

## **RECITALS**

### **SECTION 1 ENACTMENT**

- §1.01 Recitals
- §1.02 Short Title

### **SECTION 2 DEFINITIONS**

- §2.01 Terms

### **SECTION 3 GRANT OF AUTHORITY**

- §3.01 Use of Public Rights-of-Way
- §3.02 Additional Services/Compensation
- §3.03 Responsibility for Costs
- §3.04 Publication Costs
- §3.05 Franchise Non-Exclusive
- §3.06 Grant of Other Franchises; Competitive Equity

### **SECTION 4 SERVICE AVAILABILITY**

- §4.01 Service Availability
- §4.02 Annexations
- §4.03 Installation and Extension Policy

### **SECTION 5 TERM, EVALUATION AND RENEWAL**

- §5.01 Term of Franchise
- §5.02 Performance Evaluations
- §5.03 Renewal

### **SECTION 6 COMPLIANCE WITH CITY, STATE, AND FEDERAL LAWS**

- §6.01 Compliance with Applicable Laws
- §6.02 Subject to Police Power of the City
- §6.03 Notification in the Event of Preemptive Law

### **SECTION 7 CONDITIONS OF PUBLIC RIGHTS-OF-WAY OCCUPANCY**

- §7.01 Use
- §7.02 Excavation
- §7.03 Restoration
- §7.04 Relocation
- §7.05 Temporary Removal of Wire for Building Moving
- §7.06 Tree Trimming
- §7.07 Approval of Plans and Specifications
- §7.08 Underground Installation
- §7.09 Facilities Location
- §7.10 Work of Contractors and Subcontractors
- §7.11 Standards
- §7.12 Emergency Relocation

### **SECTION 8 INDEMNIFICATION AND LIABILITY**

- §8.01 Indemnification
- §8.02 Damages and Penalties
- §8.03 Expenses
- §8.04 Separate Counsel

## **SECTION 9 INSURANCE REQUIREMENTS**

- §9.01 Minimum Coverage
- §9.02 Increased Coverage
- §9.03 Endorsements
- §9.04 Workers' Compensation
- §9.05 Certificate of Insurance
- §9.06 Insurance Term
- §9.07 Issuing Companies

## **SECTION 10 PERFORMANCE BONDING**

- §10.01 Amount
- §10.02 Reservation of Rights
- §10.03 Endorsement

## **SECTION 11 CABLE SYSTEM CHARACTERISTICS**

- §11.01 Channel Capacity
- §11.02 New Construction
- §11.03 Cable System Capabilities
- §11.04 Equal and Uniform Service

## **SECTION 12 OPERATIONAL STANDARDS**

- §12.01 Compliance with Applicable FCC Rules
- §12.02 Technical Performance
- §12.03 Parental Guidance Control
- §12.04 Customer Service

## **SECTION 13 SIGNALS TO BE CARRIED**

- §13.01 Required Programming Categories
- §13.02 Service for the Hearing Impaired

## **SECTION 14 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

- §14.01 Initial Channels
- §14.02 Additional Channels
- §14.03 Delivery of PEG Programming
- §14.04 Management and Control of PEG Channels
- §14.05 Relocation of Access Channels
- §14.06 PEG Capital Support
- §14.07 Technical Assistance

## **SECTION 15 EMERGENCY USE OF THE CABLE SYSTEM**

- §15.01 Emergency Alert Capability

## **SECTION 16 FREE DROPS AND SERVICE**

- §16.01 Free Drops and Service
- §16.02 Low Income Discount

## **SECTION 17 PAYMENT TO CITY**

- §17.01 Amount and Time
- §17.02 Annual Financial Report
- §17.03 Right of Inspection of Records
- §17.04 Late Payment Interest Charge

- §17.05 Acceptance
- §17.06 Acts of Non-Collection
- §17.07 Additional Commitments Not Franchise Fees

## **SECTION 18 RECORDS AND REPORTS**

- §18.01 Notice
- §18.02 Books of Account
- §18.03 Confidentiality
- §18.04 Quarterly Reports
- §18.05 Annual Report
- §18.06 Performance Reports

## **SECTION 19 REGULATION OF RATES**

- §19.01 City Regulation of Grantee's Rates
- §19.02 Notice of Rates
- §19.03 Customer Billing

## **SECTION 20 EMPLOYMENT REQUIREMENTS**

- §20.01 Equal Opportunity in Employment

## **SECTION 21 PROHIBITION OF DISCRIMINATORY OR PREFERENTIAL PRACTICES**

- §21.01 No Rate Discrimination

## **SECTION 22 ASSIGNMENT OF FRANCHISE**

- §22.01 City Approval of Assignment Required
- §22.02 City Approval of Change of Control Required
- §22.03 Change in Control Terms
- §22.04 No Waiver

## **SECTION 23 FRANCHISE VIOLATIONS, NOTICE AND LIQUIDATED DAMAGES**

- §23.01 Notice of Default; Opportunity to Cure; Public Hearing
- §23.02 City Action in Event of Violation
- §23.03 Liquidated Damages
- §23.04 Arbitration
- §23.05 Force Majeure
- §23.06 Reservation of Rights
- §23.07 Venue and Jurisdiction
- §23.08 No Third-Party Beneficiaries
- §23.09 Captions

## **SECTION 24 REVOCATION OF FRANCHISE**

- §24.01 General
- §24.02 Method of Revocation
- §24.03 Grantee May Appeal City's Decision

## **SECTION 25 VALUATION**

- §25.01 Purchase Price of Cable System

## **SECTION 26 FAILURE OF CITY TO ENFORCE FRANCHISE**

- §26.01 No Waiver of Terms

## **SECTION 27 RECOURSE, UNDERSTANDING, CONSTRUCTION, AND SEVERABILITY**

- §27.01 Requirements and Enforcement
- §27.02 Grantee's Understanding
- §27.03 Construction of Franchise
- §27.04 Provisions Severable

## **SECTION 28 ACCEPTANCE OF FRANCHISE**

- §28.01 Method of Acceptance
- §28.02 Acceptance of Franchise Not a Waiver
- §28.03 Effective Date

## **ORDINANCE NO. 1249**

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO COMCAST OF PUGET SOUND, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AND FRANCHISE FOR THE TERM OF SEVEN YEARS, TO ERECT, MAINTAIN, AND OPERATE A CABLE SYSTEM IN THE CITY OF GIG HARBOR, WASHINGTON; TO ERECT, MAINTAIN, AND OPERATE ITS POLES, TOWERS, ANCHORS, WIRES, CABLES, ELECTRONIC CONDUCTORS, CONDUITS, MANHOLES, AND OTHER STRUCTURES AND APPURTENANCES IN, OVER, UNDER, ALONG, AND ACROSS THE PRESENT AND FUTURE PUBLIC RIGHTS-OF-WAY IN THE CITY; PRESCRIBING COMPENSATION FOR THE RIGHTS, PRIVILEGES, AND FRANCHISE CONFERRED HEREUNDER; PRESCRIBING THE CONDITIONS GOVERNING THE OPERATION OF THE BUSINESS INsofar AS IT AFFECTS THE USE OF PUBLIC PROPERTY FOR THE PURPOSE OF SUCH BUSINESS; INSTALLATION, UPGRADE, MAINTENANCE, AND OPERATION OF SAID CABLE SYSTEM AND BUSINESS; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, by Ordinance No. 1054, the City of Gig Harbor granted a five year franchise to Comcast of Puget Sound Inc., effective July 31, 2006; and

WHEREAS, Grantee has provided cable services within the City under such franchise; and

WHEREAS, Grantee has requested renewal of its franchise in accordance with Section 626 of the Cable Act to allow continued operation of its cable system in the City; and

WHEREAS, the City Council finds from all the evidence that Grantee meets the legal, financial, and technical qualifications, as well as other qualifications, necessary to assure that the residents of the City of Gig Harbor will receive the best available cable service provided in accordance with this franchise; and

WHEREAS, following proper notice, the City Council of the City of Gig Harbor held a public hearing on Grantee's request for renewal, at which time representatives of Grantee and interested citizens were heard in a full public proceeding affording opportunity for comment by any and all persons desiring to be heard; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the

City Council now deems it appropriate and in the best interest of the City and its inhabitants that the franchise be renewed with Grantee; now, therefore

THE CITY COUNCIL OF THE CITY OF GIG HARBOR DO ORDAIN AS FOLLOWS:

## **SECTION 1 ENACTMENT**

§1.01. Recitals. The facts and recitations set forth in the preamble of this Ordinance are hereby adopted, ratified, and confirmed.

§1.02. Short Title. This Ordinance shall be known and may be cited as “The City of Gig Harbor Cable Service Franchise Ordinance.” Within this document, it shall be referred to as the “Franchise.”

## **SECTION 2 DEFINITIONS**

§2.01. Terms. Terms, phrases, words, and abbreviations not defined herein shall be construed in accordance with the Cable Act, and if not therein defined, then in accordance with the ordinances of the City or their customary usage and meaning. When not inconsistent with the context, words used in the singular shall include the plural, words in the plural shall include the singular, and words used or defined in one tense or form shall include other tenses or derivative forms. The headings contained in this Franchise are to facilitate reference only, do not form a part of this Franchise, and shall not in any way affect the construction or interpretation hereof. The words “shall,” “will,” and “must” are mandatory, and the word “may” is permissive or directory.

- A. Affiliate. When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- B. Basic Cable Service. The Cable Service tier, which includes the retransmission of local television broadcast signals, as well as the PEG Channels required by this Franchise.
- C. Cable Act. The Cable Communications Policy Act of 1984 as amended and as may be amended from time to time during the term of this Franchise (47 U.S.C. § 521 et seq., as amended).
- D. Cable Operator. Any Person or group of Persons (i) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in the Cable System, or (ii) who otherwise Controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

- E. Cable Service. The transmission to Subscribers of Video Programming, or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.
- F. Cable System. 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, but is not limited to, Video Programming and which is provided to multiple Subscribers within a community, but such term does not include facilities that qualify under the exceptions put forth in 47 U.S.C. §522(7). Unless otherwise specified, "Cable System" is used in this Franchise to refer to the particular cable system authorized under the Franchise and operated by the Grantee or any Affiliate who is a Cable Operator within the Franchise Area.
- G. Channels. A portion of the frequency band capable of carrying a video programming service or a combination of video programming services, whether by analog or digital signal.
- H. City Engineer. The Gig Harbor City Engineer or his/her designee.
- I. Control. The actual working control of Grantee in whatever manner exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in Control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Grantee; or (ii) an agreement of the holders of voting stock or rights of the Grantee which effectively vests or assigns policy decision-making in any Person other than the Grantee.
- J. Days. Calendar days unless otherwise specified.
- K. Drop. An aerial or underground portion of the Cable System which extends from the tap to the ground block of the Subscriber's residence or business.
- L. Educational Access Channel. The non-commercial Channel(s) on the Cable System which are reserved for educational users and used in accordance with the rules and procedures established by the City or its designee.
- M. Expanded Basic Cable Service. The tier of cable programming services which is offered for an additional monthly charge over and above the charge for Basic Cable Service.
- N. Federal Communications Commission or FCC. The agency as presently constituted by the United States Congress or any successor agency with jurisdiction over Cable Service matters.

- O. Franchise Area. The incorporated area of the City and such additional areas as may be included in the corporate limits of the City during the term of this Franchise.
- P. Government Access Channel. The non-commercial Channel(s) on the Cable System which are reserved for government users and used in accordance with the rules and procedures established by the City or its designee.
- Q. Grantee. Comcast of Puget Sound, Inc., also known as Comcast, or its lawful successor.
- R. Gross Revenue. Any and all revenue as determined in accordance with generally accepted accounting principles (GAAP) derived by the Grantee or any Cable Operators of the Cable System, including an Affiliate of Grantee, from the operation of the Cable System to provide Cable Services within the Franchise Area.

By way of illustration and not limitation, Gross Revenue includes all fees charged Subscribers for any and all Cable Services provided by Grantee over the Cable System such as Basic Cable Service revenues, Expanded Basic Cable Service revenues, Premium Cable Service revenues, revenues derived from any other Cable Service tier, revenues resulting from fees charged to Subscribers for any optional, per-Channel, or per-program services, revenues from leased Access Channels, revenues received from any music services that are deemed to be a Cable Service over the Cable System, revenues from the sale of program guides; revenues resulting from connection, modification or reconnection to the Cable System in order to receive Cable Services, revenues from service calls, revenues resulting from the lease, rental, or use of Cable System equipment used to provide Cable Service, revenues from late, delinquent, or other administrative fees applied to Cable Services, and Franchise fees assessed on Cable Services which are collected from Subscribers.

Gross Revenues shall also include advertising sales, minus commissions due to advertising agencies that arrange for the advertising buy as calculated under GAAP and home shopping revenues to the extent consistent with GAAP.

Gross Revenues shall not include (i) any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency; (ii) unrecovered bad debt, and (iii) those payments described in subsection 14.06 of this Franchise.



- S. Other Programming Service. Information that a Cable Operator makes available to all Subscribers generally.
- T. Master Use Permit Ordinance. Chapter 12.18 of the Gig Harbor Municipal Code.
- U. Normal Operating Conditions. Those service conditions that are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, labor strikes or slowdowns, civil disturbances, telephone network outages which are not caused by Grantee or its Affiliate, commercial power outages, and severe or unusual weather conditions. Those conditions which are within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, changes in rates, regular or seasonal demand periods, changes in the billing cycles, changes in channel lineups that are within the Grantee's control, backup power during power outages, and maintenance or upgrade of the Cable System.
- V. Premium Cable Services. The delivery over the Cable System of programming to Subscribers for a fee or charge over and above the charge for Basic Cable Service or Expanded Basic Cable Programming Service on a per program, per Channel, per connection or per time period of connection basis.
- W. PEG Channels. All Public Access Channels, Educational Access Channels and Government Access Channels, collectively.
- X. PEG Programming. Non-commercial programming produced for cable casting over the PEG Channels.
- Y. Person. Any natural person, firm, partnership, association, corporation, company, joint stock company, trust corporation, governmental entity, or organization of any kind.
- Z. Public Access Channel. The non-commercial Channel(s) on the Cable System which are reserved for public users and used in accordance with the rules and procedures established by the City, or its designee.
- AA. Public Rights-of-Way. The surface, the air space above the surface, and the area below the surface of any public street, highway, freeway, land path, parkway, circle, lane, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation, repair, and maintenance of a Cable System. No reference in this Franchise to a Public Right-of-Way shall be deemed to be a representation or

guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation, repair, and maintenance of a Cable System, and the Grantee shall be deemed to gain only those rights which the City has the undisputed right and power to give.

AB. Subscriber. Any Person lawfully receiving Cable Service delivered by means of the Grantee's Cable System.

A.C. Video Programming. Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

### **SECTION 3 GRANT OF AUTHORITY**

§3.01. Use of Public Rights-of-Way. There is hereby granted to Grantee the right, privilege, and Franchise to have, acquire, construct, reconstruct, upgrade, repair, maintain, use, and operate in the City a Cable System, and to have, acquire, construct, reconstruct, repair, maintain, use, and operate in, over, under, and along the present and future Public Rights-of-Way of the City all necessary or desirable poles, towers, anchors, wires, cables, electronic conductors, underground conduits, manholes, and other structures and appurtenances necessary for the construction, maintenance, and operation of a Cable System in the Franchise Area. Grantee or Affiliates shall not install or construct facilities within the City's Public Rights-of-Way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

§3.02. Additional Services/Compensation. By granting this Franchise, the City does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered over the Cable System which are not Cable Services. Upon request, Grantee shall inform City of any non-Cable and/or Cable Services offered over the Cable System of which Grantee or its Affiliates are aware. By accepting this Franchise, Grantee does not waive any right it has under law to challenge the City's requirement for authorization to provide non-Cable Services.

§3.03. Responsibility for Costs. Except as expressly provided otherwise, any act that Grantee is required to perform under this Franchise shall be performed at its cost. If Grantee fails to perform work that it is required to perform within the time provided for performance or a cure period, the City may perform the work and bill the Grantee for documented costs. The Grantee shall pay the amounts billed within forty-five (45) days. The parties agree that any amounts paid pursuant to this Section are not Franchise fees and fall within one or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this section is intended to affect in any way (by expansion or contraction) Grantee's rights under applicable law governing rates.

§3.04. Publication Costs. Any and all costs of publication related to this Franchise which may be required by law or action of City Council shall be borne by Grantee, subject to the five percent (5%) limit established by Section 622 of the Cable Act. Any payments made by the City under this provision are to be reimbursed to the City within thirty (30) days of Grantee's receipt of the invoice.

§3.05. Franchise Non-Exclusive. The rights, privileges, and Franchise granted hereby are not exclusive. This Franchise shall not be construed as any limitation upon the right of the City, through its proper officers, to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways by Franchise, permit or otherwise. The City shall not authorize or permit any Person providing Video Programming and/or Cable Services to enter into the Public Rights-of-Way in any part of the City on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

§3.06. Grant of Other Franchises; Competitive Equity.

A. Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises subsequent to this Franchise to provide Cable Service within the Franchise Area; provided, the City agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise fees; insurance; System build-out requirements; security instruments; Access Channel and support; 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. If any subsequent franchise is granted by the City or by transfer, extension, or renewal which, in the reasonable opinion of Grantee, contains materially more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include more materially favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.

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

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

## **SECTION 4 SERVICE AVAILABILITY**

§4.01. Service Availability. The Grantee shall provide Cable Service throughout the entire Franchise Area, subject to the provision below.

§4.02. Annexations. If the City annexes any contiguous area which is being provided Cable Service by the Grantee or its Affiliates, the annexed area will be subject to the provisions of this Franchise upon the effective date of the annexation; provided, however, that Grantee shall be allowed a reasonable time under the circumstances to make any required modifications to the Cable System, Cable Services, billing system, etc., as may be required to accommodate such change, and provided that if the area is serviced by an Affiliate, a transfer of ownership of the Cable System in that area to the Grantee shall not be required by the City. If the annexed area is being provided Cable Service by another provider, Grantee shall have the right, but not the requirement, to extend its Cable System to the annexed area. If the annexed area is not being provided Cable Services, the Grantee shall be required to provide service within one (1) year of the annexation.

§4.03. Installation and Extension Policy

- A. In general, except as otherwise provided herein, Grantee shall provide a standard installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area. 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 or sixty (60)

foot Underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to subsection B below.

- B. No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as the existence of more than one hundred twenty-five (125) aerial feet or sixty (60) underground feet of distance from distribution cable to connection of service to Customers, or a density of less than twenty-five (25) residences per cable-bearing mile of aerial trunk or distribution cable or sixty (60) residences per cable-bearing mile of underground trunk or distribution cable, service shall be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. 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.

## **SECTION 5**

### **TERM, EVALUATION, AND RENEWAL**

§5.01. Term of Franchise. This Franchise shall be in full force and effect for a term of seven (7) years commencing on the effective date of Ordinance No. 1249.

§5.02. Performance Evaluations. In order to assure that the Grantee is complying with the terms of this Franchise and with the character, quality, and efficiency of service to be rendered, given, performed, and furnished under this Franchise, and in order to promote a sharing of information between the City Council and the Grantee, the City may schedule a performance evaluation once during any seven (7) year term of the Franchise, subject to §5.03 below, in accordance with the following process:

- A. At least one hundred twenty (120) days prior to each performance evaluation, the City shall notify the Grantee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Grantee pursuant to paragraph B below. Unless specifically waived by the City Council, attendance of Grantee's duly authorized representative at these meetings shall be mandatory.

- B. Within sixty (60) days from receipt of such notification, the Grantee shall file a report with the City that is certified by a representative of the Grantee knowledgeable of the operations of Grantee within the City, in reasonable detail, specifically addressing, at a minimum, the following areas:
- (1) compliance with the requirements regarding technical performance and testing, as provided in §12.02 of this Franchise;
  - (2) compliance with the PEG Channel requirements, as provided in §14.01 and §14.02;
  - (3) compliance with the FCC customer service standards;
  - (4) a comparison of rates to any benchmarks or standards set by federal, state, or local agencies having jurisdiction; and
  - (5) any other topic deemed material or relevant by the City for its enforcement of this Franchise, subject to the confidentiality provisions in §18.03.
- C. All reports to be prepared under this subsection and submitted by Grantee shall be based on information since the previous performance evaluation up to and inclusive of the most current quarter available and not data that ends more than twelve (12) months before the time of the performance evaluation.
- D. Following receipt of the report, but not less than thirty (30) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. Grantee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, Grantee shall notify the City, in writing, explaining the reasons for such delay.
- E. The City Council shall hear any interested Persons during such performance evaluation. The Grantee shall be entitled to all the rights of due process consistent with the City proceedings including, but not limited to, the right to present evidence and the right to be represented by counsel.

§5.03. Renewal. Grantee and City agree that the Cable Act shall govern Franchise renewal proceedings at the time of renewal.

## **SECTION 6**

### **COMPLIANCE WITH CITY, STATE, AND FEDERAL LAWS**

- §6.01. Compliance with Applicable Laws. Grantee shall at all times comply with all laws, rules, and regulations of the City, state and federal governments and any administrative agencies thereof which are applicable to all businesses in the City and/or all users of the Public Rights-of-Way. The express provisions of this Franchise constitute a valid and enforceable contract between the parties.
- §6.02. Subject to Police Power of the City. Construction, maintenance, and operation of Grantee's Cable System and all property of Grantee subject to the provisions of this Franchise shall be subject to all lawful police powers, rules, and regulations of the City. The City shall have the power at any time to order and require Grantee to remove or abate any pole, line, tower, wire, cable, guy, conduit, electric conductor, or any other structure or facility that is dangerous to life or property. In the event Grantee, after written notice, fails or refuses to act within fifteen (15) days of such written notice, City shall have the power to remove or abate the same at the expense of Grantee, all without compensation or liability for damages to Grantee except in instances when the damage is caused by negligence or willful misconduct of the City or its agents.
- §6.03. Notification in the Event of Preemptive Law. Grantee shall use its best efforts to notify the City of any change in law that materially affects Grantee's rights or obligations under this Franchise.

## **SECTION 7**

### **CONDITIONS OF PUBLIC RIGHTS-OF-WAY OCCUPANCY**

- §7.01. Use. All structures, wires, cables, equipment, and facilities erected or maintained by Grantee within the City shall be located as to cause minimum interference with the proper and intended use of the Public Rights-of-Way and with the rights or reasonable convenience of the owners or occupants of property which adjoins any of such Public Rights-of-Way. The location of all poles, towers, anchors, wires, cables, electronic conductors, conduits, manholes and other structures and appurtenances in, over, under, along, and across the present and future Public Rights-of-Way in the City shall be fixed under the supervision of the City or an authorized agent appointed by the City. Grantee agrees to comply with all other City laws, rules, or ordinances that govern the use of Public Rights-of-Way that may be lawfully promulgated by the City during the franchise term. In the event that there is substantial conflict between the requirements of this Franchise and any enacted Public Rights-of-Way standards, the franchise shall govern.
- §7.02. Excavation. Grantee may excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its facilities used to provide Cable Service under this Franchise. In the event a permit may ordinarily be required

for any excavation, a permit shall not be required for the installation of facilities to initiate service to a customer's property, or repair or maintenance of existing facilities unless such installation, repair or maintenance requires the breaking of pavement, excavation or boring. Grantee shall provide the City written notice within fifteen (15) days of any proposed breaking of pavement, excavation, or boring on any Public Rights-of-Way other than for the purposes of installation of facilities to initiate service to a customer's property, or repair or maintenance of existing facilities, prior to the commencement thereof.

Grantee shall provide the City with notice following any emergency maintenance that required the breaking of pavement, excavation, or boring on the Public Right-of-Way. Property owners or occupants of adjoining property shall be given reasonable notice. No Public Rights-of-Way shall be encumbered by construction, maintenance, removal, restoration, or repair work by Grantee for a longer period than shall be necessary to execute such work. When the Grantee shall make or cause to be made excavations or shall place obstructions in any Public Rights-of-Way, the public shall be protected by barriers and lights placed, erected, and maintained by the Grantee in accordance with any existing or future City, state, or federal requirements.

§7.03. Restoration. Grantee shall warrant any restoration work performed by or for Grantee in the Public Rights-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after a 48-hour notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within forty-five (45) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall reimburse the City in a manner agreeable to both parties.

§7.04. Relocation. Whenever by reason of the construction, repair, maintenance, relocation, widening, raising, or lowering of the grade of any Public Rights-of-Way by the City or by the location or manner of construction, reconstruction, maintenance, or repair of any public property, structure, or facility by the City, it shall be deemed necessary by the City for Grantee to move, relocate, change, alter, or modify any of its facilities or structures, such change, relocation, alteration, or modification shall be promptly made by Grantee upon thirty 30 days' written notice by the City. If the City requires Grantee to relocate its facilities located within the Public Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights-of-Way. Reasonable effort shall mean a review by the City Engineer of the available construction space in or under the Public Rights-of-Way. After making provision for the foreseeable future capacity requirements for City owned utilities and other public infrastructure of the City, the City Engineer shall allot any available excess among the City's franchisees on a first come, first serve basis with Grantee being given preference along with any other franchisee with similar right to relocation consideration. In the event that limited space is available for multiple relocated



franchised facilities, and all franchisees have an equal right to be considered for relocation, all available space shall be allotted in the same proportion as space was allotted in the Public Rights-of-Way from which the facilities are to be removed. Grantee shall pay the cost of relocating its facilities unless there are funds generally available to affected users of the Public Rights-of-Way for reimbursement of such costs, in which case Grantee shall be entitled to its share of such funding. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of the Grantee, if Grantee cannot make such application itself. In the event Grantee, after such notice, fails or refuses to commence, pursue, or complete such relocation work within a reasonable time, the City shall have the authority, but not the obligation, to remove or abate such structures or facilities and to require Grantee to pay to the City the reasonable cost of such removal or abatement, all without compensation or liability for damages to Grantee unless such damage was caused by the willful misconduct of the City or its agents. For the purposes of this Section 7.04, "reasonable time" means twenty-one (21) days unless Grantee provides notice to the City of its inability to commence, pursue or complete such relocation within twenty-one (21) days due to extenuating circumstances beyond Grantee's control. The parties should then meet and discuss a timeframe in which such relocation shall occur.

§7.05. Temporary Removal of Wire for Building Moving. Upon written request of any Person holding a building moving permit issued by the City, Grantee shall remove, raise, or lower its wires and cables temporarily to permit the moving of houses, buildings, or other bulky structures. The reasonable expense of such temporary removal, raising, or lowering shall be paid by the benefited Person, and Grantee may require such payment in advance, Grantee being without obligation to remove, raise, or lower its wires and cables until such payment shall have been made. Grantee shall be given written notice, at least five (5) business days in advance, to arrange for such temporary wire and cable adjustments.

§7.06. Tree Trimming. The Grantee shall have the authority to trim trees or other natural growth overhanging any of the Cable System in the Franchise Area to prevent branches from coming into contact with the Grantee's wires, cables or other equipment that may be damaged due to continued contact. The Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, at its own expense, replace all trees or shrubs damaged as a result of such trimming in a mutually agreed manner with the property owner. From time to time, the City may pass ordinances regulating tree trimming or removal on or along City property, and Grantee shall comply with these ordinances.

§7.07. Approval of Plans and Specifications. In accordance with the City's right-of-way use regulations, Grantee shall provide complete plans and specifications for all construction (with the exception of individual drops) within Public Rights-of-Way. Approval of plans and specifications shall not be unreasonably delayed or denied. In the event of rejection, Grantee shall submit revised plans and specifications for

approval. This provision shall apply to each construction sequence if the construction is accomplished in phases.

§7.08. Underground Installation.

- A. In those portions of the City where telephone lines and electric utility lines are both located underground, Grantee's lines, cables, and wires shall also be placed underground. Grantee's lines, cables, wires, and similar facilities located above ground prior to the effective date of this Franchise shall be relocated underground by Grantee at the same time that all other above-ground utility lines (e.g., electric and telecommunications lines) located on the poles with Grantee's facilities are required to be placed underground. Grantee shall pay the cost of relocating its facilities unless there are funds generally available to affected users of the Public Rights-of-Way. It shall be the policy of the City that existing poles for electric and communications purposes be utilized by Grantee whenever possible.
- B. Whenever feasible and when a pathway is needed by Grantee, and at Grantee's sole discretion, City shall allow Grantee to place conduit and conduit appurtenances in trenches provided by City for City projects. The costs of providing and installing conduits and associated appurtenances shall be the sole responsibility of Grantee. With respect to City projects, the costs of City trenching, including side trenching and excavation for vault and equipment placement, backfill, and restoration, shall be the sole responsibility of the City.

§7.09. Facilities Location.

- A. From time to time, the City, or its representatives, may request identification of the specific location of certain Grantee Cable System facilities. The Grantee agrees to respond, if possible, to such request within forty-eight (48) hours of the receipt of the request. In the event that Grantee cannot locate such information within forty-eight (48) hours, Grantee shall notify the City to alert them. If Grantee fails to notify the City of its facilities locations within forty-eight (48) hours, and damage is caused to Grantee's facilities as a direct result, the Grantee shall hold the City harmless from all liability, damage, cost or expense resulting from the City's actions in this regard unless such damage was caused by the willful misconduct of the City or its agents.
- B. Within sixty (60) days of the effective date of this Franchise, Grantee shall provide the City with a current route map of the Cable System located within the City. Upon City request, but no more often than once each year during the term of this Franchise, the Grantee shall provide the City with an updated route map showing the changes that have occurred in the Cable System.

- C. Grantee agrees to obtain facilities location information from other users of the Public Rights-of-Way prior to Grantee's construction, reconstruction, maintenance, operations and repair of the Cable System facilities.

§7.10 Work of Contractors and Subcontractors. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, and requirements. Work by contractors and subcontractors is 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 as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and applicable law. Grantee shall be jointly and severally liable for all damages, injuries, or losses, including property and personal damages and for correcting all damage caused by any contractor or subcontractor working on Grantee's behalf.

§7.11 Standards. All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. Grantee must comply with all federal, State and local safety requirements, rules, regulations, laws, and practices, and deploy 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 Electrical Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards in effect at the time of the work being performed.

- A. Grantee shall ensure that all cable drops are properly bonded and grounded at the home, consistent with applicable code requirements in effect at the time of the work being performed. All non-conforming or non-performing cable drops shall be replaced by Grantee as necessary to conform to applicable code.
- B. Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable.
- C. All installations of equipment, lines, and facilities shall be installed in accordance with standard engineering practices and of sufficient height to comply with all federal, State, and local regulations, ordinances, and laws.
- D. Grantee and the City agree that nothing in this Franchise shall give Grantee the right to construct new poles without prior City approval. Furthermore, nothing contained in this Franchise gives Grantee a right of pole attachment to City facilities or facilities owned by third parties.

§7.12 Emergency Relocation. The City may require relocation of facilities at the Grantee's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety or welfare. The City shall request that

Grantee perform the relocation, if however, the Grantee fails to perform the relocation within the time necessary to avert the emergency, the City may perform the relocation itself, and recover the reasonable and necessary costs of the relocation. Within forty-five (45) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall reimburse the City in a manner agreeable to both parties.

## **SECTION 8 INDEMNIFICATION AND LIABILITY**

### **§8.01. Indemnification.**

- A. It is the intent of this Section and by its acceptance of this Franchise, Grantee specifically agrees, that Grantee for itself and its agents, employees, subcontractors, and the agents and employees of said subcontractors, shall indemnify and hold the City, its officers, agents, employees, and elected officials harmless from all liability actions, causes of action, lawsuits, judgments, claims, damages, penalties, costs or fees, including attorney's fees and costs of defense, for any injury to or the death of any Person or damage to or destruction of any property arising out of, resulting from or based upon, in whole or in part, any negligent act or omission of Grantee under this Franchise related to the construction, reconstruction, upgrade, operation, or maintenance of its Cable System. In the event that any action, suit or proceeding is brought or claim is made against the City based upon or arising out of any such negligent act or omission of the Grantee under this Franchise, the City shall give timely notice in writing of such action, suit, proceeding and tender such claim to the Grantee. However, the failure of the City to provide such notice in writing to Grantee shall not relieve Grantee of its duties and obligations under this Section, provided that Grantee is given sufficient advance notice to perform its duties under this Section.
- B. The City shall not and does not by reason of granting this Franchise, assume any liability of Grantee whatsoever for injury or death to Persons, damage to property, or penalties of any kind whatsoever. The provisions of this Section shall survive the expiration or early termination of this Franchise.
- C. Subject to applicable law, Grantee shall indemnify the City, its elected officials, officers, authorized agents, boards, and employees for any damages, claims, additional costs, or expenses assessed against, or payable by, the City 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 relocation required by the City. As part of its indemnity obligations pursuant to Section 8.01(A) the provisions of this Section 8.01(C) shall specifically include, but are not limited to, claims for delay, damages, costs, assessed against or payable by the City, by a contractor performing public work for or on behalf of the City.

- D. Grantee shall indemnify and hold harmless the City from any Workers' Compensation claims to which Grantee may become subject during the term of this Franchise. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided per this Franchise, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees or other third party. This waiver has been mutually negotiated by the parties.

§8.02. Damages and Penalties. By acceptance of this Franchise, Grantee specifically agrees that it will pay all damages or penalties which the City, its officers, agents, employees, or contractors may legally be required to pay as a result of damages arising out of copyright infringements and all other damages arising out of Grantee's or Grantee's agents' installation, maintenance, or operation of the Cable System, except as referenced in Section 14 of this Franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, subject to Section 635A of the Cable Act and applicable law.

§8.03. Expenses. If any action or proceeding is brought against the City or any of its officers, agents, or employees for claims for damages or penalties described in this Section, the Grantee, upon written notice from the City, shall assume the investigation of defense and fully control any resolution or compromise thereof, including the employment of counsel and the payment of all expenses including the reasonable value of any services rendered by any officers, agents, employees or contractors of the City which are not unreasonably duplicative of services provided by Grantee and its representatives. The City shall fully cooperate with the Grantee.

§8.04. Separate Counsel. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, then upon the approval and consent of Grantee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and the Grantee shall pay the reasonable fees and expenses of such separate counsel. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

## **SECTION 9 INSURANCE REQUIREMENTS**

§9.01. Minimum Coverage. Grantee shall maintain throughout the term of this Franchise:

- A. A commercial general liability insurance policy issued by a company duly authorized to do business in the State of Washington insuring the Grantee with respect to the installation, maintenance, and operation of Grantee's Cable System in the minimum amount of Two Million Dollars (\$2,000,000.00) per incident and Five Million Dollars (\$5,000,000.00) aggregate.
- B. An automobile liability insurance policy and, if necessary, a commercial umbrella liability insurance policy with a limit of not less than One Million Dollars (\$1,000,000) per accident. Such insurance shall cover liability arising out of any Grantee motor vehicle (including owned, hired, and non-owned vehicles).

§9.02. Increased Coverage. The City Council reserves the right to require Grantee to increase the minimum amounts of liability insurance coverage up to a maximum of Four Million Dollars (\$4,000,000) per incident if such increased coverage is deemed by City Council to be reasonably based on changes in statutory law, court decisions, or the claims history of the industry or the Grantee. Such requirement shall be expressed by resolution or ordinance.

§9.03. Endorsements. Grantee agrees that with respect to the insurance requirements contained in §9.01, all insurance certificates will contain the following required provisions:

- A. Name the City of Gig Harbor and its officers, employees, and elected representatives as additional insureds.
- B. Provide for thirty (30) days' notice to the City for cancellation, non-renewal or material change, or ten (10) days notice to the City in the event of non-payment of the premium.
- C. Shall be on an occurrence basis and shall be primary coverage of all losses resulting from Grantee's operations covered by the policies.

§9.04. Workers' Compensation. The Grantee shall maintain throughout the term of this Franchise workers' compensation and employers liability insurance in the amount required by all applicable federal and state laws.

§9.05. Certificate of Insurance. Upon acceptance of the Franchise, Grantee shall provide to the City and maintain on file throughout the term of the Franchise a certificate of insurance evidencing coverage as required in this Section.

§9.06. Insurance Term. The insurance required by §9.01 shall be kept in full force and effect by Grantee during this Franchise and thereafter until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of Grantee's Cable System, should such removal be required by City Council or undertaken by Grantee.

§9.07. Issuing Companies. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

## **SECTION 10 PERFORMANCE BONDING**

§10.01. Amount. Upon acceptance of the Franchise, Grantee shall furnish and file with the City a performance bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00). The bond shall be conditioned upon the faithful performance of the Grantee of all terms and conditions of the Franchise. If there is an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall thereupon establish and provide within thirty (30) days from receiving notice from the City, to the City as security for faithful performance by Grantee of all of the provisions of this Franchise, an additional performance bond in the amount of Twenty-Five Thousand Dollars (\$25,000).

§10.02. Reservation of Rights. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law.

§10.03. Endorsement. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled without notice to the City and issuance of a replacement bond. The City must be given thirty (30) days written notice by certified mail, return receipt requested, of intent to cancel or not to renew."

## **SECTION 11 CABLE SYSTEM CHARACTERISTICS**

§11.01. Channel Capacity. Grantee's Cable System shall have the potential of providing no fewer than one hundred (100) Channels throughout the term of this Franchise. All Channels being offered to Subscribers within the Franchise Area will adhere to the technical standards set forth in paragraph 12.02 (A).

§11.02. New Construction. Any areas of the City where Grantee constructs new Cable System facilities, such facilities shall be built, at a minimum, to the same technical specifications as the Cable System existing in the City as of the effective date of this Franchise.

§11.03. Cable System Capabilities. Prior to the effective date of this Franchise, Grantee completed an upgrade of its Cable System. Concurrently, the Grantee modified

its Cable System from a traditional "Christmas tree architecture" to a hybrid fiber coaxial, fiber-to-the-node system architecture, with fiber-optic cable deployed from the headend to the node and coaxial cable deployed from the node to Subscriber's homes. Active and passive devices are capable of passing a minimum of 550MHz and capable of delivering more than 100 Channels of high quality analog or digital video signals, meeting or exceeding FCC technical quality standards. Emergency standby power is rated at a minimum of twelve (12) hours at the headend, two (2) hours at each fiber optic node located throughout the Cable System. During this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications.

§11.04. Equal and Uniform Service. The Franchisee shall provide access to equal and uniform Cable Service offerings throughout the Franchise Area.

## **SECTION 12 OPERATIONAL STANDARDS**

§12.01. Compliance with Applicable FCC Rules. Grantee shall comply with present and future applicable rules and regulations of the FCC including, but not limited to, technical standards, testing requirements, consumer protection standards and consumer electronics compatibility regulations and all other present and future rules and regulations of the FCC in connection with and relating to the operation of Grantee's Cable System.

§12.02. Technical Performance.

- A. Grantee's Cable System within the City shall meet or exceed all FCC and other applicable technical and signal quality standards for cable systems, including any such standards or regulations as hereinafter may be amended or adopted to the extent that compliance with such amended standards is mandated by law or regulation.
- B. Antennas, supporting structures, headend and associated equipment, outside plant used in the Cable System shall comply with any applicable federal, state or generally applicable City law.
- C. Grantee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical or telephone system located in any building, the cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals.
- D. If the City contacts Grantee prior to the next FCC required test period (e.g., those generally conducted in February and August of each year), a City



representative may be present during the testing. Upon request, Grantee shall provide written summary reports of the results of such tests to the City.

- E. Grantee shall maintain all of its facilities and outside plant in a safe condition. Copies of the plant maintenance procedure manuals will be available for inspection at Grantee's office in Bremerton, Washington on written request, within thirty (30) days.
- F. Grantee shall keep and maintain a proper and adequate inventory of maintenance and repair parts for the Cable System. Grantee shall maintain or otherwise have available a work force of skilled technicians for Cable System repair and maintenance.
- G. Upon request, Grantee shall provide the City copies of all correspondence with the FCC related to technical performance of the Cable System in the Franchise Area. In the event that any complaints are filed with the FCC related to the Cable System operations, Grantee shall provide copies of such complaints as well as the resolution thereof to the City upon request.

§12.03. Parental Guidance Control. Upon request of a Subscriber, Grantee shall provide by sale and/or lease a device by which the Subscriber can prohibit viewing or use of a particular Cable Service(s) during periods selected by that Subscriber. Subscribers shall be notified in writing, by the Grantee of the availability of the device at least once per year.

§12.04. Customer Service. The Grantee shall provide customer service in accordance with the FCC standards set forth in 47 CFR 76.309(a-c). If the City enters into a subsequent franchise with any other competing cable operator and affords them more favorable terms relating to customer service standards Grantee shall be entitled to the benefit of the more favorable terms as well. Additionally, if the City subsequently adopts a Customer Service Standards ordinance the terms of that subsequent ordinance shall govern.

### **SECTION 13 SIGNALS TO BE CARRIED**

§13.01. Required Programming Categories. To the extent they are reasonably available, Grantee shall carry the following general programming categories:

- A. News, Information and Government
- B. Movies
- C. Sports
- D. General Entertainment, Music and the Arts
- E. Children, Family
- F. Educational, Science, Foreign language

§13.02. Service for the Hearing Impaired. Grantee shall comply with any FCC requirements regarding altering or adapting programming for the hearing impaired. Grantee shall not take any action to remove or alter closed captioning provided for the hearing impaired as a part of any programming. Grantee shall deliver intact such closed captioning in the manner in which it arrives at the headend or from another origination source to the Cable System.

## **SECTION 14 PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS**

§14.01. Initial Channels. Within forty-five (45) days of written request, Grantee shall dedicate one (1) Channel for the carriage of PEG Programming. The Grantee shall ensure that such PEG Channel is of a technical quality comparable to any other Channel offered over the Cable System. To the extent allowed by law, the City agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the City's use of the PEG Channels required herein.

§14.02. Additional Channels.

- A. Grantee shall make available up to two (2) additional PEG Channels (for a total of 3 PEG Channels) based on demonstrated community need and subscriber support for additional channels.
- B. If all the Video Programming Services offered by Grantee on the Cable System are in a digital format, Grantee shall likewise make the PEG Channels available in a digital format.

§14.03. Delivery of PEG Programming. PEG Programming may be in analog or digital format, so long as it is compatible with the technology utilized by the Cable System for delivery to Subscribers on the lowest tier of service in accordance with applicable law.

§14.04. Management and Control of PEG Channels. The City may, at its discretion, allocate and reallocate the PEG Channels amongst Public, Educational and Government Access Programming. The City may authorize a third party(ies) to control and manage the use of any or all PEG Channels dedicated for City use, and their related facilities. The City, or its designee, may formulate rules for the operation of PEG Channels consistent with this Franchise and federal law.

§14.05. Relocation of Access Channels. Grantee will use reasonable efforts to minimize the movement of PEG Channel assignments. Grantee shall provide the City with at least forty-five (45) days' notice, prior to the time any PEG Channel designation is changed, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible. Grantee shall notify customers of the Access Channel's relocation in the form of a bill message. Any new Channel designations for the PEG Channels provided

pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards.

§14.06. PEG Capital Support. Effective sixty (60) days after written request and continuing during the term of this Franchise, Grantee shall pay to City a Capital Contribution for PEG Access capital expenditures in the amount of fifteen cents (\$.15) per Subscriber per month. Grantee shall make Capital Contribution payments quarterly, no later than thirty (30) days following the end of the quarter. Grantee shall pay interest in accordance with IRS specified interest amounts for corporate underpayments for the applicable period, on PEG Capital Support payments, or portions thereof, that are paid subsequent to the specified payment dates. The City agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the Capital Contribution to the price of Cable Services and to collect the Capital Contribution from Subscribers. In addition, as permitted in 47 C.F.R. §76.985, all amounts paid as the Capital Contribution may be separately stated on Subscriber's bills as a Government Access capital equipment fee.

§14.07. Technical Assistance. Within four (4) hours of receipt of a request from the City regarding a problem with a PEG Channel, Grantee shall commence research to determine whether or not the problem with the PEG Channel is the result of matters for which Grantee is responsible and, if so, Grantee will take prompt corrective action. Such assistance will be at no charge to the City. Grantee is responsible for all maintenance, repair and replacement of any return lines and associated equipment from Grantee's side of the fiber termination panel at the PEG origination sites to the headend. The City is responsible for all maintenance, repair and replacement of facilities and equipment on the City-side of the fiber termination panel at the PEG origination sites. Grantee agrees to install equipment provided by the City at the PEG origination sites and provide technical support for the installation for six months after the date of installation.

## **SECTION 15 EMERGENCY USE OF THE CABLE SYSTEM**

§15.01. Emergency Alert Capability.

- A. Grantee shall provide an operating Emergency Alert System ("EAS") in accordance with and at the time required by the provisions of federal laws, including FCC regulations.
- B. The City shall only permit appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System that in any manner results in an inappropriate use thereof. To the extent allowed by law, the City shall hold the Grantee, its employees and officers harmless from any claims arising out of the emergency use of the EAS facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.

- C. Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in a manner consistent with sound operational practices for emergency systems. Grantee will advise the City of the testing schedule and the City and/or its authorized representative may be present for the tests.

## **SECTION 16**

### **FREE DROPS AND SERVICE**

§16.01. Free Drops and Service. Free drops and service provided pursuant to this section are a voluntary initiative of Grantee and Grantee agrees to continue the service throughout the term of the Franchise to existing City owned and occupied buildings, schools and public libraries. Complimentary service is defined as standard installation, one outlet per building per campus and basic service. For purposes of this section, "school" means all State-accredited public and private K-12 schools. In addition, Grantee shall provide, at no cost to the City or other entity, throughout the term of this Franchise, one outlet of Basic Cable Service to new buildings that are owned or leased and occupied by the City, schools and public libraries where service is not being provided as of the effective date of this Franchise. If additional outlets of Basic Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

The complimentary Cable Service described herein shall be limited to those locations where the drop line from the feeder cable to such building does not exceed one hundred twenty-five aerial feet (125') or sixty feet (60') underground unless the City or other entity agrees to pay the actual incremental cost of such drop line in excess of one hundred twenty-five aerial feet (125') or sixty feet (60') underground.

This complimentary service is provided for the benefit of the Community and shall only be accessible to the employees of the receiving institutions. This complimentary service shall not be made available to the general public such as on a commercial basis. The City shall guarantee that its use will not conflict with Grantee's general policies regarding commercial contracts. The City shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service provided under this section.

§16.02 Low Income Discount. Grantee has historically granted a thirty percent (30%) discount to Subscribers who are low income and are aged 65 years or older or disabled to its Basic Cable Service Subscribers (provided they are not already receiving a package discount and provided further they are the legal owner or lessee/tenant of the dwelling unit). Grantee, as a voluntary initiative, is encouraged to continue to offer a discount to these individuals. For purposes of this discount, Subscribers are considered low income if their combined disposable income from all sources does not exceed the Housing and Urban

Development Standards for the Seattle/Everett Area for the current and preceding calendar year. As of the Effective Date of this Franchise Grantee is offering this low income discount as described herein.

## **SECTION 17 PAYMENT TO CITY**

- §17.01. Amount and Time. As compensation for the right, privilege, and Franchise herein conferred, Grantee shall pay to City each year during the term of this Franchise a sum equal to five percent (5%) of the Grantee's Gross Revenues. Such payments shall be made quarterly within forty-five (45) days after the expiration of each calendar quarter. Accompanying the payment, Grantee shall submit a written report verified by an authorized representative of Grantee, containing an accurate statement of Grantee's Gross Revenues by category, and the computation thereof.
- §17.02. Annual Financial Report. Grantee shall file with the City within ninety (90) days following the end of each calendar year, or portion thereof during which the Franchise is in effect, a certified statement of Gross Revenues, prepared according to generally accepted accounting principles, showing Gross Revenues by significant category used in the computation of Franchise fee payments for the previous year.
- §17.03. Right of Inspection of Records. The City shall have the right to inspect Grantee's records showing the Gross Revenues from which payments to the City are computed and to recompute any and all amounts paid under this Franchise. The City's right to audit and the Grantee's obligation to retain records related to a Franchise fee audit shall expire six (6) years after each Franchise fee payment has been made to the City. The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of the Grantee. If after a financial audit it is agreed that the Grantee has under paid amounts owed to the City in excess of ten percent (10%) then the City may require the Grantee to reimburse the City for the actual cost of the audit, such cost not to exceed Five Thousand Dollars (\$5,000) for each year of the audit period.
- §17.04. Late Payment Interest Charge. In the event any payment due quarterly is not received within forty-five (45) days from the end of the preceding quarter, Grantee shall pay interest on the amount due in accordance with IRS specified interest amounts for corporate under-payments for the applicable period.
- §17.05. Acceptance. Payments received from the Grantee under this Section shall not in any way limit or impair any of the privileges or rights of the City, whether under this Franchise or otherwise. No acceptance of any payment shall be construed as an accord that the amount paid is the correct amount, nor shall acceptance be construed as a release of any claim the City may have for additional amounts payable under the provisions of this Section, subject to the limitations in §17.03.

§17.06. Acts of Non-Collection. Any transaction or arrangement made for the purpose of evading Franchise fees payable under this Franchise is prohibited.

§17.07. Additional Commitments Not Franchise Fees. The Franchise fee payable hereunder shall be exclusive of and in addition to all taxes, fees for municipal improvements, the PEG Capital Fee and other lawful obligations of Grantee to City, subject to applicable law.

Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any annual period, Grantee agrees that the additional commitments herein are neither Franchise fees as defined under any federal law in effect as of the effective date of this Franchise, nor are the additional payments to be offset or credited against any Franchise fee payments due to the City.

## **SECTION 18 RECORDS AND REPORTS**

§18.01. Notice. Unless expressly otherwise agreed between the parties, every notice or response required by the Franchise to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when hand delivered, or five (5) business days after having been posted in a properly sealed and correctly addressed envelope and sent by certified or registered mail, postage prepaid.

The notices or responses to the City shall be addressed as follows:

Office of the Mayor  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335

With a copy to:  
City Clerk  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335

The notices or responses to the Grantee shall be addressed as follows:

Comcast of Puget Sound, Inc.  
Attention: General Manager  
1225 Sylvan Way  
Bremerton, WA 98310

With a copy to:  
Comcast of Puget Sound, Inc.  
Attention: Franchising and Local Government Relations  
15815 25<sup>th</sup> Avenue West  
Lynnwood, Washington 98087

The City and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

- §18.02. Books of Account. Grantee shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise and its exhibits. All such books of accounts and records related to enforcement of the Franchise shall be made available for inspection by the City at Grantee's office in Lynnwood, Washington, during normal business hours upon thirty (30) days' advance notice. If Grantee elects to move the books of accounts and records relating to the enforcement of this Franchise elsewhere, Grantee must make said books and records available and pay the travel costs, lodging, meals and any copying expenses or a City representative to visit the site where the books and records may be found, if such a review is requested by the City. Grantee shall maintain the books and records for Franchise compliance purposes for a period of five (5) years. If Grantee maintains books and records related to enforcement of the Franchise for a period greater than five (5) years, City shall have access to those records.
- §18.03. Confidentiality. Notwithstanding anything to the contrary set forth in this Section, Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously indentifying 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 and federal law. Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law. In the event that the City receives a public records request for the disclosure of information Grantee has designated as confidential, trade secret or proprietary, the City shall promptly provide notice of such disclosure and a copy of any written request so that Grantee can take appropriate steps to protect its interests within ten (10) days of receiving notification of the City's intended disclosure. Nothing in the Section 18.03 prohibits the City from complying with RCW 42.56, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Grantee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order requested by Grantee which 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 City for any fines or penalties imposed for failure to disclose such records.

§18.04. Quarterly Reports. A report shall be filed by Grantee with the City within forty-five (45) days following the end of each calendar quarter, or portion thereof during which the Franchise is in effect. At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. Grantee shall notify the City of such a change thirty (30) days in advance. The material substance of the report shall be in a form reasonably acceptable to the City. The information contained within the quarterly report shall include, but not be limited to:

A. The Gross Revenue report required by subsection 17.01.

§18.05. Annual Report. A report shall be filed by Grantee with the City within ninety (90) days following the end of each calendar year, or portion thereof during which the Franchise is in effect. At the Grantee's option, the measurements and reporting above may be changed from calendar years to billing or accounting years. Grantee shall notify the City of such a change thirty (30) days in advance. The information contained within the annual report shall include, but not be limited to:

A. Total number of Subscribers and Basic Service only Subscribers, subject to subsection 18.03.

B. The Gross Revenue report required by subsection 17.02.

C. A summary of any new services being offered.

D. A PEG capital support recovery report.

Such report shall be certified by a representative of the Grantee knowledgeable of the operations of the Grantee within the City. Grantee shall also provide the City a copy of the publicly-available annual report of the Grantee's parent company, when available.

§18.06. Performance Reports. Upon written request, but no more frequently than once a year, the City may request a report which may include any or all of the following, depending on the needs of the City:

A. Records of all written complaints received by Grantee for the previous year. The term "complaint" as used herein refers to escalated concerns about any aspect of the Cable System or Grantee's cable operations.

B. Records of outages for the previous year, indicating date, duration, area, and the number of Subscribers affected, type of outage and cause.



- C. Records of service calls for repair and maintenance for the previous year, indicating the date and time service was required, the date of acknowledgment, the date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved.
- D. Records of installation/reconnection and requests for service extension for the previous year, indicating the date of request, date of acknowledgment, and the date and time service was extended.

## **SECTION 19 REGULATION OF RATES**

- §19.01. City Regulation of Grantee's Rates. All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.
- §19.02. Notice of Rates. Upon request, Grantee shall provide a copy of its rates and charges for any and all of its Cable Services in the City and shall notify the City of any changes to such rates and charges in compliance with any timing requirements prescribed in FCC regulations.
- §19.03. Customer Billing. Customer billing shall be itemized by service(s) per FCC regulation 76 CFR 309 (B)(ii)(A).

## **SECTION 20 EMPLOYMENT REQUIREMENTS**

- §20.01. Equal Opportunity in Employment. Grantee shall afford equal opportunity in employment to all qualified Persons. No Person shall be discriminated against in employment because of race, color, religion, national origin, or gender.

## **SECTION 21 PROHIBITION OF DISCRIMINATORY OR PREFERENTIAL PRACTICES**

- §21.01. 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 apply its rates in accordance with governing law. Grantee shall permit Subscribers to make any in- residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefore. If any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged appropriate service charges by Grantee. Nothing herein shall be construed to prohibit:

- A. The temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;
- B. The offering of rate discounts for Cable Service to governmental agencies or educational institutions; or
- C. Offering of bulk discounts for Multiple Dwelling Units.

## **SECTION 22 ASSIGNMENT OF FRANCHISE**

- §22.01. City Approval of Assignment Required. This Franchise shall not be assigned, sold or transferred, or otherwise encumbered, to any third party that does not possess the legal, technical or financial qualifications to operate the Cable System without the prior consent of the City expressed by resolution or ordinance, and then only under such conditions as may be lawfully prescribed therein. Within thirty (30) days of receiving the request for transfer, the City shall notify the Grantee, in writing, of the information it requires to determine whether the FCC Form 394 (the transfer application) is complete so that the City can ascertain the legal, financial, and technical qualifications of the transferee. If the City has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving a complete FCC Form 394, consent by the City shall be deemed given. No assignment to any Person shall be deemed effective until the transferee has filed with the City an instrument in writing, duly executed, reciting the fact of such assignment, accepting the terms of this Franchise, and agreeing to comply with all lawful provisions hereof, subject to applicable law.
- §22.02. City Approval of Change of Control Required. The Grantee shall promptly notify the City of any proposed change of Control of the Grantee. For the purpose of determining whether the City shall consent to such change of Control, the City may inquire into the legal, financial, and technical qualifications of the prospective controlling party, but shall do so within thirty (30) days of receipt of the requested change of Control from the Grantee. Grantee shall assist the City in such inquiry and will respond within ten (10) days unless a longer time is reasonably necessary to respond or allowed by law. No change of Control to any Person shall be deemed effective until the transferee has filed with the City an instrument in writing, duly executed, reciting the fact of such change in Control, accepting the terms of this Franchise, and agreeing to comply with all lawful provisions hereof, subject to applicable law.
- §22.03 Change in Control Terms. In reviewing a request for assignment or change of Control, the City may inquire into the legal, technical, and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said assignment or change of Control upon such terms and conditions which are consistent with federal law;

provided, however, that any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee.

§22.04 No Waiver. The consent or approval of the City to any assignment of the Franchise or change in Control pursuant to this Section 22 shall not constitute a waiver or release of any rights of the City either pursuant to law or the Franchise itself.

## **SECTION 23**

### **FRANCHISE VIOLATIONS, NOTICE AND LIQUIDATED DAMAGES**

§23.01. Notice of Default; Opportunity to Cure; Public Hearing.

- A. Notice of Default. The City shall notify the Grantee, in writing, of any alleged failure to comply with a provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to:
1. respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or
  2. cure the default; or
  3. notify the City 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 City, in writing and in detail, as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) 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.
- B. If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with subsection (A)(2), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting, in writing, and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the

meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

- C. If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or violation within fifteen (15) days or within such other reasonable timeframe as the City shall determine.
- D. The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

§23.02. City Action in Event of Violation. Subject to the City's compliance with the cure notice and procedures given in §23.01 and in the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

- A. Seek liquidated damages pursuant to §23.03;
- B. In the case of violation of a material provision of the Franchise or other material violation as set forth in §24.01 and §24.02, seek to revoke the Franchise pursuant to §24.03;
- C. Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

Notwithstanding the foregoing, the City may not pursue monetary damages or liquidated damages in addition to the interest specified in §17.04 for late payment of Franchise fees; or monetary damages or liquidated damages in addition to the interest specified in §14.06 for late payment of the PEG Capital Fee.

§23.03. Liquidated Damages.

- A. If Grantee remains in violation following this cure period, the City may charge to and collect from Grantee the liquidated damages set forth in subsection (E) below, with liquidated damages beginning to accrue no earlier than the day following the end of the cure period set forth in §23.01 above. If the City pursues liquidated damages, the Grantee may elect, in response, to request to enter into arbitration pursuant to §23.04 below. If the Grantee enters into arbitration, liquidated damages shall be tolled from the date of Grantee's election for the full duration of the arbitration proceeding, before accruing again. If Grantee prevails at arbitration liquidated damages shall be waived, if the City prevails in

arbitration liquidated damages shall accrue until Grantee corrects the violation.

- B. The parties agree that actual damages that might be sustained by the City by reason of Grantee's violation of the Franchise provisions below, are uncertain and difficult to ascertain, and that the sums set forth below are reasonable compensation for such violation, and Grantee promises to pay, and the City agrees to accept, such sums as liquidated damages, and not as a penalty, in the event of such violation.
- C. Additionally such sums of money shall be considered liquidated damages due the City by Grantee by reason of inconvenience to the public and because of public works supervision and maintenance and other City administrative time and involvement which resulted in the expenditure of public funds due to Grantee's failure to comply with certain provisions in this Franchise.
- D. Grantee covenants that any such sums paid to the City under this Franchise provision shall not be included in the development of any rate, change, or price for services charged to Subscribers.
- E. The specific amounts of liquidated damages are as follows:
  - (1) For failure of Grantee to provide any report, certificate or map to the City as required by this Franchise, Fifty Dollars (\$50) per day.
  - (2) For failure to comply with the service availability requirements set forth in Section 4, the greater of Fifty Dollars (\$50) per day or One Dollar (\$1.00) per day per impacted Subscriber.
  - (3) For failure of Grantee to respond, restore or repair the Public Rights-of-Way within forty-eight (48) hours of notice by City under §7.03, Two Hundred Fifty Dollars (\$250) per day for every day following forty-eight (48) hours after Grantee's receipt of the notice.
  - (4) Should the City adopt any lawful and generally applicable ordinance governing the Public Rights-of-Way which includes administrative fees for City-performed relocation of Grantee facilities, such fees in the ordinance shall apply to the Grantee and supersede the ability of the City to collect liquidated damages under the Franchise for relocation violations.
  - (5) For failure of Grantee to provide a cable system in accordance with Section 11, One Thousand Dollars (\$1000) per day.

- (6) For failure of Grantee to provide the PEG Channels as required by Section 14, Two Hundred Fifty Dollars (\$250) per day.
- (7) For failure of Grantee to provide the notice of rates as required by §19.02, Twenty-Five Dollars (\$25) per day.
- (8) For departure of fifteen percent (15%) measured over a quarterly period from FCC Customer Service Standards, Fifty Dollars (\$50) per day.
- (9) For failure to comply with any other material breaches of the Franchise, Two Hundred Fifty (\$250) per day.

§23.04 Arbitration.

- A. All disputes relating to the interpretation, application or enforcement of liquidated damages under § 23.03 may be arbitrated as provided below.
- B. Either party may initiate arbitration by sending written notice to the other.
- C. In the event an arbitration is initiated, each party has fifteen (15) days from the date of receipt of written notice, to provide to the other party in writing, a list of six persons qualified to serve as arbitrators with no affiliation or relationship with either party that would tend to affect the person's ability to act as a neutral arbitrator, and acceptable to that party.
- D. The City and Grantee shall mutually select an arbitrator from the list within five (5) days after the exchange of proposed arbitrators information. If the City and Grantee are unable to agree upon an arbitrator within the time specified herein, then an arbitrator shall be appointed by the Chief Judge of the Federal District Court for the Western District of Washington or, if said judge declines to act, by the Presiding Judge of the Pierce County Superior Court.
- E. After an arbitrator has been selected, he or she shall take an oath to serve neutrally and impartially. The arbitrator shall then schedule such discovery or other exchange of documents and information as is appropriate to the issue and a date, time and place for hearing the presentations of the City and the Grantee. The hearing shall occur not less than sixty (60) days and not more than one hundred (100) days after the appointment of the arbitrator unless the parties mutually agree to a different schedule or an extension is granted by the arbitrator for good cause shown. The arbitrator shall make a written report to the City and the Grantee on their final determination within thirty (30) days after

completion of the hearing. The determination of the arbitrator shall constitute a final arbitration determination, appealable to a court of competent jurisdiction by either party.

- F. The arbitration shall be conducted in Seattle, Washington, in accordance with the existing rules of the American Arbitration Association, but not under the auspices or control of the AAA unless the parties so agree. Judgment upon any award by the arbitrator may be entered by the state or federal court having jurisdiction.
- G. Each party shall be responsible for its own costs of arbitration.
- H. Statutes of limitation applicable under Washington law shall apply to proceedings in arbitration.

§23.05. Force Majeure. Other than its failure, refusal, or inability to pay its debts and obligations, including, specifically, the payments to the City required by this Franchise, Grantee shall not be declared in default or be subject to any sanction under any provision of this Franchise in those cases in which performance of such provision is prevented by reasons beyond its control.

§23.06. Reservation of Rights. The rights reserved to the City under this Section are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right shall affect any other right the City may have.

§23.07. Venue and Jurisdiction. Venue and jurisdiction for any action for breach or default of this agreement will lie in Pierce County, Washington.

§23.08. No Third-Party Beneficiaries. Nothing in this Franchise is or was intended to confer third-party beneficiary status on any Person or any member of the public to enforce the terms of this Franchise.

§23.09. Captions. The captions and headings of Sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

## **SECTION 24 REVOCATION OF FRANCHISE**

§24.01. General. In addition to all rights and powers of the City by virtue of this Franchise or otherwise, the City reserves, as an additional and as a separate and distinct power, the right to revoke the Franchise in accordance with the procedures specified herein if any of the following events occur or for any of the following reasons:

- A. Grantee by act or omission violates any material term, condition, or provision of this Franchise and fails or refuses to effect material compliance following the notice and opportunity to cure specified under §23.01.
- B. Grantee knowingly or willingly attempts to evade any material provision of this Franchise.
- C. Grantee knowingly makes a false entry or statement regarding any material provision under this Franchise in any reports or records provided to the City.
- D. Repeated and substantial violation or willful disregard of:
  - (1) the City's lawful ordinances and regulations related to the Public Rights-of-Way; or
  - (2) the FCC Customer Service Standards; or
  - (3) the Cable System technical performance requirements in Section 12.
- E. The occurrence of any event which may reasonably lead to the foreclosure or other similar judicial or non-judicial sale of all or any material part of the Cable System.
- F. Grantee becomes insolvent or is adjudged bankrupt or all or any part of Grantee's facilities are sold under an instrument to secure a debt and are not redeemed by Grantee within thirty (30) days from the date of such sale; provided, however, this shall not be an event of termination or cancellation in the event of bankruptcy proceeding and the trustee, receiver, or debtor in possession agrees in writing to be bound by the terms of this Franchise.
- G. Grantee has been found by a court of law to have practiced any fraud or deceit in its conduct or relations under this Franchise with the City, Subscribers or potential Subscribers.

§24.02. Method of Revocation. Should the City Council determine, following the process set forth in §23.01 (to the extent applicable,) that its selected course of action shall be to seek revocation of the Franchise, the City shall give Grantee written notice of such intent. The notice shall set forth the causes and reasons for the proposed revocation, shall advise Grantee that it will be provided an opportunity to be heard by City regarding such proposed action before any such action is taken, and shall set forth the time, date, and place of the hearing. In no event



shall such hearing be held less than thirty (30) days following delivery of such notice to Grantee. At the hearing, the Grantee shall be entitled to all rights of due process consistent with the City procedures including, but not limited to, the right to present evidence, examine witnesses and the right to be represented by counsel. Any such revocation of this Franchise shall be by ordinance.

- §24.03. Grantee May Appeal City's Decision. The Grantee may appeal the City's decision to revoke the Franchise to an appropriate court, which shall have the power to review the City's decision de novo and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.

## **SECTION 25 VALUATION**

- §25.01. Purchase Price of Cable System. If the Franchise is revoked for cause and the parties agree that the City may purchase the Cable System, the City may purchase the Cable System at an equitable price. If renewal of the Franchise is lawfully denied and the parties agree that the City may purchase the Cable System, the City may purchase the Cable System at fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the Franchise itself. Should the parties fail to agree upon the equitable price or the fair market value of the Cable System, the same shall be determined in an appropriate proceeding filed in any court having jurisdiction.

## **SECTION 26 FAILURE OF CITY TO ENFORCE FRANCHISE**

- §26.01. No Waiver of Terms. The Grantee shall not be excused from complying with each and all of the terms, conditions, and provisions of this Franchise even though the City should upon one or more occasions fail to insist upon, to require, or to seek compliance with any such term, condition, or provision.

## **SECTION 27 RECOURSE, UNDERSTANDING, CONSTRUCTION, AND SEVERABILITY**

- §27.01. Requirements and Enforcement. Except as expressly provided herein, Grantee shall have no monetary recourse whatsoever against City of any loss, cost, expense, or damage arising out of the provisions or requirements of this Franchise or because of the enforcement thereof by City or because of the lack of City's authority to grant all or any part of this Franchise.
- §27.02. Grantee's Understanding. Grantee expressly acknowledges that in accepting this Franchise, it relied solely upon its own investigation and understanding of the power and authority of City to grant this Franchise and that Grantee was not induced to accept this Franchise by any understanding, promise, or other

statement, verbal or written, by or on behalf of the City or by any third Person concerning any term or condition not expressed herein.

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

§27.03. Construction of Franchise. By acceptance of this Franchise, Grantee acknowledges that it has carefully read the provisions hereof and is willing to and does accept all of the risks of the meanings of such provisions.

§27.04. Provisions Severable. If any provision, section, subsection, paragraph, sentence, clause, or phrase of this Franchise is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Franchise. It is the intent of the City in adopting this Franchise that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this Franchise are declared to be severable.

## **SECTION 28 ACCEPTANCE OF FRANCHISE**

§28.01. Method of Acceptance. Within sixty (60) days from the publication date of this Franchise, Grantee shall file with the City Clerk a written instrument, executed and sworn to by a corporate officer of the Grantee before a Notary Public, in the following form signed in its name and behalf:

“To the Honorable Mayor and City Council of the City of Gig Harbor, Washington: For itself, its successors, and assigns, Comcast of Puget Sound, Inc., duly authorized to do business in the State of Washington, hereby accepts the attached Franchise and agrees to be bound by all of its terms, conditions, and provisions, subject to applicable law.

COMCAST OF PUGET SOUND, INC.

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.”

§28.02. Acceptance of Franchise Not a Waiver. Acceptance of this Franchise by Grantee shall not constitute a waiver by it of any of its rights.

§28.03. Effective Date. Subject to the acceptance by Grantee, this Franchise shall be effective five (5) days after its publication and passage as required by law.

BY THE CITY COUNCIL AND APPROVED BY ITS MAYOR ON THIS 22nd day of October, 2012.

THE CITY OF GIG HARBOR

\_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST:

\_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Angela S. Belbeck, Attorney for the City of Gig Harbor

Filed with the City Clerk: 09/12/12  
Adopted by the City Council: 10/22/12  
Publication Date: 10/31/12  
Effective Date: 11/05/12  
Ordinance No. 1249