conveyed to the city or a unit of government, including, but not limited to, any public alley, boulevard, lane, way, place, drive, easement, right of way or sidewalk, or any portion thereof, under the jurisdiction of the city. land acquired or dedicated for public roads and streets, but does not include:

1. State highways;
2. Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public, unless specifically used as a utility corridor;
3. Structures, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the state parks and recreation commission; or

6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

S. "Right-of-Way" also includes easements dedicated for compatible use and consistent with Section 621 of the Cable Act.

R.T. "Subscriber" means a person or entity or user of the cable system who lawfully receives cable services or ~~other service therefrom~~ with franchisee's express permission.

**4.04.020 AUTHORITY TO GRANT FRANCHISES OR LICENSES FOR CABLE TELEVISION.**

It shall be unlawful to engage in or commence construction, operation, or maintenance of a cable communications system without a franchise issued under this chapter. The council may, by ordinance, award a nonexclusive franchise to construct, operate and maintain a cable communications system which complies with the terms and conditions of this chapter.

Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the cityTown from granting other or further franchises or permits or preclude the cityTown from using any public rights-of-way, streets, or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the cityTown to make such changes, as the cityTown shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new public rights-of-way and other public properties. However, any such changes shall not materially or substantially impair the rights granted a franchisee pursuant to this chapter. All franchises granted subsequent to the effective date of the master cable ordinance codified in this chapter shall be granted with consistent material terms and conditions of this chapter and existing franchises.

**4.04.030 INCORPORATION BY REFERENCE.**

The provisions of this chapter shall be incorporated by reference in any franchise ordinances or licenses approved hereunder. The provisions of any proposal submitted and accepted by the cityTown shall be incorporated by reference in the applicable franchise. However, in the event of any conflict between the proposal, this chapter and the franchise, the franchise shall be the prevailing document.

**4.04.040 NATURE AND EXTENT OF THE FRANCHISE.**

Any franchise granted hereunder by the cityTown shall authorize a franchisee, subject to the provisions herein contained:

- A. To engage in the business of operating and providing cable service ~~and other services~~ and the distribution and sale of such services to subscribers within the cityTown;
- B. To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appropriate to the cable system. No privilege or exemption shall be granted or conferred upon a franchisee by any franchise except those specifically prescribed therein, and any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

**4.04.050 LENGTH OF THE FRANCHISE.**

The cityTown shall have the right to grant a franchise for a period of time appropriate to the circumstances of the particular grant. (~~Ord. 315 § M2(D), 1996~~)



**4.04.060 APPLICATION.**

An applicant for a franchise to construct, operate, and maintain a cable communications system within the cityTown shall file an application in a form prescribed by the cityTown, accompanied by a nonrefundable filing fee in an amount determined by the cityTown.

**4.04.070 FRANCHISE ISSUANCE.**

Prior to the granting of a franchise, the cityTown council shall conduct a public hearing to determine the following:

A. Initial Franchise.

1. That the public will be benefited by the granting of a franchise to the applicant;
2. That the applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area;
3. That the applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the cityTown;
4. That the applicant will comply with all terms and conditions placed upon a franchisee by this chapter;
5. That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the cable facilities and systems incorporated in its application for a franchise;
6. That the public rights-of-way have the capacity to accommodate the cable communications system;
7. That the proposed franchise is consistent with the cityTown's present and future use of the public rights-of-way to be used by the cable communications system;
8. That the benefit to the public from the cable communications system outweighs the potential disruption to existing users of the public rights-of-way to be used by the cable communications system and the resultant inconvenience which may occur to the public; and
9. That all other conditions resulting from the grant of the franchise have been considered by the cityTown and that the cityTown determines that the grant is still in the public's best interest.

B. Renewal Franchise.

1. That the applicant has complied with the material terms and conditions of the existing franchise, and with applicable law;
2. That the quality of the applicant's previous service, including signal quality, response to customer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system has been reasonable in light of community needs;
3. That the applicant has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the applicant's proposal;
4. That the applicant's proposal is reasonable to meet the future cable-related community needs and interests taking into account the cost of meeting such needs and interests;
5. The capacity of public rights-of-way to accommodate the cable system;
6. The present and future use of the public rights-of-way to be used by the cable system;
7. The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public; and

8. Any other condition that is in the public's best interest.

**4.04.080 ACCEPTANCE.**

No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the ordinance granting the same has become effective.

Within sixty (60) days after the effective date of the ordinance awarding a franchise, or within such extended period of time as the council in its discretion may authorize, a franchisee shall file with the cityTown clerk its written acceptance of the franchise and all of its terms and conditions, in a form satisfactory to the cityTown attorney, together with the insurance policy required by Section 4.04.300, Insurance, as well as the bond policy required by ~~Section F18, Performance Bonds, in the franchise. Acceptance of this chapter is a condition precedent to its taking effect, and unless such acceptance is filed within the time period specified, this chapter shall be null and void. (Ord. 315 § M5, 1996)~~

**4.04.090 POLICE POWERS.**

In accepting any franchise, a franchisee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the cityTown to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the cityTown pursuant to such power. The cityTown council expressly reserves unto itself all its police powers to adopt ordinances necessary to protect the health, safety and welfare of the general public in relation to the rights granted under this franchise. The cityTown reserves the right to use, occupy and enjoy any public rights-of-way or other public places for any purpose, including without limitation the construction of any water, sewer or storm drainage system, installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other cityTown services and other public street improvement projects.

**4.04.100 RULES AND REGULATIONS BY THE CITYTOWN.**

In addition to the inherent powers of the cityTown to regulate and control any franchise it issues, the authority granted to it by the Act, and those powers expressly reserved by the cityTown, or agreed to and provided for in a franchise, the right and power is hereby reserved by the cityTown to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers giving due regard to the rights of the franchisee. Except as noted above, the foregoing does not allow for amendment by the cityTown of material terms of any franchise it issues without the consent of a franchisee.

The cityTown council reserves the right to delegate its authority for franchise administration to a designated agent.

**4.04.110 CONSTRUCTION STANDARDS.**

All cable facilities constructed under this chapter shall be placed and maintained at such places and positions in or upon such public rights-of-way and public places so it shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of the state of Washington, and cityTown rules, regulations, ordinances, codes, standards and policies pertaining to such construction.

At least ten (10) days prior to the intended construction of cable facilities, ~~1~~a franchisee shall inform all residents in the affected area that a construction project will commence, the dates

and nature of the project, and a toll-free telephone number which the subscriber may call for further information. A preprinted door hanger may be used for this purpose.

The cityTown reserves the right, as the interest of the public may require, to ~~request~~require the installation or construction of new cable facilities proposed by franchisee to be constructed in arterial thoroughfares or to be installed in alternate public rights-of-way which are substantially comparable in terms of the expense to franchisee for installation or construction, and which provide distribution to all affected parcels of property that is equal or better to the requested installation route. The cityTown shall give particular preference to the alternate installation location in cases in which the existing improvements to the public right-of-way would be affected by the proposed installation, or where the structural integrity of the surface of the right-of-way, or inconvenience to the public caused by the proposed installation cannot be mitigated through alternative means.

**4.04.120 NOTICE OF ENTRY ON PRIVATE PROPERTY.**

At least twenty-four (24) hours prior to entering private property or streets or other public property or easements adjacent to or on such private property to perform new ~~plant~~facility construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property. A franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

**4.04.130 EMERGENCY REPAIRS.**

Notice requirements of Section 4.04.120 are suspended for purposes of entry upon private property to perform repairs at the subscriber's request or in the event of system outage repairs or other emergencies in which insufficient time is available to provide notice to subscribers, provided that franchisee obtains permission from subscriber to enter the private property.

**4.04.140 RESTORATION OF PROPERTY.**

After performance of work, franchisee shall restore private property as nearly as practicable to its condition prior to construction. Any disturbance of landscaping, fencing, or other improvements on private property shall, at the sole expense of a franchisee, be promptly repaired and restored (including replacement of such items as shrubbery and fencing) to the reasonable satisfaction of the property owner.

**4.04.150 LOCATION OF CABLE FACILITIES.**

Whenever, in the sole opinion of the cityTown, any of a franchisee's facilities or equipment need to be relocated or altered due to a construction or repair project by the cityTown in a public way, a franchisee shall move or relocate said facilities or equipment ~~within thirty (30) days of receiving written notice from~~ as required by the cityTown. However, in the event such relocation is required due to emergency repairs deemed necessary by the city, such relocation or moving shall be accomplished within twenty four (24) hours. Any relocation or alteration of a franchisee's facilities or equipment required under this section shall be at the sole expense of a franchisee, except as otherwise provided in RCW 35.99.060.

**4.04.160 UNDERGROUNDING.**

In those areas and portions of the cityTown where the transmission or distribution facilities of the public utility providing telephone service and those of the facility providing electric service are underground or where underground placement is required for new or existing telephone and

electrical service, then a franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground upon cityTown approval. Such activities shall be made in concurrence and cooperation with the other affected utilities. Amplifiers and associated equipment in a franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground.

#### 4.04.170 CONSTRUCTION IN RIGHT-OF-WAY.

- A. Right-of-Way Permit. A franchisee shall submit an application for, pay the permit fee, and obtain a right-of-way permit to perform work in any public rights-of-way in accordance with WMC 12.04.020. Permits to perform work in public rights-of-way shall be available to all similarly situated applicants on the same terms and conditions. No work, other than emergency repairs, shall commence without such a permit. Emergency repairs may be made immediately with notification given to the cityTown no later than the next business day.
- B. Installation. In accordance with the permit issued, all transmission lines, equipment, and structures shall be located and installed so as to cause minimum interference with the rights and reasonable convenience of property owners, and at all times shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of the public. Franchisee must obtain written permission from the Town to install ~~a~~Any poles or other fixtures ~~placed in any street~~Right-of-Way. ~~by a franchisee~~Such poles and/or fixtures shall be placed in such manner as not to interfere with the usual travel on such ~~public way~~Right-of-Way.
- C. Interference With Use of Streets. When installing, locating, laying, or maintaining cable facilities, apparatus, or improvements, a franchisee shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in as good condition as it was prior to performance by franchisee of such work, or as otherwise specified in the permit. Any facility, apparatus, or improvement under this chapter shall be laid, installed, located, or maintained in conformance with instructions given by, and to the reasonable satisfaction of, the cityTown. In any event, a franchisee shall, at its own expense, and to the reasonable satisfaction of the cityTown in accordance with the terms of the right-of-way permit, restore to cityTown standards and specifications any damage or disturbance caused to streets as a result of franchisee's construction or operations.
- D. Relocation/Removal. Upon receipt of ~~ninety (90) days'~~ prior written notice consistent with the requirements of RCW 35.99.060, a franchisee, at its own expense, and within the time period prescribed by the cityTown, shall protect, support, temporarily disconnect, relocate, or remove any of its cable facilities or property when, in the judgment of the cityTown, the same is required by reason of traffic conditions, public safety, and/or improvements by governmental agencies. Nothing herein shall be deemed a taking of the property of a franchisee, and franchisee shall be entitled to no surcharge by reason of this section.
- E. CityTown's Performance of Work. After receipt of thirty (30) days' prior written notice, and upon the failure of a franchisee to commence, pursue, or complete any work required by the provisions of this chapter or failure to comply with any applicable federal, state or cityTown laws, ordinances, rules, regulations or standards to be performed on any street, within the reasonable time prescribed and to the reasonable satisfaction of the cityTown,

the cityTown may, at its option, cause such work to be done, and a franchisee shall pay to the cityTown the reasonable cost thereof, within thirty (30) days after receipt of demand.

#### **4.04.180 SAFETY REQUIREMENTS.**

A franchisee, in accordance with applicable national, state, and local safety requirements, shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. All structures and all lines, equipment and connections in, over, under, and upon the public rights-of-way or places of a franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

The cityTown reserves the general right to see that the cable facilities of a franchisee are constructed and maintained in a safe condition.

#### **4.04.190 TREE TRIMMING.**

~~Except for emergency conditions which may preclude prior approval, for locations in the rights-of-way or Town property, Grantee shall obtain written approval or permit from the Town prior to commencing any tree trimming. In all other cases, Grantee shall abide by all Town rules, regulations, ordinances, policies and standards, including the Town's vegetation plan and WMC Chapter 16.12 pertaining to tree preservation. Except for emergency conditions which may preclude prior approval, a franchisee shall abide by all city rules, regulations, ordinances, policies and standards, including the city's vegetation plan. A franchisee shall have the authority, at its expense, to trim trees upon and overhanging streets, public rights of way and places in the franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of a franchisee and, if necessary, to clear a microwave path. A franchisee shall be responsible for debris removal from such activities. (Ord. 315 § M12, 1996)~~

#### **4.04.200 RATES.**

A. Within thirty (30) days after the grant of any franchise hereunder, a franchisee shall file with the cityTown a complete schedule of all present rates charged to all subscribers.

~~B. B.~~ Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, a franchisee shall provide the cityTown and all subscribers a minimum of thirty (30) days' prior written notice of such change.

~~Subject to the Act and resultant FCC regulations, the city may regulate the rates or charges for providing cable service and other equipment and may establish rate regulation review procedures as delegated by federal law.~~

- ~~1. B. The city will follow the FCC rate regulations in its regulation of the basic service rates and charges of the company and any other cable television system operating in the town, notwithstanding any different or inconsistent provisions in the franchise; and~~
- ~~2. In connection with such regulation, the town will ensure a reasonable opportunity for consideration of the views of interested parties; and~~
- ~~3. The mayor, or his or her designee, is authorized to execute on behalf of the town and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC rate regulations in order to enable the town to regulate basic service rates and charges. (Ord. 315 § M13, 1996; Ord. 290 §§ 1-3, 1993)~~



**4.04.210 CABLE AVAILABILITY.**

Cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides subject to density and coverage limitations.

**4.04.220 FRANCHISE FEE.**

A franchisee shall pay to the cityTown a quarterly franchise fee no later than forty-five (45) days following the end of such quarter, equal to a percentage of gross revenues for the preceding three months. Interest shall accrue if not paid by, forty-five (45) days from the end of the quarter. Such remittances shall be accompanied by forms ~~furnished by the city~~ to report reasonable detailed information as to the sources of such income.

**4.04.230 NONDISCRIMINATION.**

In connection with rates, charges, cable facilities, rules, regulations and in all franchisee's services, programs or activities, and all franchisee's hiring and employment made possible by or resulting from this franchise, there shall be no discrimination by franchisee or by franchisee's employees, against any person in accordance with the requirements of state or federal law. ~~because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement is not intended to expand or conflict with other state or federal law regulating the same matters.~~

This requirement shall apply, but not be limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Franchisee shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding nondiscrimination. ~~material and repeated violations of this provision shall be grounds for termination of this franchise by the cityTown and, in the case of the franchisee's breach, may result in ineligibility for further cityTown agreements; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled; and provided further, that connection I and/or service charges may be waived or modified during promotional campaigns of a franchisee.~~

~~**4.04.240 CONTINUITY OF SERVICE.**~~

~~A franchisee shall continue to provide service to subscribers so long as their financial and other obligations to a franchisee are fulfilled.~~

~~A. In this regard a franchisee shall act so far as it is reasonable within its control to provide all subscribers with continuous uninterrupted service during the term of the franchise subject to applicable law.~~

~~B. In the event a franchisee fails to operate a system for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the city council or without just cause such as the occurrence of an act of God or other circumstances reasonably beyond a franchisee's control, the city may, after notice and an opportunity for a franchisee to commence operations at its option, operate the emergency alert system or designate someone to operate the emergency alert system until such time as a franchisee restores~~

~~service or a replacement franchisee is selected. If the city is required to fulfill this obligation for a franchisee, a franchisee shall reimburse the city for all reasonable costs or damages that are the result of a franchisee's failure to perform. (Ord. 315 § M17, 1996)~~

**4.04.250 TRANSFER OF OWNERSHIP.**

A franchise shall not be sold, transferred, leased, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, unless written approval is granted by the cityTown council within ~~one hundred twenty -ninety (90)~~120 days after transfer application has been submitted. The cityTown council's approval shall not be unreasonably withheld. Such costs associated with this review process shall be reimbursed to the cityTown by a new prospective franchisee.

An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singularly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

A franchisee shall promptly notify the cityTown prior to any proposed change in, or transfer of, or acquisition by any other party of control of a franchisee's company. Every change, transfer, or acquisition of control of a franchisee's company shall cause a review of the proposed transfer. In the event that the cityTown adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the cityTown may cancel the franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee.

The cityTown will exercise such regulatory control as it has under the Act to monitor ownership, control, utilization and transfer of a franchise.

**4.04.260 ~~REMOVAL AND ABANDONMENT~~ OF PROPERTY OF FRANCHISEE.**

~~The city may direct a franchisee to temporarily disconnect or bypass any equipment of a franchisee in order to complete street construction or modification, install and remove underground utilities, or for any other reasons of public health and safety and reasonable right-of-way management. Such removal, relocation or other requirement shall be at the sole expense of a franchisee.~~

~~In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of twelve (12) months or more, or in the event such system or property has been installed in any public right-of-way or other public place without complying with the requirements of the franchise or other city ordinances or the franchise has been terminated, canceled or has expired, a franchisee shall promptly, upon being given ten (10) days' notice, remove at its expense within ninety (90) days from the public right-of-way or other public place all such property and poles of such system other than any which the city may permit to be abandoned in place which permission shall not be unreasonably withheld. In the event of such removal, a franchisee shall promptly restore the street or other areas from which such property has been removed to a condition reasonably satisfactory to the city.~~

Any property of a franchisee remaining in place ninety (90) days after the termination or expiration of the franchise shall be considered permanently abandoned unless the franchisee

has commenced removal within a reasonable amount of time. Any property of a franchisee which the franchisee intends to be abandoned in place shall be abandoned in such manner as the cityTown shall prescribe. Upon permanent intentional abandonment of the property of a franchisee in place, the property shall become that of the cityTown, and a franchisee shall submit to the cityTown clerk-treasurer an instrument in writing, to be approved by the cityTown attorney, transferring to the cityTown the ownership of such property. If franchisee abandons property without removing the property or obtaining approval for a permanent abandonment in place, the CityTown is authorized to remove the property at franchisee's sole expense. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under state or federal law.

#### **4.04.270 REVOCATION FOR CAUSE.**

~~A. Any franchise granted by the cityTown may be terminated during the period of such franchise for repeated failure by a franchisee to comply with material provisions of this chapter, the franchise, FCC regulations or other applicable law.~~

~~B. The procedure to be followed resulting in termination for any of the above reasons, except franchisee's request, shall be:~~

- ~~1. The city council shall identify the deficiencies or noncompliance and shall direct a franchisee, in writing, to correct such deficiencies or comply with such regulations within thirty (30) days or a reasonable period of time.~~
- ~~2. Failure to comply with subsection (B)(1) of this section within such thirty (30) days or other prescribed period will cause the matter of noncompliance to be brought before the city council for hearing.~~
- ~~3. At such hearing a franchisee and other interested parties shall be given a fair opportunity for full participation, including the right to introduce evidence to require the production of evidence and to question witnesses. The city council will make the determination as to whether any noncompliance was without just cause. In the event the city council finds that such noncompliance was without just cause, the city council may in its sole discretion fix an additional time period to cure such deficiency(ies). If the deficiency has not been cured at the expiration of any additional time period or if the council does not grant any additional period, the city council may by ordinance declare the franchise to be terminated and forfeited.~~
- ~~4. If a franchisee appeals the city council revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided a franchisee is otherwise in compliance with the franchise.~~
- ~~5. Nothing contained in the above subsections of this section shall prevent the issuance of a new franchise containing terms substantially the same or identical to a franchise which previously was revoked, upon satisfactory assurances made to the city council that the terms and conditions of this chapter can be met by the new franchisee. (Ord. 315 § M20, 1996)~~

#### **4.04.280 Effect of termination for noncompliance.**

If any franchise is terminated by the cityTown by reason of a franchisee's noncompliance, that part of the system under such franchise located in the streets and public property shall, at the election of the cityTown, become the property of the cityTown in accordance with the cityTown's as well as a franchisee's rights and remedies under state and federal law. If the cityTown, or a third party, does not purchase the system, a franchisee shall, upon order of the



cityTown council, remove the system as required under Section 4.04.260, Removal and abandonment of property of franchisee.

**4.04.290 INDEMNITY AND HOLD HARMLESS.**

As a condition to the issuance of any franchise under this chapter, the franchisee shall be required to agree to an indemnification provision as provided for in the franchise.

~~Franchisee agrees to indemnify and hold the city, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and reasonable attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this franchise to the extent caused by the negligent acts, errors or omissions of the franchisee, its partners, shareholders, agents, employees, or by the franchisee's breach of this franchise.~~

~~In the event it is determined that RCW 4.24.115 applies to this franchise, franchisee agrees to defend, hold harmless and indemnify the city to the maximum extent permitted thereunder, to the full extent of franchisee's negligence. Franchisee understands that these indemnity provisions shall apply to claims from which the franchisee would otherwise be able to claim immunity under RCW Title 51 and that this understanding has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this franchise with respect to any event occurring prior to such expiration or termination. In any case in which suit or action is instituted against the city by reason of damage or injury caused by a franchisee, the city shall cause written notice thereof to be given to a franchisee and a franchisee thereupon shall have the duty to appear and defend any such suit or action, without cost or expense to the city.~~

~~The city shall at its sole expense, fully indemnify and hold harmless a franchisee, its officers, agents and employees from any and all claims, suits, actions, liability and judgment for damage resulting from the city's sole negligent action which results in liability to a franchisee in connection with the city's use of the emergency alert override, I-nets or public, educational, and government access. (Ord. 315 § M22, 1996)~~

**4.04.300 INSURANCE.**

A franchisee agrees to maintain sufficient insurance to operate in the right of way and shall furnish the cityTown with a certified copy or original of such insurance policies ~~a commercial-general liability insurance policy~~ naming the cityTown as an additional insured. The amount of such insurance policies ~~policy~~ shall be established in the franchise agreement. Such insurance must be in place no later than the date of acceptance of a franchise by a franchisee. This insurance shall be maintained in full force at the franchisee's expense throughout the period of the franchise.

**4.04.310 PERFORMANCE BONDS/SECURITY FUND.**

A franchisee shall comply with any franchise regarding the agreed-upon performance bond or security fund.

A. The security fund shall serve as security for the payment of any penalties, fees, charges, or credits as provided for herein or under the franchise and for the performance by a cable operator of all its obligations.

C.B. The rights reserved to the Town with respect to the security fund are in addition to all other rights of the Town, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding, or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Town may otherwise have.

**~~4.04.310 — EQUALIZATION OF CIVIC CONTRIBUTIONS.~~**

~~In the event the city grants an overlapping franchise under terms and conditions materially different from those in the existing franchise, then the franchisee may, within six (6) months of the grant of such overlapping franchise, elect to come under the same terms and conditions as the overlapping franchise. Said election shall apply to the franchisee's entire franchise area and shall become effective upon the franchisee's filing with the clerk of the city its written acceptance, and its agreement to be legally bound to comply with all terms and conditions applicable to the overlapping franchise. (Ord. 315 § M24, 1996)~~

**4.04.320 INCONSISTENCY.**

If any portion of this chapter should be inconsistent or conflict with any rule or regulation now or hereafter adopted then to the extent of the inconsistency or conflict the rule or regulation of the applicable federal or state agency shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect. The remaining provisions of this chapter shall not be affected thereby.

## MEMORANDUM

DATE: September 21, 2020  
TO: Woodway Town Council  
FROM: Emily Miner, Office of the Town Attorney  
RE: Comcast Franchise

---

### **Background**

On behalf of the Town, Elana Zana and Emily Miner, attorneys at Ogden Murphy Wallace, have been assisting the Town with negotiations for a new cable franchise with Comcast. Initial negotiations were conducted as part of a consortium with several other jurisdictions which allowed for more efficient and effective negotiating of the general pieces of the franchise. Once the agreement framework was established, each jurisdiction finalized the agreement to address their particular needs.

### **Analysis**

While the Town has latitude over some aspects of the franchise agreements, other aspects such as franchise fees are regulated by State and Federal regulations. The Town has worked to ensure that provisions of the agreement provide adequate protection of the public Rights-of-Way and the Town's ability to require movement of utilities consistent with Town needs.

Specifically, the new agreement with Comcast includes:

1. Requirement that Comcast continues to pay 5% of their gross revenues from cable services to the Town as a franchise fee.
2. A 30% discount rate from regularly published rates for individuals who are considered low income by federal standards, and who are either permanently disabled, or over 65 years of age.
3. Continued complimentary cable service to all Town-owned buildings, subject to an election by Comcast to discontinue upon 120 days' notice.
4. Collection of \$0.25/subscriber/month to support the Government Access Channel.
5. Terms requiring compliance with general use of the ROW requirements and permitting.
6. Indemnification and Insurance provisions.
7. Design standards and requirements for strand-mounted Wi-Fi devices on Comcast's own cables.

Additionally, Comcast will be executing a separate commitment letter with the Town promising to extend its cable system to service the proposed mixed-use Urban Village district at Point Wells.

Finally, Elana and Emily also amended WMC Chapter 4.04 to bring it up to date with industry standards and ensure compliance with revised state and Federal laws.

### **Next Steps and Recommendation**

Per state law, franchises require two “readings” before the Council. Thus, this initial reading is an opportunity for Council to review the franchise and ask questions.

Additionally, per WMC 4.04.070, Council is required to conduct a public hearing to determine whether the franchise renewal meets the requirements set out in WMC 4.04.070(B). The hearing is also an opportunity for the public to provide testimony regarding the franchise.

Looking forward, at the October 5, 2020, Council will hold a public hearing and take action on the franchise, side letter, and code amendments.

The Town Attorney Office’s recommendation is that the franchise is consistent with Town codes and state and federal law and thus, should be approved at the October 5, 2020 meeting.

EFM:efm

# **TOWN OF WOODWAY**

## **ORDINANCE 2020-618**

AN ORDINANCE OF THE TOWN OF WOODWAY GRANTING COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, REPAIR AND UPGRADE THE CABLE SYSTEM UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA FOR THE PURPOSE OF PROVIDING CABLE SERVICES, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS ORDINANCE AND APPLICABLE LAW.

WHEREAS, the Town of Woodway (Town) has a legitimate and necessary regulatory role in ensuring the availability of cable communications service, and reliability of cable systems in its jurisdiction, the availability of local programming (including public, educational and Governmental Access programming) and quality Customer service; and

WHEREAS, diversity in Cable Service programming is an important policy goal and Grantee's Cable System offers a wide range of programming services; and

WHEREAS, the Town is authorized by applicable law to grant one or more nonexclusive Franchises to construct, operate and maintain cable systems within the boundaries of the Town; and

WHEREAS, in consideration of the mutual promises made herein, and other good and valuable consideration as provided herein, the receipt and adequacy of which are hereby acknowledged, the Town and Grantee do hereby agree as follows;

NOW, THEREFORE, the Town Council of the Town of Woodway does hereby ordain as follows:

**CABLE FRANCHISE**

**Between**

**TOWN OF WOODWAY, WASHINGTON**

**And**

**COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC**

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## INTRODUCTORY STATEMENT

**CABLE TELEVISION FRANCHISE.** This Cable Television Franchise is entered into in Woodway, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Town of Woodway, Washington a municipal corporation, hereinafter (the “the Town”) and Comcast Cable Communications Management, LLC who is hereinafter known as (“Grantee”). The Town and Grantee are sometimes referred to hereinafter collectively as the “parties.”

## **SECTION 1. - DEFINITIONS**

For the purposes of this Franchise and the Exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein when indicated with the text of the Franchise by being capitalized. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined, or those defined, but not capitalized within the text shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 **“Access” or “Access Programming”**

includes Governmental or educational Access, collectively, and means the availability for Noncommercial use by various governmental and educational agencies, institutions and organizations, in the community, including the Town and its designees, of particular channels on the Cable System to receive and distribute Video Programming to Subscribers, as permitted under applicable law. “Governmental Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 **“Access Channel”**

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

1.3 **“Activation” or “Activated”**

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

1.4 **“Affiliated Entity” or “Affiliate”**

when used in connection with Grantee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control of Grantee.

1.5 **“Bad Debt”**

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

1.6 **“Basic Service”**

is the lowest level of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.

1.7 **“Broadcast Signal”**

means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite dishes or any other means.

1.8 “Cable Act”

means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as amended by the Telecommunications Act of 1996, and any amendments thereto.

1.9 “Cable Operator”

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

1.10 “Cable Service”

means the one-way transmission to Subscribers of Video Programming, or other programming service and Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service.

1.11 “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 that includes Video Programming and that is provided to multiple Subscribers within a community, but such term does not include:

- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) a facility that serves Subscribers without using any public right-of-way;
- (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. Section 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. Section 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (4) an open video system that complies with Section 653 of the Cable Act; or
- (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, the term “Cable

System” shall mean Grantee’s Cable System in the Franchise Area unless the context indicates otherwise.

- 1.12 “Capital Contribution”  
means a fee required by this franchise for Access facilities pursuant to 47 U.S.C 542(g)(2)(C).
- 1.13 “Channel”  
means a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.
- 1.14 “Customer Service Representative” or “CSR”  
shall mean any person employed by Grantee to assist, or provide service to, Customers, whether by answering public telephone lines, writing service or installation orders, answering Customers’ questions, receiving and processing payments, or performing other Customer service-related tasks.
- 1.15 “Designated Access Provider”  
means the entity or entities designated by the Town to manage or co-manage Access Channels and facilities. The Town may be a Designated Access Provider.
- 1.16 “Downstream Channel”  
means a Channel capable of carrying a transmission from the Headend to remote points on the Cable System.
- 1.17 “Dwelling Unit”  
means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.
- 1.18 “FCC”  
means the Federal Communications Commission or its lawful successor.
- 1.19 “Fiber Optic”  
means a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying electric lightwave pulses.
- 1.20 “Franchise”  
means the document, in which this definition appears, that is executed between the Town and Grantee, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.
- 1.21 “Franchise Area”



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

1.22 “Franchise Fee”

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

- (1) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment on both utilities and Cable Operators or their services, but not including a tax, fee, or assessment that is unduly discriminatory against Cable Operators or cable Subscribers);
- (2) Capital costs that are required by the Franchise to be incurred by Grantee for Educational or Governmental Access facilities, including the support required in Section 9.6;
- (3) Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
- (4) Any fee imposed under Title 17, United States Code.

1.23 “Grantee”

means Comcast Cable Communications Management, LLC or its lawful successor, transferee or assignee.

1.24 “Gross Revenues”

1.24.1 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the Town. Gross Revenues include, by way of illustration and not limitation:

- (1) monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- (2) installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- (3) fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Town;

- (4) converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- (5) Advertising Revenues as defined herein;
- (6) late fees, convenience fees, and administrative fees, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- (7) revenues from program guides;
- (8) Franchise Fees;
- (9) FCC Regulatory Fees;
- (10) commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Town; and
- (11) any Cable Service revenues that may develop in the future, whether or not anticipated, and consistent with GAAP.

1.24.2 “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System Subscribers within the Town and shall be allocated on a pro rata basis using Grantee’s Cable System Subscribers within the Franchise Area in relation to the total number of Grantee’s Cable Service subscribers covered under the advertising arrangement. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast Effectv (“Effectv”) or their successors associated with sales of advertising on the Cable System within the Town allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

1.24.3 “Gross Revenues” shall not include:

- (1) actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- (2) any taxes and/or fees on services furnished by Grantee imposed by an municipality, state, or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- (3) fees imposed by any municipality, state, or other governmental unit on Grantee, including but not limited to Public, Educational and Governmental (PEG) Fees;
- (4) launch fees and marketing co-op fees; and

- (5) unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.
- 1.24.4 To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state, or local law. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Town. To the extent discounts reduce revenues includable for purposes of calculating Franchise Fees, Grantee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payment of Franchise Fees to the Town. The Town reserves its right to review and to challenge Grantee's calculations.
- 1.24.5 Grantee reserves the right to change the allocation methodologies set forth in this definition of Gross Revenues in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the Town within sixty (60) days of making such changes, and as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to 1.24.6 below.
- 1.24.6 Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing, the Town reserves its right to challenge Grantee's calculation of Gross Revenues, including the application of GAAP to Franchise Fees and the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.
- 1.24.7 For the purposes of determining Gross Revenue Grantee shall use the same method of determining revenues under GAAP as that which Grantee uses in determining revenues for the purpose of reporting to national and state regulatory agencies.

1.25 "Headend" or "Hub"

means any Facility for signal reception and dissemination on a Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and Facilities.

1.26 “Leased Access Channel”

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

1.27 “Locally Scheduled Original Programming”

means Government Access or Educational Access programming that is created by the Town or their designated access provider(s) including edited coverage of live programming. Such Locally Scheduled Original Programming shall not be considered as qualifying as such after three (3) cablecasts (initial, first repeat and second repeat). Automated Video Programming filler, such as cablecasts of highways and roads, or video bulletin boards does not constitute Locally Scheduled Original Programming that qualifies herein.

1.28 “Pay Service” or “Premium Service”

means Video Programming or other programming service choices (such as movie Channels or pay-per-view programs) offered to Subscribers on a package tier, per-Channel, per-program or per-event basis.

1.29 “Person”

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

1.30 “Rights-of-Way”

means land acquired or dedicated for public roads and streets including easements dedicated for compatible use and consistent with Section 621 of the Cable Act, but does not include:

- (1) State highways;
- (2) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public, unless specifically used as a utility corridor;
- (3) Structures, including poles and conduits, located within the right-of-way;
- (4) Federally granted trust lands or forest board trust lands;
- (5) Lands owned or managed by the state parks and recreation commission; or

- (6) Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

1.31 “Service Interruption”

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

1.32 “State”

means the State of Washington.

1.33 “Subscriber” or “Customer”

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

1.34 “Town”

means the Town of Woodway, Washington, a municipal corporation, of the State of Washington.

1.35 “Tier”

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

1.36 “Video Programming”

means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, or cable programming provider.

## **SECTION 2. - GRANT OF FRANCHISE**

### **2.1 Grant**

2.1.1 The Town hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair and upgrade the Cable System for the purpose of providing Cable Services, subject to the terms and conditions set forth in this Franchise and applicable law. This Franchise shall constitute both a right and an obligation to fulfill the obligations set forth in the provisions of this Franchise.

2.1.2 Grantee, 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 all lawfully enacted applicable construction codes and regulations. This Franchise is intended to convey limited rights and

interests only as to those streets in which the Town has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide Grantee any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise does not deprive the Town of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the Town's streets covered by this Franchise, including without limitation the right to perform work on its roadways, Right-of-Way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

- 2.1.3 This Franchise is subject to and shall be governed by all applicable provisions now existing or hereafter amended of federal, State and local laws and regulations, including but not limited to the Woodway Municipal Code and engineering, construction and development standards. This Franchise is subject to the general lawful police power of the Town affecting matters of municipal concern. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the Town, including but not limited to WMC Chapters 4.04 and 12.04. Grantee agrees to comply with the provisions of the Town ordinances provided that in the event of a conflict between the provisions of ordinances and the Franchise, the express provisions of the Franchise shall govern.
- 2.1.4 Grantee agrees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of Grantee that is a Cable Operator of the Cable System in the Franchise Area, as defined herein, or directly involved in the management or operation of the Cable System in the Franchise Area, will comply with the terms and conditions of this Franchise.
- 2.1.5 No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:
  - (1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the ordinances and laws of the Town.
  - (2) Any permit, agreement or authorization required by the Town for Rights-of-Way users in connection with operations on or in Rights-of-Way or public property; or
  - (3) Any permits or agreements for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise.

2.1.6 This Franchise authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6), as amended. Neither the Town nor the Grantee waive any rights they may have under applicable law as to the lawful use of the Cable System for other services and the regulatory obligations related to such services.

## 2.2 Use of Rights-of-Way

2.2.1 Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, through, below and along the Rights-of-Way within the Franchise Area, such wires, cables (both coaxial and Fiber Optic), conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures regarding placement and installation of Cable System facilities in the Rights-of Way.

2.2.2 Grantee must follow the Town-established requirements, as well as all the Town codes, ordinances and other regulations regarding placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way. Grantee must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. To protect public health, safety and welfare, the Town may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Rights-of-Way; may deny access if Grantee is not willing to comply with the Town's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the Town, or that is installed without prior Town approval of the time, place or manner of installation (including charging Grantee for all the costs associated with removal); and the Town may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. Grantee shall assume its costs (in accordance with applicable law) associated with any requirement of the Town in the exercise of its police powers, to relocate its Cable System facilities located in the Rights-of-Way.

## 2.3 Term

2.3.1 This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall remain in full force and effect for a period of ten (10) years from and after the effective

date of this Ordinance, as specified in SECTION 19. - , subject to acceptance of this Franchise by Grantee pursuant to 18.16.

2.3.2 The grant of this Franchise shall have no effect on any ordinance in effect prior to the effective date of this Franchise to indemnify or insure the Town against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees (for any prior years) that were due and owed under a prior franchise and the franchise ordinance.

#### 2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or franchises granted by the Town or its predecessors to any Person to use any property, Right-of-Way, easement, including the right of the Town to use same for any purpose it lawfully deems fit, including the same or similar purposes allowed Grantee hereunder. The Town may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems, as the Town deems appropriate.

#### 2.5 Grant of Other Franchises

2.5.1 Grantee acknowledges and agrees that the Town reserves the right to grant one or more additional franchises subsequent to this Franchise to provide Cable Service or wireline video programming service within the Franchise Area; provided, the Town agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: Franchise Fees; insurance; system build-out requirements; security instruments; Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization so long as the regulatory and financial burdens on each entity are materially equivalent. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section so long as the Town does not have lawful authority to regulate such wireless broadband networks within the Franchise Area.

2.5.2 The modification process of this Franchise as provided in the preceding paragraph shall only be initiated by written notice by Grantee to the Town regarding specified franchise obligations. Grantee's notice shall address the following:



- (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise;
- (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments;
- (3) providing text for any proposed Franchise amendments to the Town, and
- (4) a written explanation of why the proposed amendments are necessary.

2.5.3 Upon receipt of Grantee's written notice as provided in Section 2.5.2, the Town and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Town and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the parties shall amend this Franchise to include the modifications. Notwithstanding any modification of this Franchise pursuant to the provisions of this Section 2.5, should any entity, whose authorization to provide Cable Services or similar wireline video programming service resulted in a triggering of the amendments under this Section, fail or cease to provide such services within the Town, the Town may provide ninety (90) days' written notice to Grantee of such fact, and the Town and Grantee shall enter into good faith negotiations to determine the original terms, conditions and obligations of this Franchise shall be reinstated and fully effective.

2.5.4 In the event an application for a new cable television franchise is filed with the Town proposing to serve the Franchise Area, in whole or in part, the Town shall provide notice of such application to the Grantee.

2.5.5 In the event that a wireline multichannel video programming distributor, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or wireline video services within the Town without a Cable Service franchise or other similar lawful authorization granted by the Town, then Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend this Franchise. Such petition shall:

- (1) indicate the presence of such wireline competitor;
- (2) identify the Franchise terms and conditions for which Grantee is seeking amendments;

- (3) provide the text of all proposed Franchise amendments to the Town,
- (4) identify all material terms or conditions in the applicable state or federal authorization which are substantially more favorable or less burdensome to the competitive entity.

The Town shall not unreasonably withhold consent to Grantee's petition.

## 2.6 Familiarity with Franchise

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

## 2.7 Effect of Acceptance

By accepting the Franchise, Grantee:

- (1) acknowledges and accepts the Town's legal right to issue and enforce the Franchise;
- (2) agrees that it will not oppose the Town's intervening to the extent it is legally entitled to do so in any legal or regulatory proceeding affecting the Cable System;
- (3) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and
- (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

## 2.8 Police Powers

In accepting this Franchise, Franchisee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the Town to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the Town pursuant to such power. The Town Council expressly reserves unto itself all its police powers to adopt ordinances necessary to protect the health, safety and welfare of the general public in relation to the rights granted under this Franchise. The Town reserves the right to use, occupy and enjoy any public rights-of-way or other public places for any purpose, including without limitation the construction of any water, sewer or storm drainage system, installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian

trails, sidewalks, other pedestrian amenities, other Town services and other public street improvement projects.

2.9 Franchise Area

Grantee shall provide Cable Services, as authorized under this Franchise, within the Franchise Area in accordance with line extension and density provisions as provided herein.

2.10 Reservation of Rights

Nothing in this Franchise shall

- (1) abrogate the right of the Town to perform any public works or public improvements of any description,
- (2) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Town, or
- (3) be construed as a waiver or release of the rights of the Town in and to the Rights-of-Way.

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

3.1 Franchise Fee

As compensation for the use of the Town's Rights-of-Way, Grantee shall pay as a Franchise Fee to the Town, throughout the duration of this Franchise, an amount equal to five percent (5.0%) of Grantee's Gross Revenues or such greater or lesser percentage subject to subsection 3.8 below. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise.

3.2 Payments

Grantee's Franchise Fee payments to the Town shall be computed quarterly for the preceding quarter. Each quarterly payment shall be due and payable no later than forty-five (45) days after the end of the preceding quarter. The quarters shall end respectively on the last day of March, June, September and December.

3.3 Acceptance of Payment

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

3.4 Franchise Fee Reports

Each payment shall be accompanied by a written report to the Town on a form commonly used by Grantee, verified by an officer of Grantee, containing an

accurate statement in summarized form, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall include all Gross Revenues of the Cable System.

### 3.5 Audits

No more than on an annual basis, upon thirty (30) days' prior written notice, the Town shall have the right to conduct an independent audit of Grantee's financial records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided Grantee cooperates in making all relevant records available upon request, the Town will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous six (6) years. Any additional amounts due to the Town as a result of the audit shall be paid within sixty (60) days following written notice to Grantee, and Grantee's agreement that the audit findings are correct, which notice shall include a copy of the audit findings. If a Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the Town receives the payment. If the audit shows that Franchise Fees have been underpaid, by five percent (5%) or more in a calendar year, Grantee shall pay the cost of the audit in an amount up to \$12,500 for the first year of the audit and \$5,000 for the next two years of the audit period.

### 3.6 Financial Records

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

### 3.7 Underpayments

In the event any payment is not received within forty-five (45) days from the end of the scheduled payment period, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the Town receives the payment. The period of limitation for recovery of franchise fees payable hereunder shall be six (6) years from the date on which payment by the Grantee was due.

### 3.8 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time throughout the term of this Franchise, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, the parties

hereby agree to amend the Franchise after written notice to Grantee, and a public meeting to discuss same, provided that all wireline cable systems in the Franchise Area over which the Town has jurisdiction are treated in an equivalent manner. In the event that at any time throughout the term of this Franchise, the Town is limited by federal law to collecting an amount which is less than five percent (5%) of Gross Revenues in any twelve (12) month period, Grantee may request reduction of the Franchise Fee payments to the Town in accordance with federal law and the parties hereby agree to amend the Franchise unless the Town would be covered under grandfathered provisions under federal law to keep the Franchise Fee at five percent (5%) of Gross Revenues.

3.9 Payment on Termination

If this Franchise terminates for any reason, Grantee shall file with the Town within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by Grantee since the end of the previous fiscal year. Within forty five (45) days of the filing of the certified statement with the Town, Grantee shall pay any unpaid amounts as indicated. If Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the Town may do so by utilizing the funds available in a letter of credit or other security provided by Grantee pursuant to Section 5.3 or may exercise any other remedies provided to the Town in law or equity to collect on such financial obligations.

3.10 Service Packages

In addition to the requirements elsewhere in this Franchise, Town acknowledges that, during the term of this Franchise, Grantee may offer to its Subscribers, at a discounted rate, a bundled or combined package of services consisting of Cable Services, which are subject to the Franchise Fee referenced above, and other services that are not subject to that Franchise Fee. To the extent discounts reduce revenues includable for purposes of calculating Franchise Fees, Grantee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payment of Franchise Fees to the Town. As between Cable Services and non-Cable Services, revenues shall be allocated on a pro rata basis. If a dispute arises between the parties regarding this matter, Town and Grantee will meet within twenty (20) days' notice and discuss such matters in good faith in an attempt to reach a reasonable compromise thereof.

3.11 Alternative Compensation

In the event that Franchise Fees are prohibited by any law or regulation, Franchisee shall pay to the Town that amount, if any, which is determined by applicable law.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses by any

law of the Town, the State or the United States including, without limitation, sales, use, utility, property, permits and other taxes, or business license fees.

#### **SECTION 4. - ADMINISTRATION AND REGULATION**

The Town shall be vested with the power and right to administer and enforce this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right of administration, or any part thereof, to the extent permitted under federal, State and local law, to any agent in the sole discretion of the Town.

##### **4.1 Rates and Charges**

Grantee rates and charges related to or regarding Cable Services shall be subject to regulation by the Town to the full extent authorized by applicable federal, State and local laws. Customer billing shall be itemized by service(s) per FCC Regulation 76.309(B)(ii)(A) and 76.1619 or as amended. Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

##### **4.2 No Rate Discrimination**

All Grantee rates and charges shall be published (in the form of a publicly-available rate card), made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions. Grantee shall not deny cable service or otherwise discriminate against customers or others. Grantee shall apply its rates in accordance with governing law. Nothing herein shall be construed to prohibit:

- (1) The temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;
- (2) The offering of reasonable discounts to similarly situated Persons;
- (3) The offering of rate discounts for either Cable Service generally; or
- (4) The offering of bulk discounts for Multiple Dwelling Units.
- (5) Grantee offers to continue through a voluntary initiative a discount of 30% from its published rate card rate to Subscribers for Basic Cable Services or the Basic portion of Expanded Basic as part of their service (provided they are not already receiving a package discount) who are deemed low income by federal standards and who are either permanently disabled or 65 years of age or older, provided that such individual(s) are the legal owner or lessee/tenant of their Dwelling Unit. This subsection shall not prohibit Grantee from providing a larger discount or offering the discount to other economically or physically challenged Subscribers. If Grantee determines to discontinue such discount,

Grantee shall provide the Town at least ninety (90) days written notice.

4.3 Filing of Rates and Charges

Throughout the term of this Franchise, Grantee shall maintain on file with the Town a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

4.4 Time Limits Strictly Construed

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

4.5 Performance Evaluation

4.5.1 Performance evaluation sessions may be held at any time upon request by the Town during the term of this Franchise following Grantee's repeated failure to comply with the terms of this Franchise or no more than once in any annual period.

4.5.2 All evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.

4.5.3 Topics that may be discussed at any evaluation session may include those issues surrounding Grantee's failure to comply with the terms of the Franchise, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein and further provided that this subsection need not be followed before other legal or equitable remedies within this Franchise.

4.5.4 During evaluations under this subsection, Grantee agrees to participate in such evaluation sessions described in this Section 4.5 and to provide such information or documents as the Town may request to perform the evaluation.

4.6 Leased Access Channel Rates

Upon request, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee.

4.7 Late Fees

- 4.7.1 For purposes of this subsection, any assessment, charge, cost, fee or sum, however, characterized, that Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable local, State and federal laws.
- 4.7.2 Grantee's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the subscribers.

## **SECTION 5. - FINANCIAL AND INSURANCE REQUIREMENTS**

### **5.1 Indemnification**

#### **5.1.1 General Indemnification**

Grantee, at its sole cost and expense, shall indemnify, defend and hold the Town, its officers, officials, boards, commissions, authorized agents, representatives, and employees, harmless from any action or claim for injury, damage, loss, liability, settlement, proceeding, judgment, or cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any acts, errors, or omissions, or from the conduct of Grantee's business, including all damages in any way arising out of, or by reason of, any construction, excavation, erection, operation, maintenance, repair or reconstruction, or any other act done under this Franchise, by or for Grantee, its authorized agents, or by reason of any neglect or omission of Grantee its authorized agents or its employees, except only such injury or damage as shall have been occasioned by the sole negligence or intentional misconduct of the Town. Grantee shall consult and cooperate with the Town while conducting its defense of the Town. Said indemnification obligations shall extend to any settlement made by Grantee.

#### **5.1.2 Concurrent Negligence**

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the Town, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence.

#### **5.1.3 Indemnification for Relocation**

Grantee shall indemnify, defend and hold the Town, its elected officials, officers, authorized agents, boards, and employees, harmless for any damages, claims, additional costs, or expenses payable by, the Town related to, arising out of, or resulting from Grantee's failure to remove,



adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any lawful relocation required by the Town. Pursuant to Section 5.1.1, the provisions of this Section 5.1.3 shall specifically include, but are not limited to, claims for delay, damages, costs, and/or time asserted by any contractor performing public work for or on behalf of the Town.

5.1.4 Additional Circumstances

Grantee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost and expense, including court and appeal costs and attorneys' fees and expenses in any way arising out of any failure by Grantee to secure consents from the owners, authorized distributors or franchisees/licensors of programs to be delivered by the Cable System, provided however, that Grantee will not be required to indemnify the Town for any claims arising out of the use of Access Channels by the Town and/or its Designated Access Providers or use by the Town of the Emergency Alert Cable System.

5.1.5 Procedures and Defense

If a claim or action arises, the Town or any other indemnified party shall tender the defense of the claim or action to Grantee, which defense shall be at Grantee's expense. The Town may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims financially affecting the Town without the Town's written approval that shall not be unreasonably withheld.

5.1.6 Duty of Defense

The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this Section 5.1.

5.1.7 Duty to Give Notice

The Town shall give Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. The Town's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event any such claim arises, the Town or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the obligation and duty to defend any claims arising thereunder, and the Town shall cooperate fully therein.

5.1.8 Separate Representation

If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the Town and the counsel

selected by Grantee to represent the Town, Grantee shall select other counsel without conflict of interest with the Town.

5.1.9 Prior Franchises

The grant of this Franchise shall have no effect on Grantee's duty under the prior franchises to indemnify or insure the Town against acts and omissions occurring during the period that the prior franchises were in effect, nor shall it have any effect upon Grantee's liability to pay all Franchise Fees which were due and owed under prior franchises.

5.1.10 Waiver of Title 51 RCW Immunity

Grantee's indemnification obligations shall include indemnifying the Town for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this indemnification for actions brought by the aforementioned employees is limited solely to claims against the Town arising by virtue of Grantee's exercise of the rights set forth in this Franchise. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115; provided however, the forgoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees or other third party. The obligations of Grantee under this Section 5.1.10 have been mutually negotiated by the parties hereto.

5.1.11 Inspection

Inspection or acceptance by the Town of any work performed by Grantee at the time of completion of construction or maintenance projects shall not be grounds for avoidance of any of these covenants of indemnification.

5.1.12 Damage to Grantee Facilities

Notwithstanding any other provisions of this Section 5.1, Grantee assumes the risk of damage to its Cable System facilities located in or upon the Rights-of-Way from activities conducted by the Town, and agrees to release and waive any and all such claims against the Town except to the extent any such damage or destruction is caused by or arises from the gross negligence, intentional misconduct or criminal actions of the Town. In no event shall the Town be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with the Town's acts or omissions.

5.1.13 Environmental Liability

Grantee shall at its own cost, expense, and liability, comply with all

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

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

## 5.2 Insurance Requirements

### 5.2.1 General Requirement

Grantee shall procure and maintain for the duration of the Franchise and as long as Grantee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Agreement and use of the rights-of-way in the coverage amounts described below:

- (1) Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than two million dollars (\$5,000,000) per occurrence. The general aggregate limit shall be no less than five million dollars (\$5,000,000). Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Town shall be named as an additional insured under the Grantee's Commercial

General Liability insurance policy with respect this Franchise using ISO endorsement CG 20 12 05 09 or CG 20 26 07 04, or substitute endorsement providing at least as broad coverage.

- (2) Commercial Automobile Liability Insurance with minimum combined single limits of at least two million dollars (\$2,000,000) each occurrence and five million dollars (\$5,000,000) aggregate with respect to each of Grantee's owned, hired and non-owned, or any other vehicles assigned to or used in any activities authorized under or used in conjunction with this Franchise. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Umbrella or excess liability insurance in the amount of five million dollars (\$5,000,000). Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Grantee's Commercial General Liability and Automobile Liability insurance. The Town shall be named as an additional insured on the Grantee's Excess or Umbrella Liability insurance policy. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

#### 5.2.2 Primary Insurance

Grantee's Commercial General Liability, Automobile Liability, and Excess or Umbrella Liability, insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the Town. Any insurance, self-insurance, or self-insured pool coverage maintained by the Town shall be excess of the Grantee's insurance and shall not contribute with it. The Town, and the Town's officers, officials, boards, commissions, agents, representatives, and employees are to be covered as, and have the rights of, additional insured's with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation, upgrade, maintenance, repair, replacement or ownership of the Cable System;

#### 5.2.3 Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

#### 5.2.4 Verification of Coverage

Grantee shall furnish the Town with original certificates and a copy of the

amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Franchise. Upon request by the Town, the Grantee shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all subcontractors' coverage.

5.2.5 Subcontractors

Grantee shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the Grantee provided insurance as set forth herein, except the Grantee shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Grantee shall require that the Town is an additional insured on the Subcontractor's Commercial General liability insurance policy.

5.2.6 Notice of Cancellation

Grantee shall provide the Town with written notice of any policy cancellation within two business days of their receipt of such notice.

5.2.7 Failure to Maintain Insurance

Failure on the part of Grantee to maintain the insurance as required shall constitute a material breach of Franchise, upon which the Town may, after giving five business days' notice to Grantee to correct the breach, terminate the Franchise or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Town on demand.

5.2.8 Grantee – Self-Insurance

If the Grantee is self-insured or becomes self-insured during the term of the Franchise, Grantee or its affiliated parent entity shall comply with the following:

- (1) provide the Town, upon request, a copy of Grantee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available;
- (2) Grantee or its parent company is responsible for all payments within the self-insured retention; and
- (3) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

5.2.9 No Limitation of Liability

Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.

5.3 Security

- 5.3.1 Grantee shall provide a performance bond (“Performance Bond”) in the amount of twenty-five thousand dollars (\$25,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore the Town Rights-of-Way and other property. The Performance Bond shall be in a standard industry form. Grantee shall pay all premiums or costs associated with maintaining the Performance Bond and shall keep the same in full force and effect at all times. Except as expressly provided in Section 5, Grantee shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence.
- 5.3.2 If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then the Town may request and Grantee shall establish and provide within thirty (30) days from receiving notice from the Town, to the Town, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the Town in the amount of twenty-five thousand dollars (\$25,000).
- 5.3.3 If a letter of credit is furnished pursuant to subsection (B), the letter of credit shall then be maintained at that same amount until the uncured breach is resolved.
- 5.3.4 After the giving of notice by the Town to Grantee and expiration of any applicable cure period, the letter of credit or Performance Bond may be drawn upon by the Town for purposes including, but not limited to, the following:
- (1) Failure of Grantee to pay the Town sums due under the terms of this Franchise;
  - (2) Reimbursement of costs borne by the Town to correct Franchise violations not corrected by Grantee;
  - (3) Liquidated damages assessed against Grantee as provided in this Franchise.
- 5.3.5 The Town shall give Grantee written notice of any withdrawal from the Performance Bond or letter of credit. Within ten (10) days following notice that a withdrawal has occurred from the Performance Bond or letter of credit, Grantee shall restore the Performance Bond or letter of credit to the full amount required under this Franchise. Grantee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the letter of credit or otherwise limit the Town's recourse to any other remedy available at law or in equity.

- 5.3.6 Grantee shall have the right to appeal to the hearing examiner for reimbursement in the event Grantee believes that the Performance Bond or letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Town erroneously or wrongfully withdraws from the Performance Bond or letter of credit, as determined by either the hearing examiner or judicial appeal, shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in The Wall Street Journal as of the date of such decision.
- 5.3.7 If any Performance Bond or letter of credit delivered pursuant thereto 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 Performance Bond or letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in this Section.

#### 5.4 Bonds

Grantee, at its expense, shall comply with all of the applicable construction or maintenance bonding requirements provided for in the Town Code, permit requirements, or development standards officially adopted by the Town for work in the Rights-of-Way.

### **SECTION 6. - CUSTOMER SERVICE**

#### 6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619.

#### 6.2 Subscriber Privacy

Grantee shall comply with privacy rights of Subscribers in accordance with applicable law.

#### 6.3 Customer Service Agreement and Manual

6.3.1 Grantee shall provide to Subscribers an accurate, comprehensive service agreement (currently called the work order) and Customer installation packet (currently called the Install Package) for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

- (1) Grantee's procedure for investigation and resolution of Subscriber service complaints.

- (2) Services to be provided and rates for such services.
  - (3) Billing procedures.
  - (4) Service termination procedure.
  - (5) A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.
  - (6) A complete statement of the Subscriber's right to privacy.
  - (7) Equipment policy.
  - (8) The name, address and phone number of the Customer care department that is responsible for handling cable questions and complaints for Grantee.
- 6.3.2 A copy of the installation packet shall be available to each Subscriber at the time of initial installation and any reconnection or Cable Service upgrade requiring a home visit by Grantee (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber. Within thirty (30) days following material policy changes, information regarding the changes will be provided to Subscribers.

## **SECTION 7. - REPORTS AND RECORDS**

### 7.1 Open Records

- 7.1.1 Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Town. In addition to any other records that may be provided for under any other section of this Franchise, the Town, including the Town's Clerk-Treasurer and Public Works Director or their designees, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates, which are reasonably related to the administration or enforcement of the terms of this Franchise, or Grantee's use and location within the Town's Rights-of-Way. Records subject to this Section 7.1 include, without limitation, FCC filings on behalf of Grantee, its parent corporations, or Affiliates which directly relate to the operation of the Cable System in the Town; SEC filings; listing of Cable Services, rates, and Channel line-ups; Cable Services added or dropped; Channel changes; the net number of Subscribers and the number of Subscribers added and terminated; all planned construction activity; Right-of-Way route maps (including overhead and underground trunk and distribution facilities in a GIS format); beginning and ending plant miles; total homes passed for the previous twelve (12) months; and any significant technological changes



occurring in the Cable System; federal and State reports; reports of Subscriber complaints in the Town and how such complaints are resolved.

- 7.1.2 Grantee shall not deny the Town access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate, or a third party. The Town may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Town, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may require that the Town or its designee inspect them at Grantee's local offices. For purposes of clarity, any requirements to provide as-built maps shall not be considered too voluminous or unable to be copied for security purposes with respect to the provisions of this subsection 7.1.2. If any books or records of Grantee are not kept in a local office and are not made available in copies to the Town or its designee upon written request as set forth above, and if the Town determines that an examination of such records is necessary or appropriate for the performance of any of the Town's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

## 7.2 Confidentiality

- 7.2.1 Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. That said, Grantee does agree to provide all information reasonably required to verify compliance with the material terms of the Franchise. If Grantee believes that any documents are confidential or proprietary, Grantee shall be responsible for clearly and conspicuously identifying the work as 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 State or federal law.
- 7.2.2 As a public agency, records and information provided to or otherwise used by the Town may be subject to a request submitted under the state Public Records Act. In such an event, Grantee agrees to cooperate fully with the Town in satisfying the Town's duties and obligations under the Public Records Act, subject to Grantee's rights under this Franchise and RCW 42.56.540. If a request is received for records Grantee has submitted to the Town and has identified as confidential, proprietary or protected trade secret material, the Town will use its best efforts to provide Grantee with notice of the request in accordance with RCW 42.56.540 and a reasonable time (of no less than 10 days) within which Grantee may seek an injunction to prohibit the Town's disclosure of the requested record. The

Town shall comply with any injunction or court order obtained by Grantee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order, Grantee shall reimburse the Town for any fines or penalties imposed for failure to disclose such records as required hereunder. Nothing in this Section 7.2 prohibits the Town from complying with RCW 42.56, or any other applicable law or court order requiring the release of public records, and the Town shall not be liable to Grantee for compliance with any law or court order requiring the release of public records. The Town is not required to assert on Grantee's behalf any exemption based on trade secret, proprietary or confidential information, provided, however, the Town may assert such exemption if the Town itself believes in good faith that an exemption applies to the requested records. Grantee agrees to defend, indemnify and hold the Town, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the assertion of an exemption to disclosure under the Public Records Act based upon records claimed or identified by Grantee as confidential, proprietary or protected trade secret material. The provisions of this section shall survive the expiration or termination of this Franchise.

### 7.3 Annual Reports

Upon request, and no more than ninety (90) days after the end of the first quarter, Grantee shall submit to the Town a written report, which shall include the following information:

- 7.3.1 A Gross Revenue statement for the preceding calendar year and all deductions and computations for the period, and such statement shall be reviewed by a certified public accountant.
- 7.3.2 A summary of the previous year's activities regarding the development of the Cable System, including, but not limited to, homes passed, beginning and ending plant miles and the total number of Subscribers.

## **SECTION 8. - PROGRAMMING**

### 8.1 Broad Programming Categories

Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available.

- (1) Educational programming;
- (2) News, government, weather and information;
- (3) Sports;

- (4) General entertainment including movies;
- (5) Foreign language programming; and
- (6) Children's programming.

## 8.2 Deletion of Broad Programming Categories

8.2.1 Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without prior written notice to the Town.

8.2.2 In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee shall follow the guidelines of federal law.

## 8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene under applicable federal, State or local laws.

## 8.4 Services for the Disabled

Grantee shall comply with the Americans With Disabilities Act and any amendments or successor legislation thereto.

## 8.5 Parental Control Device

Upon request by any Subscriber, Grantee shall make available at no charge a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

## 8.6 Complimentary Cable Service

The Town acknowledges that Grantee currently provides certain complimentary video services to schools, libraries, and municipal buildings, without charge. Grantee will voluntarily continue to provide this complimentary service, provided that the facilities are already served or are within 125 aerial service feet or 60 underground trench feet (a Standard Installation) of Grantee's Cable System, excluding those buildings or portions of buildings that house or occupy prison/jail populations. Grantee agrees to voluntarily continue, until it elects to discontinue, the provision of complimentary services. At such time as Grantee elects to discontinue the provision of complimentary services, Grantee agrees that it will do so only after providing Town with at least one hundred twenty (120) days' prior written notice. Such notice shall document the proposed offset or service charges so that the Town can make an informed decision as to whether to keep the services. Upon written notice from Grantee, the Town shall be given the full one hundred twenty (120) days to review the list of outlets receiving complimentary

service and shall have the right to discontinue receipt of all or a portion of the outlets receiving complimentary service provided by Grantee in the event Grantee elects to discontinue the provision of complimentary service as set forth herein. In the event applicable law is overturned in whole or in part by action of the FCC or through judicial review, the Town and Grantee will meet promptly to discuss what impact such action has on the provision of the in-kind cable-related contributions to which this section applies.

## 8.7 New Technology

- 8.7.1 If there is a new technology, Cable Service program offering, programming delivery method or other such new development that Grantee in its sole discretion decides to beta test or trial on a limited basis in the marketplace, and such a test or trial is suited to the size and demographics of the Town, Grantee shall be allowed by the Town to conduct the trial or beta test in the Town so long as such a test is technically feasible.
- 8.7.2 If there is a new technology that in the Town's opinion would enhance substantially the quality or quantity of programming available to Subscribers on the Cable System, Grantee shall, at the request of the Town, investigate the feasibility of implementing said technology and report to the Town the results of such investigation within ninety (90) days from the date of such request.

## **SECTION 9. - PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

### 9.1 Access Channels

- 9.1.1 As of the Effective Date of this Franchise, Grantee is providing and maintaining one (1) Standard Digital (SD) Access Channel (currently on channel 21) to Subscribers within the Franchise Area. Both parties acknowledge the SD Access Channel has been provided by the Grantee with programming from a regional PEG programmer from outside of the Town. Channel 21 is the Access Channel, receiving a feed from the City of Edmonds Government Access Channel. Grantee agrees that it will continue making this SD Access Channel available to Subscribers within the Franchise Area throughout the term of this Franchise. Grantee hereby agrees that upon request from the Town, Grantee shall program Channel 21 with a different regional PEG programmer, provided that such modification is technically feasible.
- 9.1.2 At any time during the term of this Franchise, the Town may elect to undertake responsibility to control and operate the SD Access Channel provided under this Franchise. To do so, the Town shall provide the

Grantee written notice of its intent to control and operate the SD Access Channel. Upon receipt of the written notice, the Town and the Grantee shall meet to discuss and mutually agree upon an implementation plan to activate said Channel controlled and operated by the Town. Upon activation of the Town's controlled SD Access Channel, it shall replace the existing City of Edmonds' Government Access Channel.

9.1.3 The Town acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirements listed in subsection 9.1.1 above. This is accomplished through the inclusion of other regional access programming within the regional channel line-up that services the Franchise Area. The Grantee will endeavor to provide the Subscribers in the Franchise Area with the other regional access channels so long as the programmers offer them for use on the Cable System.

9.1.4 In the event Grantee makes any change in the Cable System and related equipment and facilities or in signal delivery technology, which change directly or indirectly affects the signal quality or transmission of any Access Channel programming or services, Grantee shall, at its own expense, take necessary technical steps, acquire new equipment so that the Access facilities and equipment may be used as intended to ensure that delivery of Access Video Programming signals is not diminished or adversely affected, including, among other things, so that live and taped programming can be cablecast with as good or better signal quality than existed prior to such change.

## 9.2 Simulcast High Definition (HD) Access Channel

9.2.1 The Grantee agrees to simulcast the one (1) SD Government Access Channel in HD (HD PEG Channel) format after the Town's maintains an average of five (5) hours per-day, five days per-week of Locally Scheduled Original Programming. For the purposes of this subsection, character-generated programming (i.e., community bulletin Town Councils) shall not satisfy, in whole or in part, this programming requirement. Once the Town meets or exceeds this programming requirement, the Grantee shall provide the HD PEG Channel under the following conditions:

- (1) Upon the Town's request, the Grantee shall have one-hundred and twenty (120) days to activate the simulcast HD PEG Channel.
- (2) The Grantee shall be responsible for all capital engineering costs associated with fulfilling the request to activate the simulcast HD PEG Channels.

- (3) The Town or any Designated Access Provider shall be responsible for acquiring all equipment necessary to produce programming in HD.
- (4) Upon activation of the simulcast HD PEG Channel, Grantee shall own and maintain the encoder equipment used to transmit the HD signal from Town Hall (the demarcation point).
- (5) The Town shall provide the HD PEG Channel signal as specified by the Grantee's engineering standards, as amended by the Grantee from time to time because of changes in technology.

9.2.2 The Town acknowledges that the simulcast HD PEG Channel will be available only to those Subscribers who elect to subscribe to Grantee's high-definition Cable Service, receive a HD set-top converter, and pay all fees associated therewith.

9.2.3 Grantee shall have sole discretion to determine the Channel placement of the simulcast HD PEG Access Channel within its HD channel line-up.

### 9.3 Management and Control of Access Channels

9.3.1 The Town may authorize Designated Access Providers to control, operate, and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. The Town or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise, the FCC, federal and State law. Nothing herein shall prohibit the Town from authorizing itself to be a Designated Access Provider.

9.3.2 Grantee shall cooperate with the Town and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access Channels.

### 9.4 Location and Quality of Access Channels

9.4.1 The Standard Definition Access Channel provided to Subscribers under this Franchise shall be included by Grantee as a part of the lowest Tier of service provided to all Subscribers in the Franchise. Grantee agrees to use reasonable efforts to place the Access Channel in the same vicinity as other local government access channels. Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments.

9.4.2 In addition, Grantee will make reasonable efforts to locate the HD Access Channel provided pursuant to Section 9.2 in a location on its HD Channel lineup that is easily accessible to Subscribers.

- 9.4.3 The parties agree that it is the responsibility of the Designated Access Provider(s) to provide a quality Access signal, to the Grantee at the point of demarcation, which meets or exceeds the FCC technical standards. Notwithstanding the forgoing, the Grantee agrees that it will deliver to subscribers an Access signal of the same quality it receives from the Designated Access Provider(s) without degradation and in accordance with the FCC technical standards. There shall be no restriction on Grantee's technology used to deploy and deliver Standard Definition or High Definition signals so long as the requirements of the Franchise are otherwise met. FCC technical standards shall be used for all testing and assessment of quality under this section.
- 9.4.4 Grantee shall provide Headend and hub equipment and routine maintenance and repair and replace, if necessary, any of Grantee's equipment required to carry the Access signal to and from the Town's and any other Access origination point and the Grantee's Headend and hubs for the Access Channels.
- 9.4.5 If Grantee makes a change in its Cable System and related equipment and facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or method or type of transmission of Access programming or services, Grantee shall take necessary technical steps and provide necessary technical assistance, including the acquisition of all necessary equipment and full training of access personnel, to ensure that the capabilities of Access Channels and delivery of Access programming are not diminished or adversely affected by such change. For example, live and taped programming must be cablecast with as good or better signal quality than existed prior to such change.
- 9.5 Access Channel Identification/Location/Relocation/Bill Insertions
- 9.5.1 Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall provide to the Town a minimum of sixty (60) days notice, and use its best efforts to provide ninety (90) days notice, prior to any relocation of its Access Channels, unless the change is required by federal law, in which case Grantee shall give the Town the maximum notice possible.
- 9.5.2 Grantee, upon request, and when space is available, shall provide the Town the opportunity to include two bill insertions per year. The Town or Designated Access Providers shall be responsible for the costs of printing its bill insertions, the cost of inserting the information into Grantee's bills and for any incremental postage costs. Bill insertions must conform to Grantee's reasonable mailing requirements. Grantee shall be provided an opportunity to review and approve all Access bill insertions.
- 9.6 Support for Access Capital Costs

- 9.6.1 Upon one hundred twenty (120) days notice from the Town, Grantee shall collect and remit to the Town, as support for any lawful capital PEG use, twenty-five cents (\$.25) per Subscriber per month, payable quarterly with Franchise Fees as a “PEG Contribution.” The PEG Contribution shall not be treated as franchise fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from franchise fee payments made to the Town under this Franchise or applicable law. Upon sixty (60) days written notice to Grantee, the Town Council may direct Grantee to no longer collect such PEG Fee from Subscribers.
- 9.6.2 If during the Term of this Franchise, the Town Council determines that there is a need for additional capital equipment to support the Access Channels, then based upon that demonstrated need, both parties shall meet to determine how to adjust the PEG Contribution and if the remaining term of this franchise does not accommodate the full capital needs of the Town, both parties may review the possibilities of extending the term of the franchise. Such amount shall be the same amount required of all other Cable Operators in the Franchise Area. The Town agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the PEG Contribution to the price of Cable Services and to collect the PEG Contribution from Subscribers. In addition, as permitted in 47 C.F.R. §76.985, all amounts paid as the PEG Contribution may be separately stated on Subscriber’s bills as a government access capital equipment fee.
- 9.6.3 The Town shall have discretion to allocate the PEG Contribution in accordance with applicable law. To the extent the Town makes access capital investments using Town funds prior to receiving the monthly PEG Contribution funds, the Town is entitled to apply the subsequent monthly PEG Contribution payments from Grantee toward such Town capital investments. The Town agrees that the PEG Contribution may be treated as a separate line item on Subscriber bills in accordance with applicable federal law.
- 9.6.4 Upon the Grantee’s written request, the Town shall submit a report no more frequently than annually on the use of the Town specific Access Channels and capital PEG Fee. The Town shall submit a report to the Grantee within one hundred twenty (120) days of a written request. The Grantee may review the records of the Town regarding the use of the PEG Contribution.
- 9.6.5 Unless the Town determines to no longer use the Access Channels, the Town shall dedicate the time, personnel and other resources needed to operate the Access Channels designated herein.

## 9.7 Technical Quality



Grantee shall maintain all Access channels as required by FCC standards. Grantee shall ensure that any Access Channels carried in High Definition format can also be viewed in Standard Definition format by Subscribers who do not receive High Definition service or do not have High Definition equipment, with the same quality and functionality as commercial channels of the same format, whether through simulcasting the programming in Standard and High Definition, or by means of another technical solution used by Grantee for other commercial programmers carried on the channel lineup.

## 9.8 Return Connectivity

9.8.1 When the Town provides notice to the Grantee concerning its election to control and operate the SD Access Channel, the Town shall designate its proposed Access facility location. Within sixty (60) days of receiving notice, the Grantee shall review its facilities and records and provide an estimate of costs associated with the construction and activation of a fiber optic return line capable of transmitting Video Programming to enable the distribution of the Town's Access programming to Subscribers on the provided SD Access Channel. The return line shall run from a location to be determined by the Town to the Grantee's facilities. Within a reasonable time-period of receiving the Town's directive, the Grantee shall construct and activate a return line in accordance with the cost estimate previously provided. The Town agrees to pay the actual costs of the return line within ninety (90) days of construction / activation and receipt of an invoice from the Grantee. The parties agree that the Town may use the PEG Contribution to pay for the construction of this return line.

9.8.2 Once activated and throughout the remaining term of this Franchise, Grantee shall continue to provide and maintain such return line, as per federal law.

## 9.9 Guide Selection

Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the Access Channels shall be treated in a non-discriminatory fashion consistent with applicable laws so that Subscribers will have ready access to Access Channels. To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital channel guide, Grantee will make available to Town the ability to place Access Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service. Grantee will be responsible for providing the designations and instructions necessary for the Access Channels to appear on the EPG and the Town will be responsible for providing Access content in a format that is compatible with the EPG. All costs and operational requirements for the EPG provider shall be the responsibility of the Town. Grantee is not responsible

for operations of the EPG provider. Grantee shall, to the maximum extent possible, make available to the Town any price discounts Grantee may have in place with third party vendors that offer such programming guide services. The cost of this guide service may be funded in any manner consistent with applicable law.

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

### **10.1 Construction**

- 10.1.1 Grantee hereby acknowledges that the Town Code contains construction requirements for the usage of the Rights-of-Way and agrees to abide by such construction requirements, including but not limited to those contained in WMC 4.04 and 12.04.
- 10.1.2 Grantee shall perform all maintenance, construction, repair, upgrade and reconstruction necessary for the operation of its Cable System in accordance with applicable laws, regulations, ordinances, Town standards and provisions of this Franchise. Prior to doing such work Grantee shall apply for, and obtain, appropriate permits from the Town, and give appropriate notices to the Town, and Grantee shall pay all applicable fees upon issuance of the requisite permits by the Town to Grantee. As a condition of any permits so issued, the Town officials may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic. All facilities constructed or operated under this Franchise shall be installed and maintained at such places in or upon such rights-of-way as shall not interfere with the free passage of traffic and the free use of adjoining property, and shall conform to federal standards, state requirements, and Town regulations. To the extent practicable and economically feasible, Grantee's construction and location of its facilities shall be of minimal impact to the Town streets and sidewalks located within the Rights-of-Way. All construction and maintenance of any and all of Grantee's facilities within the Rights-of-Way shall, regardless of who performs the construction, be and remain Grantee's responsibility.
- 10.1.3 Prior to beginning any construction, excavations, or significant repair, Grantee shall provide the Town with a construction schedule for work in the Rights-of-Ways as required by the Town's permitting regulations. Further, Grantee shall meet with the Town and other franchise and master permit holders and users of the Rights-of-Way upon written notice as determined by the Town, to discuss options regarding scheduling and coordinating construction in the Rights-of-Way.

10.1.4 Grantee may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, permittees and franchisees so as to reduce so far as possible the number of Rights-of-Way cuts within the Franchise Area.

10.1.5 In the event that emergency repairs are necessary, Grantee will make best efforts to contact the Town's Public Works Department 206-542-0183 prior to the repair, however Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

## 10.2 Location of Facilities

10.2.1 Prior to doing any digging or excavation in the Rights-of-Way, Grantee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to RCW 19.122.

10.2.2 Further, upon request from the Town in conjunction with the design of any Town project, and no more than thirty (30) days following such request, Grantee shall, at Grantee's expense, mark on the surface all of its located underground facilities within the area of the proposed excavation, including horizontal and vertical location.

## 10.3 Restoration of Rights-of-Way

10.3.1 When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way, Grantee shall promptly refill the opening and restore the surface as required by its permit. Grantee shall guarantee the durability and structural integrity of any street cut or repair made by it or its agents or subcontractors which is necessary for the construction, installation, operation, repair or maintenance of Grantee's Facilities; provided, that no action by an unrelated third party materially affects the integrity of the Grantee's street cut or repair. Grantee shall repair or replace, at no expense to the Town, any failed street cut or repair which was completed by the Grantee or its agents or subcontractors.

10.3.2 If Grantee excavates the surface of any Rights-of-Way, Grantee shall be responsible for restoration in accordance with applicable regulations regarding the Rights-of-Way and its surface within the area affected by the excavation. The Town may, after providing notice to Grantee, and Grantee's failure to respond within the agreed upon time, refill or repave any opening made by Grantee in the Rights-of-Way, and the expense thereof shall be paid by Grantee. In the event Grantee does not repair a Right-of-Way or an improvement in or to a Right-of-Way in a prompt

timeframe or as agreed to with the Town Engineer or any other department director as the Town may designate, the Town may repair the damage and shall be reimbursed its actual cost within thirty (30) days of submitting an invoice to Grantee. The cost of all repairs and restoration, including the costs of inspection and supervision shall be paid by Grantee. All of Grantee's work under this Franchise, and this Section in particular, shall be done in compliance with all laws, regulations and ordinances of the Town and State. All work by Grantee pursuant to this Section shall be performed in accordance with applicable Town standards.

10.3.3 The Public Works Director or any other department director as the Town may designate shall have final approval of the condition of such streets and public places after restoration.

#### 10.4 Maintenance and Workmanship

10.4.1 Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, stormwater, water pipes or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way by, or under, the Town's authority.

10.4.2 Grantee shall provide and use any equipment and appliances necessary to control and carry Grantee's signals so as to prevent injury to the Town's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in safe condition.

10.4.3 Grantee's transmission and distribution Cable System, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to unnecessarily hinder or obstruct the free use of Rights-of-Way, or other public property.

#### 10.5 Acquisition of Facilities

Upon Grantee's acquisition of facilities in any Rights-of-Way, or upon the addition or annexation to the Town of any area in which Grantee owns or operates any facility, such facilities shall immediately be subject to the terms of this Franchise.

#### 10.6 Relocation of Facilities

10.6.1 Nothing in this Franchise shall prevent the Town from constructing any public work or improvement. The Town may require Franchisee to relocate the Cable System within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of public welfare, health, or safety. For example, without limitation, the movement of or the request to locate Grantee's

facilities may be needed by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by for public purposes. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party entities. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections requested pursuant to this Section 10.6 shall be borne by Grantee. Such work shall be performed at Grantee's expense. Nothing contained within this Franchise shall limit Grantee's ability to seek reimbursement for relocation costs when permitted pursuant to RCW 35.99.060. In the case of a joint relocation project, Grantee shall be responsible for the cost of relocating its facilities.

10.6.2 If the Town determines that the project necessitates the relocation of Grantee's existing facilities, the Town shall provide Grantee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the Town shall consult with Grantee and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the Town's overall project construction sequence and constraints, to safely complete the relocation, and the Town shall endeavor to provide Grantee at least sixty (60) days' notice prior to the Relocation Date. Grantee shall complete the relocation by the Relocation Date, unless the Town or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the Town will make reasonable efforts to involve Grantee in the predesign and design phases of any Public Project. After receipt of the written notice containing the Relocation Date, Grantee shall relocate such facilities to accommodate the Public Project consistent with the timeline provided by the Town and at no charge or expense to the Town. Such timeline may be extended by a mutual agreement.

10.6.3 If Grantee fails to complete this work within the time prescribed above and to the Town's satisfaction, the Town may cause such work to be done and bill the cost of the work to Grantee, including all costs and expenses incurred by the Town due to Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, Grantee shall pay the Town. In any event, if Grantee fails to timely relocate, remove, replace, modify or disconnect Grantee's facilities and equipment, and that delay results in any delay damage accrued by or against the Town, Grantee will be liable for all documented costs of

construction delays attributable to Grantee's failure to timely act. Grantee reserves the right to challenge any determination by the Town of costs for construction delays related to an alleged failure to act in accordance with this subsection 10.6.

#### 10.7 Movement of Cable System Facilities for Other Entities

10.7.1 If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another entity with the rights to use the Rights-of-Way, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

10.7.2 At the request of any Person holding a valid permit (a "Permittee") and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. Grantee may require a reasonable deposit of the estimated payment in advance and may require that the cost be paid by the Permittee. Such payment is an exchange between the Grantee and the Permittee, and the Town will not be the administrator of these transactions.

#### 10.7.3 Reimbursement of Grantee Costs

Grantee specifically reserves any rights it may have under applicable law for reimbursement of costs related to undergrounding or relocation of the Cable System as described in this Section 10.7, and nothing herein shall be construed as a waiver of such rights.

#### 10.8 Reservation of Town Use of Right-of-Way

Nothing in this Franchise shall prevent the Town or public utilities owned, maintained or operated by public entities other than the Town from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System but insofar as the Cable System, or any portion thereof, is required to be relocated to accommodate the construction of the Town or public utility, Grantee shall be solely responsible for the costs associated with relocation.

#### 10.9 Rights-of-Way Vacation

If any Rights-of-Way or portion thereof used by Grantee is vacated by the Town during the term of this Franchise, unless the Town specifically reserves to Grantee the right to continue the use of vacated Rights-of-Way, Grantee shall, without delay or expense to the Town, remove its facilities from such Rights-of-Way, and

restore, repair or reconstruct the Rights-of-Way where such removal has occurred. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the Town, to restore, repair or reconstruct such Rights-of-Way, the Town may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the Town, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation.

#### 10.10 Removal of Discontinued Facilities

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

#### 10.11 Hazardous Substances

10.11.1 Grantee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Rights-of-Way.

10.11.2 Upon reasonable notice to Grantee, the Town may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

#### 10.12 Undergrounding of Cable

##### 10.12.1 Wiring

- (1) Where electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System

lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the Town. Such undergrounding activities shall be made in concurrence and cooperation with the other affected utilities. Related Cable System equipment, such as pedestals, must be placed in accordance with applicable Town Code requirements and rules. Except as otherwise stated in Section 10.12.1(2) below, in areas where electric or telephone utility wiring are aerial, Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

- (2) Unless otherwise permitted by the Town, Franchisee shall underground its wireline Facilities in all new developments and subdivisions, and any development or subdivision where utilities, other than electrical utilities, are currently underground.
- (3) Grantee shall utilize existing poles and conduit wherever possible. Grantee must obtain written permission from the Town to install any poles or other fixtures in the Right-of-Way. Such poles and/or fixtures shall be placed in such manner as not to interfere with the usual travel on such Right-of-Way.
- (4) This Franchise does not grant, give or convey to Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Town or any other Person.
- (5) Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by Grantee. Therefore, if Grantee constructs, relocates or places ducts or conduits in the Rights-of-Way it shall submit these plans to the Town in accordance with the Town's permitting process so as to provide the Town with an opportunity to request that Grantee place additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070. Other than submission of plans in accordance with the Town's permitting requirements, nothing set forth herein shall obligate Grantee to slow the progress of any future construction of the Cable System to accommodate the Town. In addition, Grantee agrees to cooperate with the Town in any other construction by Grantee that involves trenching or boring. The Town shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in Grantee's trenches and bores under this paragraph.
- (6) The Town shall not be required to obtain easements for Grantee.
- (7) Grantee may participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all utilities are being



converted to underground facilities. If funds from a Utility Local Improvement District are provided to aerial providers to offset the cost of undergrounding, excluding any entity operating under a tariff, Grantee's costs shall be proportionality paid for out of such funds.

10.12.2 Repair and Restoration of Property

If public property is disturbed or damaged by Grantee arising out of or in connection with the provision of Cable Service, Grantee shall restore the property to its former condition. Rights-of-Way or other Town property shall be restored in a manner and within a timeframe approved by the Town's Public Works Director, or his/her designee. If restoration of Rights-of-Way or other property of the Town is not satisfactorily performed within a reasonable time, the Public Works Director, or his/her designee, may, after prior notice to Grantee, or without notice where the disturbance or damage may create a risk to public health, safety or welfare, or cause delay or added expense to a public project or activity, cause the repairs to be made at Grantee's expense and recover the cost of those repairs from Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Grantee shall issue payment to the Town.

10.13 Interference

Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference or if such construction does not comply with Town codes or the permit, the Town may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question.

10.14 Standards

10.14.1 Grantee shall, at all times, install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries to the public. In furtherance thereof, Grantee must comply with the Town's traffic control requirements, including, for example, but without limitation, the use of signal devices, warning signs, barricades, and flaggers when appropriate. All of Grantee's structures, cables, lines, equipment and connections in, over, under and upon the rights-of-way and public ways or other places in the Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe condition.

10.14.2 Grantee must comply with all federal, State and local safety requirements, rules, regulations, standards, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and

repair of its Cable System. By way of illustration and not limitation, Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.14.3 All installations of equipment shall be permanent in nature, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. All structures and all lines, equipment and connections in, over, under, and upon the public Rights-of-Way or places of a Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

10.14.4 The Town reserves the general right to see that the cable facilities of Grantee are constructed and maintained in a safe condition.

10.14.5 Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of bundles of unused cables.

#### 10.15 Stop Work

On notice from the Town that any work is being conducted contrary to the provisions of this Franchise, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the Town. The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by mail at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

Grantee shall comply immediately with any stop work order issued by the Town.

#### 10.16 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be bonded in accordance with local ordinances, regulations and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws

governing the work performed by them. When pulling permits, a subcontractor must clearly state their connection to Grantee.

#### 10.17 Pole Transfers

If Grantee leases or otherwise utilizes a pole within the Rights-of-Way owned by a third party for attachment of Grantee's facilities, and such third party subsequently abandons the pole, for example by building a replacement pole, Grantee shall remove or relocate its facilities from such pole within sixty (60) days of notification from either the third party pole owner or the Town, provided that such other structure or place has been made available to the Grantee with sufficient time to allow for the relocation. If Grantee requires additional time to accomplish the removal and/or relocation, Grantee shall notify the Town in writing of the reasons for the additional time and its anticipated schedule.

#### 10.18 Strand Mounted WiFi Facilities

10.18.1 Subject to the provisions of this Franchise and applicable safety and electrical codes, Grantee is allowed to place strand mounted wireless facilities on its own cables strung between existing utility poles.

10.18.2 Grantee shall comply with the following requirements:

- (1) each strand mounted WiFi facility must be less than two and half (2.5) cubic feet in volume;
- (2) only one strand mounted WiFi facility is permitted per cable strung between two poles;
- (3) the WiFi strand mounted facilities shall be placed as close to the pole as technically feasible and may not be placed more than six (6) feet from the pole or in that portion of the Right-of-Way used for vehicular travel;
- (4) Grantee may not place an ancillary pole or ground mounted equipment to accommodate such strand mounted WiFi facilities, unless in the case of ground mounted equipment placed in pre-existing equipment cabinets;
- (5) the strand mounted WiFi facilities must comply with any applicable FCC requirements related to RF emissions and interference. Upon request, Grantee shall validate that such device meets FCC standards by producing documentation certified by an RF engineer; and
- (6) such strand mounted WiFi facilities must be removed if they cause a threat to public health or safety.

10.18.3 The deployment of these strand mounted WiFi facilities shall not be considered small cell facilities. To the extent Grantee performs work in the Rights-of-Way associated with the installation, maintenance,

construction, repair or upgrade of these strand mounted WiFi facilities, Grantee is required to obtain the appropriate permits consistent with SECTION 10. - . Further, such strand mounted facilities must be operated as part of the Cable System.

## **SECTION 11. - CABLE SYSTEM DESIGN**

### **11.1 Cable System Specifications**

Prior to the Effective Date of this Franchise, the parties acknowledge that Grantee undertook a voluntary upgrade of its Cable System to a hybrid fiber coaxial (HFC) fiber-to-the node system architecture, with Fiber Optic cable deployed from its Headend to nodes and tying into a coaxial system serving Subscribers. The Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted. Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise

### **11.2 Closed Captioning**

Equipment must be installed so that all closed captioned programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards.

### **11.3 No Income Discrimination**

Grantee'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.

### **11.4 Enforceability of Design and Performance Requirements**

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

### **11.5 System Review**

The Town may hold a hearing to review whether or not the Cable System and the Cable Services offered by Grantee are meeting demonstrated community needs and interests, taking into account the cost of meeting those needs and interests. The parties recognize that, as of the Effective Date, the Town is not permitted to require the provision of specific Video Programming pursuant to this subsection.

## **SECTION 12. - TECHNICAL STANDARDS**

## 12.1 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable technical standards authorized or required by law, including, FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

## 12.2 Cable System Performance Testing

12.2.1 Grantee shall, at its expense, perform all tests on its Cable System required by the FCC (including FCC required test points located within the Town) and shall maintain written records of its test results. Upon request, all FCC required technical performance tests may be witnessed by representatives of the Town. Copies of such test results will be provided to the Town upon request.

12.2.2 All required technical performance or other Cable System tests shall be at the expense of Grantee and may be witnessed by representatives of the Town. Upon request, Grantee will notify the Town before any required technical proof-of-performance or other testing occurs.

12.2.3 Grantee shall promptly take such measures as are necessary and diligently continue the same until completion in order to correct any performance deficiencies fully and to prevent their recurrence. Grantee's failure to correct deficiencies identified through this testing process shall be a violation of this Franchise. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

## **SECTION 13. - SERVICE EXTENSION**

### 13.1 Service Availability

13.1.1 In general, except as otherwise provided herein, Grantee shall provide a standard aerial installation of Cable Service within seven (7) days of a request by any Person within the Franchise Area. For standard underground installations scheduling shall be done within seven (7) days of a request for service. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

- (1) With no line extension charge except as specifically authorized elsewhere in this Franchise.

- (2) At a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot aerial drop or sixty (60) foot underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations.
- (3) At non-discriminatory monthly rates for all Subscribers, excepting commercial Subscribers, MDU Bulk Subscribers and other lawful exceptions to uniform pricing.

13.1.2 No Customer shall be refused service arbitrarily. However, for non-Standard Installations of service to Subscribers, or a density of less than twenty-five (25) residences per 5280 aerial cable-bearing strand feet of trunk or distribution cable, or sixty (60) residences per 5280 underground trench feet of trunk or distribution cable, Cable Service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. Grantee may require that the payment of the capital contribution in aid of construction be borne by such potential Subscribers be paid in advance. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Customers in the area in which service shall be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per cable-bearing mile of its trunk or distribution cable and whose denominator equals twenty-five (25) for an aerial extension or sixty (60) for an underground extension. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

13.1.3 Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise and all applicable laws.

## **SECTION 14. - STANDBY POWER AND EAS**

### **14.1 Standby Power**

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twenty-four (24) hours of emergency operation. Grantee shall maintain standby power supplies that will supply back-up power of at least four (4) hours duration throughout the distribution networks, and four (4) hours duration at all nodes and hubs. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources

necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Town no later than thirty (30) days following receipt of a request therefore.

#### 14.2 Emergency Alert Capability

14.2.1 In accordance with, and at the time required by, the provisions of FCC Regulations or other federal or State requirements, as such provisions may from time to time be amended, Emergency Alert System (“EAS”) implementation will be accomplished in compliance with the Washington State EAS Plan and to be in compliance with or further Homeland Security requirements or applications.

14.2.2 Grantee shall ensure that the EAS is functioning properly at all times in accordance with FCC regulations.

### **SECTION 15. - FRANCHISE BREACHES; TERMINATION OF FRANCHISE**

#### 15.1 Procedure for Remediating Franchise Violations

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

- (1) Respond to the Town in writing, contesting the Town’s assertion that a default has occurred, and requesting a hearing in accordance with subsection 15.1.2, below;
- (2) Cure the default; or
- (3) Notify the Town in writing that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. Upon five (5) business days’ prior written notice, either the Town or Grantee may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, the Town may set a hearing, in front of the hearing examiner, in accordance with subsection 15.1.2 below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee’s proposed completion schedule and steps are reasonable.

- 15.1.2 If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection 15.1.1(3), or denies the default and requests a hearing in accordance with subsection 15.1.1(1), or the Town orders a hearing in accordance with subsection 15.1.1(3), the Town shall set a public hearing, in front of the hearing examiner, to investigate said issues or the existence of the alleged default. The Town shall notify Grantee of the hearing in writing and such hearing shall take place no less than fifteen (15) days after Grantee's receipt of notice of the hearing. At the hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense. At any such hearing, the Town or the hearing examiner shall not unreasonably limit Grantee's opportunity to make a record that may be reviewed should any final decision of the Town be appealed to a court of competent jurisdiction. The determination as to whether a default or a material breach of this Franchise has occurred shall be within the Town's sole discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction.
- 15.1.3 If, after the public hearing in front of the hearing examiner, the hearing examiner determines that a default still exists, the hearing examiner shall order Grantee to correct or remedy the default or breach within fourteen (14) days of the hearing examiner's notification or within such other reasonable timeframe as the hearing examiner shall determine. In the event Grantee does not cure within such time as per the direction of the hearing examiner, the hearing examiner may:
- (1) Assess and collect monetary damages in accordance with this Franchise; and
  - (2) Recommend to the Town Council termination of this Franchise; or
  - (3) Recommend to the Town Council to pursue any other legal or equitable remedy available under this Franchise or applicable law.
- 15.1.4 The determination as to whether a violation of this Franchise has occurred pursuant to this Section herein shall be within the sole discretion of the hearing examiner. Any such determination by the hearing examiner shall be accompanied by a record, to which Grantee's contribution shall not be limited by the Town or the hearing examiner (i.e., the hearing examiner shall hear any interested Persons and shall allow Grantee an opportunity to be heard, to cross examine witnesses, to present evidence and to make additions to the hearing record). Any such final determination made by either the hearing examiner pursuant to 15.1.3(1) or the Town Council pursuant to 15.1.3(2) or 15.1.3(3) 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 final determination. The Town shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.



## 15.2 Alternative Remedies

- 15.2.1 No provision of this Franchise shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the Franchise 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 either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.
- 15.2.2 The Town specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the Town, its officers, officials, Boards, commissions, agents, or employees under federal, State, or local law including by example Section 635A of the Cable Act. Grantee shall not have any monetary recourse against the Town, 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.

## 15.3 Assessment of Liquidated Damages and Letter of Credit

- 15.3.1 Because it may be difficult to calculate the harm to the Town in the event of a breach of this Franchise by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages to the Town. To the extent that the Town elects to assess liquidated damages as provided in this Franchise, such damages shall be the Town's sole and exclusive remedy for such breach or violation and shall not exceed a time period of one hundred eighty (180) days. Nothing in this subsection is intended to preclude the Town from exercising any other right or remedy with respect to a breach that continues past the time the Town stops assessing liquidated damages for such breach.
- 15.3.2 Prior to assessing any liquidated damages, the Town shall follow the procedure provided in Section 5.3. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day of the violation.
- 15.3.3 Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts: two hundred dollars (\$200.00) per day for material departure from the FCC technical performance standards; one hundred dollars (\$100.00) per day for failure to provide the Access Channel or any equipment related thereto or funding which is required; one hundred dollars (\$100.00) per day for each material violation of the

Customer Service Standards; fifty dollars (\$50.00) per day for failure to provide reports or notices as required by this Franchise.

15.3.4 No cost to Grantee arising from a breach or violation of the Franchise shall be offset against any sums due the Town as a tax or franchise fee regardless of whether the combination of franchise fees, taxes and said costs exceeds five percent (5%) of Grantee's Gross Revenues in any 12-month period unless otherwise permitted by law.

15.3.5 Collection of Liquidated Damages

- (1) The Performance Bond and letter of credit referred to in Section 5.3 may be drawn upon by the Town for breach of a material provision after notice and opportunity to cure.
- (2) The Town shall give Grantee written notice of any intent to withdraw under this subsection. Within seven (7) days following receipt of such notice, Grantee shall restore the Performance Bond and letter of credit to the amount required under this Franchise. Grantee's maintenance of the Performance Bond or letter of credit shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the Performance Bond or letter of credit or otherwise to limit the Town's recourse to any other remedy available at law or in equity.
- (3) The assessment of liquidated damages does not constitute a waiver by the Town of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by the Town by reason of the breach of this Franchise or to seek specific performance.
- (4) Grantee's maintenance of the security required herein or by applicable code shall not be construed to excuse unfaithful performance by Grantee of this Franchise; to limit liability of Grantee to the amount of the security; or to otherwise limit the Town's recourse to any other remedy available at law or equity.

15.4 Revocation

15.4.1 This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured pursuant to Section 15.1, or in the event that:

- (1) Grantee attempts to evade or fails to perform any material provision of this Franchise or to practice any fraud or deceit upon the Town or Subscribers;
- (2) Grantee makes a material misrepresentation of fact in the negotiation of this Franchise;

- (3) Grantee abandons the Cable System, or terminates the Cable System's operations;
- (4) Grantee 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 Town, it being the intent that there shall be continuous operation of the Cable System; or
- (5) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Grantee's creditors, or all or part of Grantee's Cable System is sold under an instrument to secure a debt and is not redeemed by Grantee within thirty (30) days from said sale.

15.4.2 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 Grantee (at the option of the Town 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.

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

- (1) The Town 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 the Town to assume and be bound by all of the terms and provisions of this Franchise.

## 15.5 Abandonment; Purchase of the Cable System

### 15.5.1 Effect of Abandonment

If the Grantee abandons its System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Town, at its option, may:

- (1) operate the Cable System;
- (2) designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Town or until the Franchise is revoked and a new Franchisee is selected by the Town; or

- (3) obtain an injunction requiring the Grantee to continue operations. If the Town is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred, including reasonable attorney's fees and costs.

#### 15.5.2 What Constitutes Abandonment

The Town shall be entitled to exercise its options and obtain any required injunctive relief if:

- (1) the Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for seven (7) consecutive days, unless the Town authorizes a longer interruption of service; or
- (2) the Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

#### 15.6 Removal

- 15.6.1 In the event of termination, expiration, revocation or nonrenewal of this Franchise, and after all appeals from any judicial determination are exhausted and final, Town may order the removal of the System facilities from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Town. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.
- 15.6.2 However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other, permitted and lawful, non-cable services and has obtained or is in the process of obtaining a franchise or other local authority to maintain facilitates in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.
- 15.6.3 If Grantee fails to complete any required removal to the satisfaction of Town, Town may cause the work to be done, and Grantee shall reimburse Town for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of Town's expenses and costs, or Town may recover its expenses and costs from the security, or pursue any other judicial remedies for the collection thereof. Any expenses incurred in the collection by Town of such obligation shall be included in the monies due Town from Grantee, including reasonable attorneys' fees, court expenses and expenses for work conducted by Town's staff or agents.

## **SECTION 16. - FRANCHISE TRANSFER**

### **16.1 Transfer of Ownership or Control**

- 16.1.1 The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation or change of control; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the Town, which consent shall be by the Town Council, acting by ordinance or resolution.
- 16.1.2 Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of control of Grantee. The word “control” as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of Grantee shall make this Franchise subject to cancellation unless and until the Town shall have consented in writing thereto.
- 16.1.3 The parties to the sale, change in control or transfer shall make a written request to the Town for its approval of a sale or transfer or change in control and shall furnish all information required by law.
- 16.1.4 In seeking the Town’s consent to any change in ownership or control, the proposed transferee or controlling entity shall indicate whether it:
- (1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;
  - (2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;
  - (3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system;
  - (4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee or controlling entity, along with any other data that is lawfully required; and
  - (5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

- 16.1.5 The Town shall act by ordinance or resolution on the request within one hundred twenty (120) days of receipt of the FCC Form 394 application, provided it has received a complete application. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.
- 16.1.6 Within thirty (30) days of any transfer or sale or change in control, if approved or deemed granted by the Town, Grantee shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee or controlling entity, and the transferee or controlling entity shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which Grantee is not replaced by another entity, Grantee will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance. The approval of any change in control shall not be deemed to waive any rights of the Town to subsequently enforce noncompliance issues relating to this Franchise. For purposes herein to the extent that a change of control involves an entity that was not an Affiliate prior to the contemplated transaction, the Town's consent shall be required for such change in control.
- 16.1.7 In reviewing a request for sale or transfer or change in control, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer or change in control upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee. Upon any such request under this SECTION 16. - , the Town may condition such approval upon reimbursement of the Town's reasonable processing and review expense in connection with such request for sale or transfer or change in control.
- 16.1.8 Notwithstanding anything to the contrary in this subsection, the prior approval of the Town shall not be required for any sale, assignment, change in control or transfer of the Franchise or Cable System to an Affiliate of Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Town and must agree in writing to comply with all of the provisions of the Franchise including resolution of any non-compliance issues. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Town; provided that such pledge of

assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

**SECTION 17. - PROHIBITED PRACTICES, LOCAL EMPLOYMENT EFFORTS AND NOTICES**

17.1 Preferential or Discriminatory Practices Prohibited

Grantee shall not discriminate in its hiring, employment or promotion decisions. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment and non-discrimination provisions and requirements of federal, State and local laws, and rules and regulations relating thereto.

17.2 Notices

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

Grantee's address shall be:

Government Affairs  
Comcast of Cable Communications, LLC  
15815 25<sup>th</sup> Avenue West  
Lynnwood, Washington 98087

With a Copy To:

Government Affairs  
Comcast Cable  
400 Sequoia Dr, STE. 100  
Bellingham, WA 98226

the Town's address shall be:

23920 113<sup>th</sup> Place West  
Town of Woodway, Washington 98020  
Attn: Town Clerk-Treasurer

**SECTION 18. - MISCELLANEOUS PROVISIONS**

18.1 Cumulative Rights

Subject to applicable law, all rights and remedies given to the Town by this Franchise or retained by the Town herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the Town, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the Town and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

18.2 Costs to be Borne by Grantee

Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to any public meeting or hearing provided for pursuant to this Franchise. Such costs are incidental to the award of the Franchise and may not be offset against Franchise Fees.

18.3 Binding Effect

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

18.4 Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

18.5 Venue

The venue for any dispute related to this Franchise shall be United States District Court for the Western District of Washington or in Snohomish County Superior Court.

18.6 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington (as amended), the Cable Act as amended, any applicable rules, regulations and orders of the FCC, as amended, and any other applicable local, State and federal laws, rules, and regulations, as amended.

18.7 Captions

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

18.8 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either



party act toward third persons or the public in any manner that would indicate any such relationship with the other.

18.9 Waiver

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

18.10 Severability

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

18.11 Compliance with Federal, State and Local Laws

Grantee shall comply with applicable federal, state and local laws, rules and regulations, now existing or hereafter adopted.

18.12 Force Majeure

Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Grantee to anticipate and control, including war or riots, civil disturbances, pandemics, floods or other natural catastrophes, labor stoppages, slow downs, availability of materials, labor or equipment, power outages exceeding back-up power supplies or work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached.

18.13 Entire Agreement

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties.

18.14 Attorneys' Fees

If any action or suit arises in connection with this Franchise, attorneys' fees, costs and expenses in connection therewith shall be paid in accordance with the determination by the court.

18.15 Action of the Town or Grantee

In any action by the Town or Grantee mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

18.16 Acceptance

Within sixty (60) days of receipt of an executed Franchise from the Town, this Franchise shall be accepted by Grantee by filing with the Town Clerk an unconditional, written acceptance of all of the terms, provisions and conditions of this Franchise, in a form substantially similar to Exhibit A attached hereto. In addition to the written acceptance, Grantee shall furnish the additional insured endorsements and certificates of insurance required pursuant to Section 5.2 and the Performance Bond pursuant to Section 5.3. The failure of Grantee to file such an acceptance shall be deemed a rejection by Grantee and this Franchise shall then be voidable at the discretion of the Town.

18.17 No Third-Party Beneficiaries

There are no third party beneficiaries to this Franchise.

18.18 Termination of Prior Franchise

Grantee and the Town agree that this Franchise replaces and supersedes Ordinance 316 (the "Prior Franchise") with respect to Grantee; provided, however, that the grant of this Franchise shall have no effect on Grantee's obligations to indemnify or insure the Town against acts and omissions occurring during the period(s) that the Prior Franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees consistent with Washington State statute of limitations that were due and owed under a Prior Franchise.

**SECTION 19. - EFFECTIVE DATE**

This Franchise, being an exercise of a power specifically delegated to the Town legislative body, is not subject to referendum, and shall take effect five (5) days after the passage and publication of an approved summary thereof consisting of the title.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_ 2020 by the Town Council of the Town of Woodway.

TOWN OF WOODWAY

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Carla A. Nichols, Mayor

ATTEST:

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Heidi K. S. Napolitano, Clerk-Treasurer

APPROVED AS TO FORM:

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Greg Rubstello, Town Attorney

Date Filed with the Town Clerk:

Date Passed by the Town Council:

Date Published:

Effective Date:

EXHIBIT A

THE TOWN COUNCIL  
THE TOWN OF WOODWAY, WASHINGTON

In the matter of the application	:	
of Comcast Cable Communications	:	
Management,	:	
LLC for a franchise to construct	:	Franchise Ordinance No.: _____
operate and maintain facilities in,	:	
upon, over under, along, across and	:	
through the franchise area of the	:	ACCEPTANCE
the Town of Woodway, Washington	:	

WHEREAS, the Town Council of the Town of Woodway, Washington, has granted a franchise to Comcast Cable Communications Management, LLC, its successors and assigns, by enacting Ordinance No. \_\_\_\_\_, bearing the date of \_\_\_\_\_, 2020; and

WHEREAS, a copy of said Ordinance granting said franchise was received by Comcast Cable Communications Management, LLC on \_\_\_\_\_, 2020, from said Town of Woodway, Snohomish County, Washington.

NOW, THEREFORE, Comcast Cable Communications Management, LLC for itself, its successors and assigns, hereby accepts said Ordinance and the franchise contained therein and all the terms and conditions thereof, and files this, its written acceptance, with the Town of Woodway, Snohomish County, Washington.

IN TESTIMONY WHEREOF said Comcast Cable Communications Management, LLC has caused this written Acceptance to be executed in its name by its undersigned \_\_\_\_\_ thereunto duly authorized on this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST: COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_



15815 25th Ave W  
Lynnwood, WA 98087

The purpose of this letter agreement is to set forth a commitment between Comcast Cable Communications Management, LLC (“Comcast”) and the Town of Woodway, Washington (the “Town”) that is in addition to the renewed franchise agreement adopted by Ordinance No. \_\_\_\_\_ (hereinafter, “the Franchise”). This item has been negotiated in good faith and agreed to as part of the informal franchise renewal process pursuant to 47 U.S.C. § 546(h), and specifically relates to the unique community needs that exist in the Town.

**Point Wells Annexation and Future Cable System Extension**

Comcast shall extend, after annexation by the Town, its cable system to service the proposed mixed-use Urban Village district at Point Wells that is within the Town’s municipal urban growth area. The terms and conditions of our Franchise shall govern Comcast’s extension of service into the proposed development. The Town agrees to provide Comcast notification and access to all Point Wells development area joint trenching opportunities to ensure Comcast facilities are extended in the most efficient means possible.

The terms and conditions of this letter agreement are binding upon the Town and Comcast and their successors and assigns. It is understood that fulfillment of these obligations is also necessary and part of the consideration to secure the renewed Franchise.

Sincerely,

Comcast Cable Communications Management, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Town of Woodway, Washington

Acknowledged and agreed to this \_\_\_ day of \_\_\_\_\_, 2020.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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## MEMORANDUM

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**TO:** Town Council  
**FROM:** Eric Faison, Town Administrator  
**SUBJECT:** Proposed Utility Tax  
**DATE:** September 21, 2020  
**CC:** Carla Nichols, Mayor

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### **Background**

#### *Utility Tax*

At the last Council meeting, I identified for Council a new revenue option resulting from a recent Washington Supreme Court case that brought finality to the interpretation of laws related to city-imposed utility tax. Specially, the case related to a city's ability to impose a utility tax on another governmental entity's utility services within the city. The Court held that the services provided by municipalities (such as the water and sewer services provided by Olympic View) were essentially commercial services, not governmental services. As a result, municipal utility providers can be taxed in the same manner as any other commercial utility, and the Town can legally impose a six percent utility tax on Olympic View's water and sewer services.

City-imposed utility taxes are a normal part of general city revenues, rather than an exception. The Town, like most neighboring jurisdictions, imposes a six percent utility tax on telephone (including cellular), cable, natural gas, and solid waste utilities. Many cities also impose utility taxes on their own utilities, including water, sewer, and stormwater utilities.

It's important to remember that this tax would be on the utility provider, rather than the ratepayer. It is expected, however, that the utility's rates will be adjusted to account for the tax. If the tax is incorporated into the rate, we also must remember that the total tax paid will be based on an individual ratepayer's usage

#### *Franchise Fee*

Separately, our franchise agreement with Olympic View allows us to assess a franchise fee on the utility in the same amount charged by the City of Edmonds. Edmonds currently charges a fee of ten percent. If the Council elects to impose both the utility tax at six percent and the franchise fee at 10%, we estimate that the total new revenue to the Town will be approximately \$100,000 a year. If, as part of this code update, the Council decides to also impose a six percent utility tax to the stormwater utility, that would generate an additional \$5,000 a year.

## **Comparison**

During the meeting, Council requested additional information on how our utility rates would compare to other jurisdictions if the tax is imposed. Council also asked whether the tax would be regressive within the various zoning districts of the Town. In researching this issue, it quickly became apparent that these questions are much more difficult to answer than I anticipated.

For purposes of attempting to create an estimate, I used information contained on each jurisdiction's website and made a few phone calls. I also found a 2019 water/sewer rate comparison that was done by another jurisdiction. I tried my best to review the accuracy of the information.

With regard to franchise agreements, these agreements are often difficult to find. And in most cases, you need to read through each jurisdiction's franchise agreements with each water/sewer provider to determine the franchise fee imposed by each jurisdiction. And for jurisdictions with their own utilities, these fees are often buried in the overall operating expenses of the utility.

For these reasons, it is difficult to say exactly how much the tax will cost each ratepayer and exactly how much each jurisdiction charges in utility taxes and fees. But I have included below my best efforts at developing a comparison chart. As shown, based on the information that I've been able to obtain, it appears that, with the tax and franchise fee, the Town's total water and sewer rates will be roughly comparable with other jurisdictions.

As it relates to a comparison of water and sewer bills within Town, because the bills are based on usage, it is really difficult to make an accurate comparison. For example, someone on two acres with a large wooded lot may have a completely different bill than someone who has a watered, landscaped two-acre lot.

		Rate	Franchise Fee	Utility Tax	Total	Total Bill
<b>Woodway</b>						
	Water	32.10	10%	6%	37	110
	Sewer	63.14	10%	6%	73	
<b>Brier</b>						
	Alderwood Water	42.17	2%	0%	43	119
	Alderwood Sewer	75.72	0%	0%	76	
	Metro Sewer	58.93	0%	0%	59	102
<b>Edmonds</b>						
	Edmonds Water	39.61	0%	17%	46	97
	Edmonds Sewer	45.84	0%	10%	50	
	OV Water	32.10	10%	6%	37	83
	OV Sewer	39.64	10%	6%	46	
<b>Lynnwood</b>						
	Alderwood Water	42.17		6%	45	111
	Alderwood Sewer	62.67		6%	66	
<b>Medina</b>						
	Bellevue Water	45.06	4%	6%	50	126
	Bellevue Sewer	69.13	4%	6%	76	
<b>Mill Creek</b>						
	Alderwood Water	42.17			42	105
	Alderwood Sewer	62.67			63	
	Silver Lake Sewer	58.25			58	100
<b>MLT</b>						
	Water	45.89	0%	13.80%	52	106
	Sewer	48.45	0%	10%	53	
<b>Mulkiteo</b>						
	Water	40.59	0%		41	106
	Sewer	65.21	0%		65	
<b>Shoreline*</b>						
	Water	33.83	6%	0%	36	99
	Sewer	59.50	6%	0%	63	