

TOWN OF EATONVILLE

Agenda Staff Report

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| Agenda Item No.: | _____ | Meeting Date: | <u>February 24, 2020</u> |
| Subject: | <u>Affirm and Authorize the Mayor to</u> | Prepared by: | <u>Greg Jacoby</u> |
| | <u>Renew the Cable Television Franchise</u> | | <u>Town Attorney</u> |
| | <u>Agreement Between the Town and</u> | Atty Routing No: | <u>037-18</u> |
| | <u>Comcast Cable Communications, LLC</u> | Atty Review Date: | <u>February 18, 2020</u> |

Summary: The cable television provider Comcast Cable Communications, LLC (Comcast) and/or its corporate predecessors have provided cable television service to the Town since 1990. The existing franchise agreement appears to have expired in 2005 and has been subject to a series of continuing renewals on a month-to-month basis. Both the Town and Comcast desire to adopt an updated agreement. Staff and Comcast have negotiated the terms of a renewal of the franchise agreement, a copy of which is attached to Ordinance No. 2020-1 as Exhibit A.

A cable television agreement is a legal agreement between a municipality and the cable operator. It is required by state and federal law. In general, the agreement authorizes the cable operator to install its facilities and equipment in the municipality's streets and rights of way and, in return for this use of public property, federal law allows the municipality to collect a fee from the cable operator and to regulate limited aspects of cable service. The cable franchise renewal process is heavily controlled by federal law. Due to the substantial capital investment required to construct a modern cable system, federal law severely limits a municipality's ability to deny renewal of a cable franchise. The franchise must be renewed if the cable operator's past performance and proposal for future performance meet the standards established by federal law.

The following is a summary of the key terms of the franchise agreement:

- Section 2 – Grant of Franchise. The Town is granting a nonexclusive franchise to Comcast. The Town retains the legal right to grant a franchise to any other competing cable operator who contracts with the Town and, in fact, a portion of the Town is serviced by Wave. The term of the franchise is 5 years with a single 5-year extension mutually agreeable to both parties.
- Section 3 – Construction and Maintenance of the Cable System. Comcast is required to obtain all required permits and comply with all requirements for work in the Town's rights-of-way. If Comcast disturbs or damages any right-of-way or public property, it is required to promptly replace and restore the damage or disturbance at its own cost, including landscape restoration. With respect to undergrounding, if all of the transmission and distribution facilities of the respective wireline service providers, e.g., telephone, electricity, etc., are now or in the future placed underground, then Comcast will also place its cable underground. If a Town-sponsored project requires overhead facilities to be relocated underground, then Comcast will place its cable underground at no cost to the Town. With respect to aboveground placement, Comcast will use existing

poles whenever possible. The Town has reserved the right to require trenching rather than boring in certain areas of the Town because of known geologic hazards.

- Section 7 – Oversight and Regulation by the Town. Comcast currently pays the Town a franchise fee of 5% of gross revenue (as defined in the Agreement), which is the maximum compensation allowed under Federal law. The franchise fee compensates the Town for allowing Comcast to use the public rights-of-way. The franchise renewal maintains the current 5% franchise fee. Each payment is accompanied by a financial report that shows Comcast’s basis for computing the fee. The fees are subject to audit by the Town.
- Section 14 – Termination of the Franchise. The Town may revoke the franchise agreement under specified conditions, including if there is an uncured violation of a material obligation or if there is a pattern of material violations.

The original agreement with Comcast included provisions that addressed the following topics: low income discount; compensation for non-cable services; and complimentary cable service for public buildings. All three topics have been dropped from the franchise renewal agreement due to changes in federal law.

Staff are not aware any complaints about Comcast’s programming content, technical abilities, or financial capabilities.

RCW 35.27.330 requires that an ordinance granting a franchise can only be approved after two readings. Also, state law requires that at least 3 councilmembers must vote in favor of the ordinance.

Recommendation: Staff recommends approval of the first reading of Ordinance No. 2020 -1 affirming and authorizing the Mayor to renew the Cable Television Franchise Agreement between the Town and Comcast Cable Communications, LLC.

Motion for consideration: I move to approve the first reading of Ordinance No. 2020 -1 affirming and authorizing the Mayor to renew the Cable Television Franchise Agreement between the Town and Comcast Cable Communications, LLC.

Fiscal Impact: None

Attachments: Ordinance No. 2020-1
Exhibit A: Cable Television Franchise Agreement

ORDINANCE NO. 2020-1

AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, AFFIRMING AND AUTHORIZING THE MAYOR TO RENEW A CABLE TELEVISION FRANCHISE BETWEEN THE TOWN OF EATONVILLE AND COMCAST CABLE COMMUNICATIONS, LLC

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

WHEREAS, the cable television provider Comcast Cable Communications, LLC (Comcast) and/or its corporate predecessors have provided cable television service to the Town since 1990; and

WHEREAS, Comcast has substantially complied with the material terms of the existing franchise agreement and with applicable law; and

WHEREAS, the Town has determined that renewal of the existing cable franchise agreement with Comcast is consistent with the public interest; and

WHEREAS, the Town has been negotiating the terms for renewal of the existing non-exclusive cable television franchise agreement with Comcast, and the parties have reached an agreement; and

WHEREAS, the Town, having determined that the financial, legal, and technical abilities of Comcast are sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with Comcast for the construction, operation and maintenance of the cable system on the terms and conditions set forth herein; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF EATONVILLE AS FOLLOWS:

Section 1. The Cable Television Franchise Agreement by and between the Town of Eatonville and Comcast Cable Communications, LLC is hereby approved, and the Mayor is authorized to execute the Franchise Agreement, a copy of which is attached as Exhibit A and incorporated by this reference.

Section 2. Should any section, paragraph, sentence, clause or phrase of this Ordinance or the Franchise Agreement, or its application to any person or circumstance, be declared

unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance or the Franchise Agreement be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or the Franchise Agreement or its application to other persons or circumstances.

Section 3. This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING: 02/24/2020
2ND READING: 03/09/2020

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this ____ day of March, 2020.

Mike Schaub
Mayor

ATTEST:

Miranda Doll
Town Clerk

APPROVED AS TO FORM:

Gregory A. Jacoby
Town Attorney

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CABLE TELEVISION FRANCHISE AGREEMENT

This Cable Television Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Town of Eatonville (hereinafter, “Town”) and Comcast Cable Communications, LLC (hereinafter, “Operator”).

WHEREAS, the Town has reviewed the Operator’s performance under the prior franchise agreement and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the Town and its citizens, and has determined that Operator’s plans for operating and maintain its Cable System are adequate; and

WHEREAS, the Town has a legitimate and necessary regulatory role in ensuring the availability of state-of-the-art cable communications service, the high technical capability and reliability of a cable system in the Franchise Area, the availability of local programming, and quality customer service; and

WHEREAS, diversity in Cable Service is an important policy goal and the Operator’s Cable System should offer a broad range of programming; and

WHEREAS, flexibility to respond to changes in technology and Subscriber interests within the Cable Service market should be an essential characteristic of this Franchise; and

WHEREAS, the Town is authorized by law to grant one or more nonexclusive franchises to construct or operate and maintain a cable system within the boundaries of the Town: and

WHEREAS, the Town, having determined that the financial, legal, and technical ability of the Operator is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Operator for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Town and the Operator do hereby agree as follows:

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SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings given below unless the context clearly mandates a different interpretation. The word “shall” is always mandatory and not merely directory.

1.1. “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.2. “Affiliate” means, when used in connection with the Operator, any Person who owns or controls, is owned by or controlled by, or is under common ownership or control with the Operator.

1.3. “Bad Debt” means amounts lawfully billed to a Customer and owed by the Customer for Cable Service and accrued as revenue on the books of the Operator, but not collected after reasonable efforts have been made by the Operator to collect the charges.

1.4. “Basic Service” means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals.

1.5. “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

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

1.7. “Cable Service” means the one-way transmission to Customers of video programming or other programming service, and Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.8. “Cable System” shall mean the Operator’s facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility shall be considered a cable system other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; or (5)

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any facilities of any electric utility used solely for operating its electric utility systems. When used herein, the term "Cable System" or "System" shall mean Operator's Cable System in the Franchise Area unless the context indicates otherwise.

1.9. "Channel" means a portion of electromagnetic frequency that is used in a Cable System and that is capable of delivering a television channel as defined by the FCC.

1.10. "Council" means the legislative body of the Town of Eatonville.

1.11. "Customer" or "Subscriber" means any Person who lawfully receives Cable Service provided by the Operator by means of or in connection with the Cable System and whose premises are physically wired and lawfully activated to receive Cable Service from the Operator's Cable System.

1.12. "Dwelling Unit" means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.

1.13. "Education and Government (EG) Access Channels" means channel capacity designated by the Operator for the transmission of educational or government access use in accordance with this Franchise and 47 U.S.C. §521.

1.14. "Effective Date" means the date provided in the "Length of Franchise" section herein.

1.15. "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the Town including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

1.16. "Expanded Basic Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Customers above Basic Service, and does not include Premium Services.

1.17. "Facilities" or "Facility" means the component parts or part of the Cable System, including but not limited to coaxial cable, fiber-optic cable, amplifiers, taps, connectors, power supplies, electronics, towers, antennas, satellite dishes and optronics located in the Rights-of-Way.

1.18. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.

1.19. "Franchise" means the initial authorization, or renewal thereof, issued by the Town, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

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1.20. “Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

1.21. “Franchise Area” means the present legal boundaries of the Town as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of this Franchise.

1.22. “Franchise Fee” means any tax, fee or assessment of any kind imposed by the Town or other government entity on the Operator or Customer, or both, solely because of their status as such. Franchise Fees shall not include any tax, fee or assessment of general applicability, capital costs required by this Franchise to be incurred by the Operator for public, educational or governmental access and equipment, or requirements or charges incidental to the awarding or enforcing of the franchise including payments for bonds, insurance, indemnification, penalties or liquidated damages.

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

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Operator for channels designated for commercial/leased access use, which shall be allocated on a pro rata basis using total Cable Service subscribers within the Town;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees, and administrative fees, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- revenues from program guides;

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- Franchise Fees;
- FCC Regulatory Fees;
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Town.

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

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- any taxes on services furnished by Operator which are imposed directly on any Subscriber or user by the State, Town or other governmental unit and which are collected by Operator on behalf of said governmental unit
- Public, Educational and Governmental (PEG) Fees; and
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Operator for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Operator shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Operator derives revenues in the Town. The Town reserves its right to review and to challenge Operator’s calculations.

(D) Operator reserves the right to change the allocation methodologies set forth in this Section 1.28 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange

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Commission (“SEC”). Operator will explain and document the required changes to the Town as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.28(E) below. If new Cable Service revenue streams develop from Operator’s operation of its Cable System within the Town, those new revenue streams shall be included within Gross Revenues, unless the parties agree otherwise.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing, the Town reserves its right to challenge Operator’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.24 “Installation” means the connection of the Cable System by means of a cable drop from feeder cable to Subscriber’s terminals.

1.25 “Normal Business Hours” means the hours from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding federal, state or Town holidays.

1.26 “Non-Cable Service” means any service that is distributed over the Cable System, other than a Cable Service.

1.27 “Operator” means Comcast Cable Management, LLC, or its lawful successor, transferee or assignee.

1.28 “Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Town.

1.29 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Customers on a per-Channel, per-program or per-event basis for which a periodic subscription fee is charged.

1.30 “Programming” means the video, audio, multimedia or other material or programs prepared for or capable of transmission on a Cable System, or, as the context requires, the process of causing such material to be created, received, transmitted or distributed on a Cable System.

1.31 “Public Way” or “Right-of-Way” means the surface of and the space alongside, above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, easement, and road right-of-way or other public right-of-way now or hereafter held or administered by the Town.

1.32 “Town” is the Town of Eatonville, a Town of the State of Washington, existing pursuant to the Washington State Constitution, and the laws of the State of Washington.

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1.33 “Video Programming” means Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2 - Grant of Franchise

2.1. Grant. The Town hereby grants to the Operator under the Cable Act a nonexclusive Franchise authorizing the Operator to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways and easements within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, other related property or equipment, and use existing poles as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Operator from offering any service over its Cable System that is not prohibited by federal or state law. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

2.1.1. Other Ordinances. This Franchise and all rights and privileges granted hereunder are subject to, and the Operator must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the Town’s exercise of its police powers and applicable law, and in case of any conflict between the express terms of this Franchise and any ordinance enacted by the Town, this Franchise shall govern. This Franchise does not confer rights or immunities upon the Operator other than as expressly provided herein. The Operator reserves the right to challenge provisions of any ordinance that conflicts with its contractual rights, and does not waive its rights to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

2.1.2. Police Powers. In accepting the Franchise, the Operator acknowledges that its rights hereunder are subject to the legitimate rights of the police powers of the Town to enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the Town pursuant to such power. Additionally the Council expressly reserves unto itself all its police powers to adopt additional ordinances necessary to protect the health, safety, and welfare of the general public in relation to the rights granted under this Franchise. The Town reserves the right to use, occupy and enjoy any Public Rights-of-Way or other public places for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other Town services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The Town Council reserves the right to delegate its authority for Franchise administration to a designated agent.

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2.2. Length of Franchise. The length of this Franchise shall be for a term of five (5) years with a possible five (5) year extension, mutually agreeable to both the Town and Operator.

2.2.1. Effective Date. The effective date of this Franchise shall be ten (10) days after publication following the adoption of this Franchise by the Town Council, unless the Operator fails to file with the Town an unconditional acceptance of this Franchise and post the security required hereunder within sixty (60) days of the Effective Date, in which event this Franchise shall be voidable.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended. of Acceptance. By accepting the Franchise, Operator: (A) acknowledges and accepts the Town's legal right to issue and enforce the Franchise; (B) accepts and agrees to comply with each and every provision of this Franchise; and (C) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.4. Effect of Acceptance. By accepting the Franchise, Operator: (A) acknowledges and accepts the Town's legal right to issue and enforce the Franchise; (B) accepts and agrees to comply with each and every provision of this Franchise; and (C) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Town to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Town, or (C) be construed as a waiver or release of the rights of the Town in and to the Public Ways.

2.6 Competitive Equity.

2.6.1. The Operator acknowledges and agrees that the Town reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, the Town agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of the Operator'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; public, education and government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the Town which, in the reasonable opinion of the Operator, contains more favorable or less burdensome terms or conditions than this Franchise, the Town agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by Town and Operator.

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

2.6.3. In the event that a wireline multichannel video programming distributor provides video service to the residents of the Town under the authority granted by federal or State legislation or other regulatory entity, the Operator shall have a right to request Franchise amendments that relieve the Operator of regulatory burdens that create a competitive disadvantage to the Operator. In requesting amendments, the Operator 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 Operator's belief that certain provisions of the Franchise place Operator at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Town shall not unreasonably withhold consent to the Operator's petition.

SECTION 3 – Construction and Maintenance of the Cable System

3.1. Permits and General Obligations. The Operator shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality that meet or exceed industry standards. All transmission and distribution structures, poles, other lines, and equipment installed by the Operator for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2 Construction Standards. The Operator shall not commence construction, within the Town without a valid permit issued in accordance with Town codes and regulations, except as provided in this Franchise. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All equipment shall be durable and installed and maintained in accordance with good engineering practices and comply with applicable law.

3.2.1 Right-of-Way permit. The Operator shall submit an application for, pay the permit fee, and obtain a Right-of-Way permit to perform construction work in any Public Rights-of-Way in accordance with applicable local regulations. No work, other than Emergency repairs, routine aerial maintenance, or standard aerial Installation, shall commence without such a permit. Emergency repairs may be made immediately as provided for in Section 3.4 of this Agreement.

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3.2.2 Issuance of Right-of-Way permit. Construction permits shall be approved by the Town within forty-five (45) days of receipt of a completed permit application, so long as the permit request complies with the requirements of this Franchise, subject to further conditions, restrictions or regulations affecting the time, place and manner of performing the work. A permit application shall be considered complete when accompanied by all required information, plans and fees. As part of the permitting process, the Town may impose such conditions as are necessary for protecting any structures in such Rights-of-Way and for providing for the proper restoration of such Rights-of-Way and to protect the public and the continuity of pedestrian or vehicular traffic.

3.2.3 Display of Right-of-Way permit. The Operator shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Town Administrator or designee at all times when construction work is occurring.

3.2.4 Construction Schedule. The Operator shall comply fully with construction timelines outlined in an approved construction permit issued by the Town.

3.2.5 Locator service compliance. The Operator, before commencing any construction in the Public Right-of-Way, shall call for location in accordance with Chapter 19.122 RCW.

3.2.6 Placement. All transmission lines, equipment, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners and other lawfully designated uses of the Rights-of-Way. All Facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Operator shall be placed in such manner as not to interfere with the usual travel on such Public Right-of-Way. Exact placement within the Right-of-Way shall be coordinated with the Town and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The Town reserves the reasonable right as to final placement.

3.2.7 Interference with use of streets. When installing, locating, constructing or maintaining Facilities, the Operator shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in “as good as” or “better than” as it was prior to performance by the Operator of such work.

3.2.8 Completion of construction. The Operator shall promptly complete all construction activities so as to minimize disruption of the Right-of-Ways and other public and private property. All construction work authorized by a permit within Right-of-Ways, including restoration, must be completed within 90 days of the date of issuance or at such other interval as the Town may specify in writing upon issuance of the permit.

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3.2.9 Non-complying Work. Upon order of the Town Administrator or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

3.3. Conditions on Street Occupancy.

3.3.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Operator shall, upon reasonable advance written notice from the Town (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any Person using such street or Right-of-Way for the purpose of defraying the cost of any of the foregoing, the Town shall upon written request of the Operator make application for such funds on behalf of the Operator.

3.3.2. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Operator disturbs, alters, or damages any Public Way or other public property, the Operator agrees that it shall at its own cost and expense promptly replace and restore any such Public Way or public property to a condition “as good as” or “like” the condition existing immediately prior to the disturbance. Operator shall warrant any restoration or repair work performed by or for Operator in the Public Way or on other public property for one year, unless a longer period is required by the municipal code or any generally applicable ordinance or resolution of the Town. If Operator fails to promptly restore the Public Way, the Town may, after providing reasonable notice to Operator, repair or restore the Public Way, and the reasonable expense thereof shall be paid by Operator within thirty days of receipt of an itemized list of those expenses, including the cost of labor, materials, and equipment.

3.3.3. Landscape Restoration. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of the Cable System, which is done pursuant to a Franchise, shall be replaced or restored in “as good as” or “like” the condition existing prior to performance of the work. The warranty obligations set forth in subsection 3.3.2 shall also apply to landscape restoration.

3.3.4. Trimming of Trees and Shrubbery. Operator shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Operator’s wires, cables, or other equipment. All such trimming shall be done at the Operator’s sole cost and expense. The Operator shall be responsible for any damage caused by such trimming.

3.3.5 Aerial and Underground Construction.

3.3.5.1 Facilities Placement. If all of the transmission and distribution facilities of all of the respective wireline service providers in any given area within the Franchise

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Area are now or in the future placed underground, the Operator shall place its Cable Systems' distribution cables underground; provided that such underground locations are actually capable of accommodating the Operator's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of any of the respective wireline service providers are both aerial and underground, the Operator shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. In areas where a wireline service provider's wiring is aerial, the Operator may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. The Operator shall utilize existing poles wherever possible.

Nothing in this Section shall be construed to require the Operator to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

This Franchise does not grant, give or convey to the Operator the right or privilege to install its facilities in any manner on poles or equipment of the Town or any other Person.

Operator shall, to the extent economically feasible, participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all aerial facilities are being converted to underground facilities.

The Town reserves the right to require the use of trenching rather than boring to place transmission and/or distribution facilities underground in certain locations within the franchise area because of known geologic or other hazards.

3.3.5.2 Town Driven Relocation Projects.

3.3.5.2.1 Aboveground Relocation. The Town shall have the right to the extent allowed by law to require Operator to remove, replace, or modify its Facilities within the Rights-of-Way when necessary in order to ensure health, safety or welfare of the public. The expense thereof shall be paid by Operator, unless other public funds are available. Should Operator fail to remove or relocate or redesign any such Facilities by the date reasonably established by the Town (no less than 90 days), the Town may effect such removal or relocation or redesign, and the expense thereof shall be paid by Operator, including all direct costs and expenses incurred by the Town due to Operator's delay. If the Town requires Operator to relocate its Facilities located within the Rights-of-Way, the Town shall provide Operator with an alternate location within the Rights-of-Way. Nothing herein shall prevent Operator from participating in any alternative funding for relocation, such as funds for a local improvement district or LID.

3.3.5.2.2 Underground Conversion. In the event of Town driven facilities relocation projects that require conversion of overhead facilities to underground, such as projects that may include, but not be limited to: road widening, surface grade changes,

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sidewalk installation, or beautification, Operator agrees to bear the costs of converting Operator's cable system from an overhead system to an underground system as follows:

A. Utility Trench and Vault/Pedestal Engineering -- To ensure proper space and availability in the supplied joint trench, Operator shall only pay for the direct work hours and/or proportionate share of work hours based on the percentage of conduit volume, necessary to complete Cable System related engineering coordination with the other utilities involved in the project.

B. Conduit and Vaults/Pedestals Placement -- Operator shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench as follows:

1. If the Town's contractor is completing the task of conduit and vault/pedestal placement, Operator shall only pay the direct costs in accordance with Operator's approved labor and materials exhibits at the time of the project.
2. If the direct costs of Operator's approved labor and materials exhibits are not agreeable to the Town or its contractor, Operator shall have the option to hire its own contractor(s) to complete the work in accordance with Operator's approved labor and materials exhibits at the time of the project.
3. If Operator chooses option (2), the Town and its contractor(s) are responsible to coordinate with Operator's contractor(s) to provide thirty (30) days-notice and time to complete the placement of Operators conduits and vaults/pedestals in the supplied joint trench.

C. Within the conversion area, Operator shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo cable trench, or work conducted by the Operator outside of the Town's construction schedule.

3.3.5.3 Request For Relocation By Third Party. The Operator shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided (i) the Operator may impose a charge for all time and material costs associated with the project on any Person for the relocation of its facilities, and such charge may be required to be paid in advance of the relocation of its wires or cables, and (ii) if required, Operator is granted a permit for such work by the Town.

3.3.5.4 Relocation Due To Development. In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all time and material costs associated with the conditioned underground conversion of cable facilities. The Operator and/or its authorized contractor are the only agent allowed to complete the reconnection aspects of the conversion.

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3.3.5.5 Damage to Cable System. The Town shall be liable for any damage caused to Operator's Cable System as a result of any public works, public improvements, construction, excavation, grading, filling, or work of any kind by or on behalf of the Town. This provision is not applicable in instances wherein Town must cut or remove Cable System facilities due to an Emergency.

3.4. Repair and Emergency Work. In the event of an unexpected repair or Emergency, the Operator may commence such repair and Emergency response work as required under the circumstances, provided the Operator shall notify the Town Administrator as promptly as possible, before such repair or Emergency work or as soon thereafter as possible if advance notice is not practicable and, if required by the Town, shall apply for appropriate permits within forty-eight hours after discovery of the emergency.

3.5 Cable System Mapping. Operator shall provide the Town with records of Operator's trunk and distribution facilities within the Franchise Area in a standard geographic information system format (GIS) format within sixty (60) days of the Effective Date. The data shall depict the location of overhead cables, underground cables, and ground mounted features. All updates of the GIS shall be submitted to the Town within sixty (60) days upon annual request.

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

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

3.8 Inspection of Facilities. Upon reasonable notice, the Town may inspect any of Operator's Facilities or equipment within the Rights-of-Way and on other public property. If an unsafe condition is found to exist, the Town, in addition to taking any other action permitted under applicable law, may order Operator to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Town establishes. The Town has the right to inspect, repair, and correct the unsafe condition if Operator fails to do so, and to reasonable charge Operator therefor.

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3.9 Discontinuing Use of Facilities. Whenever Operator intends to discontinue using any Facility within the Town's Right of Way, Operator shall submit for the Town's approval a complete description of the Facility and the date on which the Operator intends to discontinue using the Facility. Operator may remove the Facility or request that the Town permit it to remain in place. Notwithstanding the Operator's request that any such Facility remain in place, the Town may require the Operator to remove the Facility from the Town's Right of Way. If required, the Operator shall complete such removal in accordance with a schedule set by the Town. Until such time as Operator removes the Facility as directed by the Town, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Operator shall remain responsible for all necessary repairs and relocations of the Facility in the same manner and degree as if the Facility were in active use, and Operator shall retain all liability for such Facility.

SECTION 4 - Service Obligations

4.1. General Service Obligation. The Operator shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per strand mile in areas served by overhead facilities and sixty (60) dwelling units per street mile in areas served by underground facilities. Subject to this density requirement, Operator shall offer Cable Service to all new homes or previously unserved homes located within 125 feet per an aerial service drop and 60 feet per an underground service drop of the Operator's distribution cable at the prevailing published Installation rate.

The Operator may elect to provide Cable Service to areas not meeting the above density and distance standards. The Operator may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4.2. Programming. The Operator shall offer to all Customers a diversity of video programming services.

4.3. No Discrimination. Neither the Operator nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Operator are satisfied. Nothing contained herein shall prohibit the Operator from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

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4.4. New Developments. The Town shall make all attempt to provide the Operator with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Town agrees to require the developer to give the Operator access to open trenches for deployment of cable facilities and at least ten (10) business days-notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. The Operator shall be responsible for engineering and deployment of labor applicable to its cable facilities.

4.5. Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Operator, any Cable Service, program or signal transmitted over the Cable System by the Operator.

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

4.7. Obscenity. Operator shall not transmit, or permit to be transmitted, over any Channel any Programming which is obscene in the sense that such Programming is not protected speech under the Constitution of the United States. The Operator shall comply with all relevant provisions of federal law relating to obscenity.

SECTION 5 - Fees and Charges to Customers

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Operator or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Operator shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

5.2. No Rate Discrimination. All rates and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory for all Persons of similar classes under similar circumstances and conditions and without regard to neighborhood or income. Nothing herein shall be construed to prohibit: (A) the temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; and (B) the offering of reasonable discounts to similarly situated Persons.

SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection

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6.1. Customer Service Standards. The Town hereby adopts the customer service standards set forth in 47 CFR §76.309 of the FCC's rules and regulations, as amended. The Operator shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Operator may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3. Privacy Protection. The Operator shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 7 - Oversight and Regulation by Town

7.1. Franchise Fees. The Operator shall pay to the Town quarterly, on or before the forty-five (45th) day after the end of each quarter (March, June, September, December), a franchise fee in a sum equal to five percent (5%) of Gross Revenues as is defined in this Franchise, for the preceding three calendar months.

The Town may modify the rate of the Franchise fee if so permitted by federal and state law. Prior to implementation of any modification in the rate of Franchise fee the Operator may request a public hearing by the Town Council to discuss said modification. Following such a hearing the Town Council may require the implementation of such modification in accordance with the provisions of this Franchise, subject to applicable law.

7.1.1. Late Payment. Any quarterly Franchise fee not paid by the Operator within forty-five (45) days of the end of a quarter shall bear interest at one percent (1%) per month (twelve percent (12%) per annum) on any unpaid balance of the Franchise Fee due under this Franchise, from the date due until paid.

7.1.2 Financial Reports. Each franchise fee payment shall be accompanied by a financial report showing the basis for the Operator's computation, including, revenues received by the Operator within the Town from such items as Basic Service, Expanded Basic Service, pay TV service, and other applicable sources of revenue.

7.2. Franchise Fees Subject to Audit.

7.2.1. Upon prior written notice of not less than sixty (60) days, during normal business hours, at Operator's principal business office, the Town shall have the right to inspect the Operator's financial records used to calculate the Town's franchise fees; provided, however, that any such inspection shall take place within three (3) years from the date the Town receives such payment, unless the Town has information relating to previous years beyond the three (3) years which raises doubt as to the accuracy of payments

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made under this or previous franchises in which case an additional three (3) years may be audited, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Town, the Town shall provide to the Operator a final report setting forth the Town's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Operator shall have thirty (30) days from the receipt of the report to provide the Town with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Town by the Operator as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any "Finally Settled Amount(s)" due to the Town as a result of such audit shall be paid to the Town by the Operator within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Operator, the Town shall have no further rights to audit or challenge the payment for that period. The Town shall bear the expense of its audit of the Operator's books and records, unless the final results of the audit determine an underpayment of seven (7) percent or more in which case the Operator shall bear the expense, up to three thousand dollars (\$3,000) per year audited.

7.2.4. If a franchise fee underpayment is discovered as a result of an audit, Operator shall pay, in addition to the amount due, interest at one percent (1%) per month (twelve percent (12%) per annum), calculated from the date of the underpayment was originally due until the date the Town receives the payment.

7.2.5. If a franchise fee overpayment is discovered as a result of an audit, the Town and Operator shall meet and confer in order to resolve.

7.3. Oversight of Franchise. In accordance with applicable law, the Town shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Operator's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Operator's compliance with the provisions of this Franchise Agreement.

7.4. Technical Standards. The Operator shall comply with all applicable technical standards of the FCC. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Operator shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Town shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

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7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, the Operator agrees that the Town, upon reasonable prior written notice to the Operator, may review such of the Operator's books and records reasonably necessary to determine compliance with the terms of this Franchise at the Operator's business office, during normal business hours, and without unreasonably interfering with Operator's business operations. Such books and records shall include any records required to be kept in a public file by the Operator pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the Town shall be retained by the Operator for a minimum period of six (6) years.

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

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Operator shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. During any such audit the Town shall be provided with all reasonable records and/or information to verify calculation of the Town's franchise fees. The Town agrees to treat any information disclosed by the Operator as confidential and only to disclose it to those employees, representatives, and agents of the Town that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information, unless compelled by law, and then, only on prior notice to the Operator so that an injunction can be sought, if desired. The Operator shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Operator to competitively sensitive. In the event that the Town receives a public records request under Chapter 42.56 RCW for the disclosure of information the Operator has designated as confidential, trade secret or proprietary, the Town shall notify Operator of such request immediately and provide a copy of any written request by the party seeking the information and provide the Operator with a minimum of ten (10) business days to seek a court order to enjoin that disclosure pursuant to Chapter 42.56.540 RCW. Notwithstanding the foregoing, nothing in this Section 7.5.3 prohibits the Town from complying with Chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records.

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

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(A) Records of all written complaints received by Operator for the previous year. The term “complaint” as used here in refers to escalated concerns about any aspect of the Cable System or Operator’s cable operations;

(B) Records of outages for the previous year, indicating date, duration, area, 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 acknowledgement, 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;

(E) If specifically requested by the Town: the most recent annual report; and the number of Subscribers with Basic Service;

7.6 Non-Waiver. Acceptance of any Franchise fee payment by the Town shall not be construed as an agreement by the Town that the Franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the Town be construed as a release or waiver of any claim the Town may have for further or additional sums payable under the provisions of the Ordinance.

SECTION 8 – Transfer or Change of Control of Cable System or Franchise

8.1. Neither the Operator nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. No change in control of the Operator, defined as an acquisition of 50% or greater ownership interest in Operator, shall take place without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Operator in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Town shall, in accordance with FCC rules and regulations, notify the Operator in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Town has not taken action on the Operator’s request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

SECTION 9 - Insurance and Indemnity

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9.1. Insurance. Throughout the term of this Franchise Agreement, the Operator shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Town certificates of insurance designating the Town and its officers, boards, commissions, councils, elected officials, agents and employees as additional insured's and demonstrating that the Operator has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000.00) for bodily injury or death to any one person, and up to Two Million Dollars (\$2,000,000) for a single occurrence and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Town. The Operator shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Franchise. The Operator shall provide workers' compensation coverage in accordance with applicable law. The Operator shall indemnify and hold harmless the Town from any workers' compensation claims to which the Operator may become subject during the term of this Franchise Agreement. Each insurance policy shall be with sureties qualified to do business in the State of Washington with an A- : VII or better rating for financial condition and financial performance by A.M. Best's Key Rating Guide.

9.2. Indemnification.

9.2.1. General Indemnification. The Operator shall indemnify, defend and hold harmless the Town, its officers, elected officials, employees, and agents from and against any claim for injury, damages, loss, liability, cost or expense, including, but not limited to, reasonable attorneys' fees and costs resulting from property damage or bodily injury (including accidental death), and all other damages arising in whole or in part from, any act or omission of the Operator, its agents, contractors or subcontractors, or their employees in connection with the construction, operation, maintenance or removal of the Cable System or any other act done pursuant to the terms of this Franchise. In the event that a particular activity conducted under this Franchise is subject to RCW 4.24.115, this Section 9.2.1 shall apply. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Operator and the Town, its officers, officials, employees, and volunteers, Operator's liability shall be only to the extent of Operator's negligence. No indemnity shall be owed in the event that the cause of any claim is the sole negligence of the Town.

9.2.2. Indemnification for Relocation. Subject to applicable law, Operator shall indemnify the Town for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the Town arising out of, or resulting directly from Operator's failure to remove, adjust, or relocated any of its facilities in the Rights-of Way in a timely manner in accordance with any relocation required by the Town. Operator shall always be provided a minimum of sixty (60) days-notice to perform such relocation, except in the case of an emergency and therefore the obligation to indemnify would not apply.

9.2.3. Procedures and Defense. The Town shall give the Operator written notice of any claim or of the commencement of any action, suit, or other proceeding covered by the indemnity in this Section within fifteen (15) business days of receipt of such claim or action. If a claim or action arises, the Town shall tender the defense of the claim to

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Operator, which defense shall be at Operator's expense, and Operator shall have the right and duty to accept the tender and thereafter to defend, settle, or compromise any claims arising hereunder and the Town shall cooperate fully therein.

9.2.4. Other Counsel. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the Town and the counsel selected by Operator to represent the Town, Operator shall select additional counsel with no conflict with the Town.

9.2.5. Operator's Further Responsibilities. Operator shall indemnify and hold harmless the Town from any workers' compensation claims to which Operator may become subject during the term of this Franchise. If it is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided per this Franchise, Operator waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Operator from raising such immunity as a defense against any claim brought against Operator by any of its employees or other third parties. This waiver has been mutually negotiated by the parties.

9.3. Construction Bond. Before beginning any construction work in or under the Town streets or Rights-of-Way, Operator shall furnish a construction bond to the Town as may be required in Eatonville Municipal Code Chapter 12.08.

SECTION 10 - System Description; System Facilities

10.1. System Capacity. During the term of this Agreement, the Operator's Cable System shall be capable of providing a minimum of 85 channels of video programming with satisfactory reception available to its customers in the Franchise Area.

10.2. Technical Performance. The technical performance of the Cable System shall meet or exceed all applicable federal technical standards, as they may be amended from time to time, regardless of the transmission technology utilized.

10.3. Emergency Alert. The Operator shall provide and maintain an Emergency Alert System consistent with applicable federal law and regulations, including 47 C.F.R. Part 11, and any Washington State Emergency Alert System Plan requirements.

SECTION 11 – Educational and Governmental Access

11.1. EG Channel. Within one hundred-eighty (180) days of written notice, Operator shall make available, for the Town's use, one (1) Education and Government ("EG") Access Channel for EG programming purposes. The provision of the Access Channel via digital or compressed video technology will not reduce or increase the total number of Access Channels required herein.

11.2. Channel Location and Quality. The Operator specifically reserves the right to make or change channel assignments in its sole discretion; provided however, the Operator

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shall provide as much notice as possible but not less than sixty (60) days advance written notice to the Town prior to any relocation of Access Channels. The EG Access Channel shall be made available at no extra charge to Subscribers on Operator's lowest tier of service. Any Access Channels shall have at least the same transmission quality as is used to carry other commercial Channels that deliver programming on the Cable System. The Operator shall provide Headend and hub equipment and routine maintenance and repair and replace, if necessary, any of Operator's equipment.

11.3. Regional Access Programming. The Town acknowledges that the Operator's Cable System provides additional benefits to Access programming needs beyond the requirements listed above. This is accomplished through the inclusion of other regional access programming within the regional channel line-up that services the Franchise Area. The Operator will endeavor to continue to provide the Subscribers in the Franchise Area with the other regional access channels.

11.4. Control of Access Channels. The Town may authorize a third party to control, operate, and manage the use of the EG Access facilities provided by Operator under this Franchise, including without limitation, the operation of the EG Access Channel. The Town or its designee may formulate rules for the operation of the EG Access Channel, consistent with this Franchise. Regarding the Town's or its designee's use of Access facilities and the EG Access Channel, the Operator shall fully cooperate with requests from the Town, or its designee.

SECTION 12 - Enforcement of Franchise

12.1. Notice of Violation or Default. In the event the Town believes that the Operator has not complied with the terms of the Franchise, it shall informally discuss the matter with the Operator. If these discussions do not lead to resolution of the problem within a reasonable time frame, the Town shall then notify the Operator in writing by certified mail. The notice shall state the specific details regarding the exact nature of the alleged noncompliance or default with the material conditions of the Franchise.

12.2. Operator's Right to Cure or Respond. The Operator shall have forty-five (45) days from the receipt of the Town's written notice: (A) to respond to the Town, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, the Operator will, after notifying the Town of the steps being taken and the projected date that they will be completed, commence corrections promptly and diligently pursue corrections until they are complete.

12.3. Public Hearings. In the event the Operator fails to respond to the Town's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Operator, the Town shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Town Council that is scheduled at a time that is no less than thirty (30) business days there

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from. The Town shall notify the Operator in writing of the time and place of such meeting and provide the Operator with a reasonable opportunity to be heard.

12.4 Enforcement. Subject to state and federal law, in the event the Town Council, after such public hearing, determines that the Operator is in default of any provision of the Franchise, the Town may elect to:

12.4.1 Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages; or

12.4.2 In the event of a material breach, pursue the revocation of this Franchise pursuant to the procedures in Section 14; or

12.4.3 Impose liquidated damages as set forth in Section 13.

12.4.4 Pursue any remedies that the Town may have, at law or in equity, for enforcement of this Franchise.

SECTION 13 – Liquidated Damages

13.1. Liquidated Damages. The Town and the Operator recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Town as a result of Operator's breach of certain provisions of this Franchise. Accordingly, instead of requiring such proof, the Town and Operator agree that Operator shall pay to the Town, the sums set forth below for each day or part thereof that Operator shall be in breach of specific provisions of this Franchise. Such amounts are agreed to by both parties as a reasonable estimate of the actual damages the Town would suffer in the event of Operator's breach of such provisions of this Franchise.

13.1.1. Subject to the provision of written notice to the Operator and a thirty (30) day right to cure period, the Town may assess against Operator liquidated damages as follows: One Hundred Dollars (\$100) per day for each material violation of the Franchise or the Customer Service Standards; and fifty dollars (\$50) per day for failure to provide reports or notices as required by this Franchise.

13.1.2. Liquidated damages may be assessed for no more than ninety (90) calendar days for any violation.

13.1.3. In the event Operator fails to cure within the specified cure period, or any agreed upon extensions thereof, liquidated damages accrue from the date the cure period ends.

SECTION 14 – Termination of Franchise

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14.1. Revocation. This Franchise may be revoked and all rights and privileges rescinded if:

14.1.1 There is an uncured violation of any material obligation under this Franchise;

14.1.2 The Operator attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Town or its subscribers;

14.1.3 The Operator makes a material misrepresentation of fact in the negotiation of this Franchise;

14.1.4 There is a foreclosure or involuntary sale of the Cable System;

14.1.5 The operator willfully fails to provide services as specified in this Franchise;

14.1.6 The operator becomes insolvent or if there is an assignment for the benefit of the Operator's creditors; or

14.1.7 There is a pattern or practice of material violation of any requirement of this Franchise.

14.2. Operator Without Fault. Notwithstanding Section 14.1, none of the foregoing shall constitute a material violation or breach if Operator is without fault or if the violation or breach occurs as a result of circumstances beyond Operator's reasonable control. Operator shall bear the burden of proof in establishing the existence of such circumstances.

14.3 Revocation Notice and Duty to Cure. In the event that the Town believes that grounds exist for revocation of the Franchise, the Town shall informally discuss the matter with the Operator. If these discussions do not lead to resolution of the problem, the Operator shall be given written notice of the apparent violation or noncompliance, including a short and concise statement of the nature and general facts of the violation or noncompliance, and be given forty-five (45) days to furnish evidence:

- (A) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- (B) That rebuts the alleged violation or noncompliance.
- (C) That it would be in the public interest to impose some liquidated damages or sanction less than revocation.

14.4 Revocation Hearing. In the event that the Operator fails to provide evidence reasonably satisfactory to the Town as provided hereunder, the Town Council may seek revocation of the Franchise at a public hearing. The Town shall give written notice of its intent to revoke the Franchise. The notice shall set forth the exact nature of the

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noncompliance and specify the time and place of the hearing. The Operator shall be afforded at least thirty (30) days prior written notice of the hearing.

14.4.1 At the public hearing, the Operator shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of the public hearing and the cost shall be shared equally between the parties. The Town Council shall hear any Person interested in the revocation, and shall allow the Operator, in particular, an opportunity to state its position on the matter.

14.5 Standards for Revocation or Lesser Sanctions. Within ninety (90) days after the public hearing, the Town Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation, based upon the record of the public hearing.

14.5.1 If the Town determines that the Franchise is to be revoked, the Town shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Operator. The Operator shall be bound by the Town's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within thirty (30) days. The Operator shall be entitled to such relief as the Court may deem appropriate.

14.6. Technical Violation. The Town agrees that it is not its intention to subject the Operator to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

14.6.1. In instances or for matters where a violation or a breach of the Franchise by the Operator was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

14.6.2. Where there existed circumstances reasonably beyond the control of the Operator and which precipitated a violation by the Operator of the Franchise, or which were deemed to have prevented the Operator from complying with a term or condition of the Franchise.

SECTION 15 - Miscellaneous Provisions

15.1. Force Majeure. The Operator shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, volcanic eruption, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Operator's ability to anticipate or control. This provision also covers work delays caused by waiting for

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utility providers to service or monitor their own utility poles on which the Operator's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

15.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Town:

Town of Eatonville
201 Center St. W
P.O. Box 309
Eatonville, WA 98328
Attn: Town Clerk

To the Operator:

Comcast Cable Communications, LLC
410 Valley Ave. NW, Suite 9
Puyallup, WA 98371
Attn: Franchise Department

with a copy to:

Comcast Cable Communications, Inc.
15815 25th Ave. W
Lynnwood, WA 98087
Attn.: Government Affairs Department

15.3. Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Town and the Operator with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

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

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15.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State.

15.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Town and the Operator, which amendment shall be authorized on behalf of the Town through the adoption of an appropriate resolution or order by the Town, as required by applicable law.

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

15.8. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Operator may have under federal or state law unless such waiver is expressly stated herein.

15.9. Binding Acceptance. This Franchise shall bind and benefit the parties hereto and their respective successors and assigns.

15.10. Cumulative Rights. Subject to applicable law, all rights and remedies given to the Town by this Franchise shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the Town.

15.11. No Joint Venture. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

15.12. Venue. The venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington at Tacoma, or Pierce County Superior Court.

15.13. Waiver. The failure of either party at any time to require performance by the other of any provision hereof shall in no way be a waiver thereof unless specifically waived in writing. Nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

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

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IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest: Town of Eatonville:

_____ By: _____
Name: _____
Title: _____

ACCEPTED this _____ day of _____, 2020, subject to applicable federal, state and local law.

Attest: Comcast Cable Communications, LLC

_____ By: _____
Name: _____
Title: _____