

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 746 Granting a Non-Exclusive Franchise to Qwest Broadband Services Inc., d/b/a CenturyLink, to Operate a Cable System Within City Rights-of-Way
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Alex Herzog, CMO Management Analyst
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

The City has received an application for a new right-of-way franchise from Qwest Broadband Services Inc., doing business as (d/b/a) CenturyLink, for a cable system in Shoreline. CenturyLink will provide cable, internet access, and phone line services to potential customers.

Shoreline Municipal Code (SMC) Section 5.20, the section of code that governs cable franchising, states that the City Council is required to hold a public hearing prior to the granting a cable franchise. SMC Section 12.25 also applies to franchisees, and the applicant has met or will meet these provisions upon approval of the franchise.

Proposed Ordinance No. 746 (Attachment A) would grant this non-exclusive right-of-way franchise to Century Link (Exhibit A). Council discussed and held a public hearing on the proposed ordinance on May 16, 2016.

RESOURCE/FINANCIAL IMPACT:

There is no negative fiscal impact to the City in adopting proposed Ordinance No. 746; however, the total impact is unknown, as CenturyLink has yet to market its cable services to retail customers in Shoreline.

If adopted, the agreement enables the City to collect a franchise fee of 5% of CenturyLink's gross revenues. The other revenue sources for the City of Shoreline tied to franchise issuance are the utility tax and Education and Government Access (EG) fees collected from CenturyLink subscribers. The City of Shoreline will collect a 6% utility tax and fifteen cents (\$0.15) per subscriber per month EG fee from subscribers.

Additionally, the City intends to assess full administrative costs for processing the franchise application and right-of-way permits for the new system and improvements. The costs for these services will be deducted from the \$5,000 deposit provided by CenturyLink as required by SMC 12.25.040.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 746 approving a non-exclusive franchise agreement for operating a cable system within City rights-of-way to Qwest Broadband Services Inc., d/b/a CenturyLink.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

RCW 35A.47.040 authorizes code cities to permit and regulate non-exclusive franchises for use of public streets for a variety of public and private utilities, including conduits and wires for the transmission and distribution of signals and other methods of communication. An ordinance granting a franchise must receive a majority vote of the full council membership.

Additionally, potential cable franchisees are subject to two sections in the SMC: section 5.20.020 states that “it shall be unlawful to engage in or commence construction, operation, or maintenance of a cable television system without a franchise issued under this chapter,” and section 12.25.030 states that “it shall be unlawful to construct, install, maintain or operate any facility in, on, above, or below the public right-of-way without a valid franchise agreement obtained pursuant to the provision of this chapter.”

SMC Section 5.20, the section of code that governs cable franchising, states that the City Council is required to hold a public hearing prior to the granting a cable franchise to determine if:

- The public will be benefited by the granting of a franchise to the applicant
- The applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area
- The applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the city
- The applicant will comply with all terms and conditions placed upon a franchisee by this chapter
- The applicant is capable of complying with all relevant federal, state, and local regulations, codes and standards pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise
- The public rights-of-way have the capacity to accommodate the cable television system
- The proposed franchise is consistent with the city’s present and future use of the public rights-of-way to be used by the cable television system
- The benefit to the public from the cable television system outweighs the potential disruption to existing users of the public rights-of-way
- All other conditions resulting from the grant of the franchise have been considered by the city and that the city determines that the grant is still in the public’s best interest

SMC 12.25, *Right-of-Way Franchises*, establishes the requirement for a franchise or other right-of-way agreement for use of the City’s rights-of-way and application procedures. CenturyLink has complied with the application requirements of this chapter including a \$5,000 fee deposit. Grounds for revocation of a franchise are set forth in SMC 12.25.100, and these are incorporated by reference in Proposed Ordinance No. 746.

SMC 12.15 *Use of Right-of-Way* provides regulations for permitting use of rights-of-way, including utilities, and will be applied if a franchise is not successfully negotiated. This chapter also includes expedited blanket and minor use permit processes for work in the right-of-way by franchisees in good standing, e.g. those in compliance with a long term franchise agreement.

Council discussed and held a public hearing on the proposed ordinance on May 16, 2016. Materials from that meeting can be found on the City's website: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2016/staffreport051616-8a.pdf>.

DISCUSSION

CenturyLink is a new entrant as a cable system operator in Shoreline. It is a publicly owned company. CenturyLink's parent company is Qwest Broadband Services Inc., which owns a number of other companies.

Neither CenturyLink nor its parent companies have filed for relief under any provision of the bankruptcy laws of the United States, have had an involuntary petition against them pursuant to the Bankruptcy Code, been the subject of any state law insolvency proceeding such as a transfer for the benefit of creditors, have had a franchise agreement revoked, have been found guilty by any federal, state, or municipal court or administrative agency in the United States, of a) violation of a security, or antitrust law; or b) felony or any other crime involving moral turpitude.

CenturyLink has sufficiently met a large majority of the requirements of the City's code in pursuit of a franchise agreement, including submitting a deposit of \$5,000 for the costs associated with the City's evaluation of the application for franchise. CenturyLink has agreed to acquire and submit a performance bond in the amount of \$30,000 upon approval of the franchise.

A new franchisee for cable services in Shoreline promotes economic development by allowing utilization of unused capacity of an existing right-of-way by a new business. As well, adoption of this franchise makes cable services more competitive for commercial properties in the City as the system is expanded.

The substantive portions of the proposed franchise are outlined below:

- Section 2.9: The term of the Franchise is seven (7) years and will be automatically extended for an additional two (2) years unless either party provides written notice to the other to the contrary.
- Section 3.9: All work authorized and required in the Franchise shall be done in a safe, thorough and workmanlike manner. CenturyLink 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.

- Section 6 (and an attachment of the Franchise): Extensive customer service standards, including requirements regarding availability for customer inquiries, billing, outage and service interruptions, installation and service calls, customer privacy and communications with subscribers, and complaint procedures have been written into the franchise as an attachment. City staff is working with Century Link staff to finalize the customer service standards and a draft version has been included in tonight's materials. The Customer Service Standards are attached to this staff report as Exhibit B.
- Section 7: Affirms that CenturyLink is subject to a Franchise Fee in an amount equal to 5% of Gross Revenues derived from the operation of the Cable System in Shoreline and the 6% utility tax imposed by SMC 3.32 for cable services provided to customers within Shoreline. The City will also collect Education and Government Access fee of \$.15 per subscriber (Section 11.7).
- Section 8: Includes a City approval process for transfer and renewal of the franchise.
- Section 9.1: Standard insurance provisions are included in this section, including \$2,000,000 of Commercial General Liability, \$1,000,000 of Employer's Liability and \$3,000,000 of Umbrella/Excess Liability coverage.
- Section 9.4: Within 30 days after the effective date of this Franchise, CenturyLink shall provide a performance bond in the amount \$30,000 to ensure the faithful performance of its responsibilities under this Franchise and applicable law.
- Section 11: The Franchise secures one dedicated Governmental Access Channel and one dedicated Educational Access Channel for the community.
- Section 11.7: CenturyLink will collect an Education and Government Access program fee of \$0.15 per subscriber per month.
- Section 13: If CenturyLink breaches any of the provision in the Franchise, this section provides for liquidated damages at the rates specified, which may be assessed for no more than 75 calendar days for any individual incident. This protection is in addition to the City's other legal remedies.
- Section 14: This section details the process for revocation of the Franchise.

FINANCIAL IMPACT

There is no negative fiscal impact to the City in adopting proposed Ordinance No. 746; however, the total impact is unknown, as CenturyLink has yet to market its cable services to retail customers in Shoreline.

If adopted, the agreement enables the City to collect a franchise fee of 5% of CenturyLink's gross revenues. The other revenue sources for the City of Shoreline tied to franchise issuance are the utility tax and Education and Government Access (EG) fees collected from CenturyLink subscribers. The City of Shoreline will collect a 6% utility tax and fifteen cents (\$0.15) per subscriber per month EG fee from subscribers.

Additionally, the City intends to assess full administrative costs for processing the franchise application and right-of-way permits for the new system and improvements.

The costs for these services will be deducted from the \$5,000 deposit provided by CenturyLink as required by SMC 12.25.040.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 746 approving a non-exclusive franchise agreement for operating a cable system within City rights-of-way to Qwest Broadband Services Inc., d/b/a CenturyLink.

ATTACHMENTS

- Attachment A: Proposed Ordinance No. 746 Granting a Non-Exclusive Franchise to Qwest Broadband Services Inc., d/b/a CenturyLink, to Operate a Cable System Within City Rights-of-Way
- Exhibit A: Cable Franchise Between the City of Shoreline and Qwest Broadband Services Inc., d/b/a CenturyLink
- Exhibit B: CenturyLink Cable Franchise Customer Service Standards

ORDINANCE NO. 746

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PRUPOSE OF CONSTRUCTING, INSTALLING, OPERATING, AND MAINTAINING A CABLE COMMUNICATION SYSTEM IN CERTAIN PUBLIC RIGHTS-OF-WAYS IN THE CITY.

WHEREAS, Qwest Broadband Services, Inc. d/b/a Centurylink is a cable communication company providing video programming and other programming services to its customers; and

WHEREAS, Qwest Broadband Services, Inc. d/b/a Centurylink's desired route through the City of Shoreline, hereinafter referred to as the "City," requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of a cable system; and

WHEREAS, the City Council has determined that the use of the City's rights-of-way for installation, operation, and maintenance of a cable system benefits the citizens of Shoreline as a result of such services; and

WHEREAS, the franchise for use of public rights-of-way allow for the construction, installation, operation, and maintenance of a cable system necessary to serve the future needs of the citizens of Shoreline and the coordination, planning, and management of the City's rights-of-way is necessary to ensure that the burden of costs relating to use of the public rights-of-way are fairly allocated; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way and RCW 35A.47.040 grants the City broad authority to grant non-exclusive franchise agreements and SMC 12.25 requires a franchise agreement for the use of public rights-of-way; now therefore;

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASINGTON DOES ORDAIN AS FOLLOWS:

Section 1. Non-Exclusive Franchise Granted. The City hereby grants, subject to the terms and conditions of the Franchise Agreement, hereto attached as Exhibit A, to Qwest Broadband Services, Inc. d/b/a/ Centurylink a nonexclusive Franchise authorizing Qwest Broadband Services, Inc. d/b/a/ Centurylink to construct and operate a cable system in, along, among, upon, across, above, over, under, or in any manner connected with Public Rights-of-Way within the Franchise Area, that area being the municipal boundaries of the City as of the

effective date of this Ordinance, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Rights-of-Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system.

Section 2. Publication and Cost. The City Clerk is hereby directed to publish a summary of this Ordinance in the official newspaper of the City. The cost of publication of this Ordinance shall be borne by Qwest Broadband Services, Inc. d/b/a Centurtylink who shall reimburse the City for such costs within thirty (30) days of receipt of the City's invoice.

Section 3. Franchise Acceptance. The City Clerk shall forward a certified copy of this Ordinance to Qwest Broadband Services, Inc. d/b/a Centurtylink for full acceptance. The full acceptance of the Ordinance, the Franchise Agreement and all the terms and conditions shall be filed by Qwest Broadband Services, Inc. d/b/a Centurtylink with the City Clerk within thirty (30) days of the effective date of this Ordinance. Failure on the part of Qwest Broadband Services, Inc. d/b/a Centurtylink to file said consent within thirty (30) days of the effective date of this Ordinance shall result in this Ordinance having no further force or effect and all rights granted under the Franchise Agreement shall terminate and be null and void.

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

Section 5. Effective Date. This Ordinance shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL ON JUNE 6, 2016

Mayor Christopher Roberts

APPROVED AS TO FORM:

ATTEST:

Jessica Simulcik-Smith
City Clerk

Margaret King
City Attorney

Date of Publication: , 2016
Effective Date: , 2016

FRANCHISE

Between

SHORELINE, WASHINGTON

And

**QWEST BROADBAND SERVICES, INC. D/B/A
CENTURYLINK**

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Franchise

This Cable Franchise (hereinafter, the “Franchise”) is entered into by and between the City of Shoreline, Washington (hereinafter, “City”) and, Qwest Broadband Services, Inc., d/b/a CenturyLink, a Delaware corporation, “Grantee”).

WHEREAS, the City wishes to grant Grantee a nonexclusive franchise to construct, install, maintain, and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the City is a “franchising authority” in accordance with Title VI of the Cable Act (*see* 47 U.S.C. §522(10)) and Washington State law;

WHEREAS, the City has identified the future cable-related needs and interests of the City, has considered the financial, technical and legal qualifications of Grantee, and has determined that Grantee’s Cable System is adequate, in a full public proceeding affording due process to all parties;

WHEREAS, the City desires to protect and manage the Rights-of-Way, require standards of customer service, receive financial compensation for Grantee's use of the Rights-of-Way as provided by federal law, obtain complimentary Cable Services for public buildings , obtain use of educational and governmental channels, and establish certain reporting and record access requirements pursuant to Federal and State law;

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

NOW, THEREFORE, in consideration of the City’s grant of a franchise to Grantee, Grantee’s promise to provide Cable Service to residents of the Franchise Area as set forth in the agreement, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

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

SECTION 1. Definition of Terms

For the purpose of this Franchise, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them herein. The word "shall" is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various educational and governmental agencies, institutions and organizations in the community, including the City and its designees, of Channels on the Cable System designated for such use as permitted under applicable law:

(A) “Educational Access” means Access where Schools are the primary users having editorial control over programming.

(B) “Governmental Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming.

(C) “Educational and Governmental Access” or “EG Access” means the availability for noncommercial use of a Channel or Channels on the Cable System by various governmental and educational agencies including the City and its designees.

1.2 “Access Channel” means any Channel, or portion thereof, designated for noncommercial Access purposes or otherwise made available to facilitate or transport Access programming.

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

1.4 “Bad Debt” means amounts lawfully owed by a Subscriber and accrued as revenue on the books of Grantee, but not collected after reasonable efforts by Grantee.

1.5 “Basic Service” means the lowest Tier of Cable Service that includes, at a minimum, the retransmission of local television Broadcast Signals and Access programming. “Cable Act” means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as amended by the Telecommunications Act of 1996, and any amendments thereto, 47 U.S.C. § 521 *et. seq.*

1.6 “Cable Operator” means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise Control or are responsible for, through any arrangement, the management and operation of such a Cable System.

1.7 “Cable Service(s)” means (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, 47 U.S.C. § 522(6).

1.8 “Cable System” means a cable system as defined in Title VI of the Federal Communications Act of 1934, 47 U.S.C. § 522(7), as amended, and any implementing

regulations. Unless otherwise specified, references in this Franchise to the Cable System refer to the Cable System utilized by Grantee to provide Cable Services in the Franchise Area.

1.9 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel, whether delivered in an analog or digital format.

1.10 “City” means City of Shoreline, a municipal corporation of the State of Washington.

1.11 “Control” means the ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Grantee’s affairs.

1.12 “Days” means calendar days.

1.13 “FCC” means the Federal Communications Commission or successor governmental entity thereto.

1.14 “Franchise” means this document and any amendments or modifications hereto.

1.15 “Franchise Area” means the area within the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.16 “Gross Revenues” means any and all revenue derived by Grantee or its Affiliates from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with Generally Accepted Accounting Principles (“GAAP”).

1.16.1 Gross revenues shall include but shall not be limited to the following:

- (a) fees charged for Basic Service;
- (b) fees charged to Subscribers for any service tier other than Basic Service;
- (c) fees charged for premium Channel(s), e.g. HBO, Cinemax, or Showtime;
- (d) fees charged to Subscribers for any optional, per-Channel, or per-program services;
- (e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees for Cable Service;
- (f) fees for service calls;

(g) rental of Customer equipment, including converters (e.g. set top boxes, high definition converters, and digital video recorders) and remote control devices;

(h) advertising sales revenue, minus commissions due to advertising agencies that arrange for the advertising buy, as calculated under GAAP;

(i) revenue from leased Access Channel(s);

(j) revenues received in connection with the carriage of home shopping Channels;

(k) fees for any and all music services that are deemed to be a Cable Service over a Cable System;

(l) revenue from the sale of program guides;

(m) late payment fees;

(n) Franchise fees hereunder.

1.16.2 Gross Revenues shall not include:

(a) sales of capital assets or sales of surplus equipment;

(b) program launch fees;

(c) any fees or charges collected from Subscribers or other third parties for EG fees;

(d) Bad Debt; provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected;

(e) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit;

1.15.3 The value of the complimentary Cable Services provided herein shall not increase or decrease Gross Revenues for the purpose of calculating Franchise Fees.

1.16 "Locally Scheduled Original Programming" means Government Access or Educational Access programming that is created by the City or their designated Access provider(s) including edited coverage of live programming. Such Locally Scheduled Original Programming shall not be considered as qualifying as such after two (2) cablecasts (initial airing and first repeat). Automated Video Programming filler, such as cablecasts of highways and

roads, AM/FM Radio programming, NASA or video bulletin boards does not constitute Locally Scheduled Original Programming that qualifies herein.

1.17 “Mosaic” or “Mosaic Channel” means a channel which displays miniaturized media screens and related information for a particular group of channels with common themes. The Mosaic Channel serves as a navigation tool for Subscribers, which displays the group of Access Channels on a single channel screen and also provides for easy navigation to a chosen Access Channel.

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

1.19 “Public Rights-of-Way” or “Rights-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, drive, circle or other public right-of-way, including, but not limited to, utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the City in the Franchise Area, which shall entitle the City and Grantee to the use thereof for the purpose of constructing, installing, operating, repairing, upgrading and maintaining the Cable System. Public Rights-of-Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle Grantee to the use thereof for the purposes of constructing, installing, operating, and maintaining Grantee’s Cable System over existing poles and wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the Cable System.

1.20 “QC” means Qwest Corporation d/b/a CenturyLink (“QC”), an Affiliate of Grantee.

1.21 “Qualified Living Unit” means a distinct address in the QC network inventory database, including but not limited to single family homes, multiple-dwelling units, and business locations, that meets the minimum technical qualifications defined by Grantee for provision of Cable Service

1.22 “School” means any State accredited K-12 educational institution, public or private, but excluding home schools.

1.23 “State” means the State of Washington.

1.24 “Subscriber” or “Customer” means a Person lawfully receiving any Cable Service over the Cable System with Grantee’s express permission whether or not a fee is paid. In the case of multiple office buildings or Multiple Dwelling Units, the “Subscriber” means the lessee, tenant, or occupant.

SECTION 2. Grant of Authority

2.1 Grant. The City hereby grants to Grantee under the Cable Act a nonexclusive Franchise authorizing Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Rights-of-Way 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 Rights-of-Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

2.2 Grant of Authority. Subject to the terms and conditions of this Franchise and the Cable Act, the City hereby grants Grantee the right to own, construct, operate and maintain a Cable System along the Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Franchise.

Any Affiliate of Grantee directly involved in the offering or delivery of Cable Services in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, shall comply with the obligations of this Franchise. However, the Parties acknowledge that QC, an Affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Service, including Cable Services utilizing QC's Fiber-to-the-Premises Network or Fiber-to-the-node infrastructure. So long as QC does not provide Cable Services to Subscribers in the City, QC will be subject only to the terms and conditions contained in this Franchise related, directly or indirectly, to construction, installation, and maintenance of Facilities in the Rights-of-Way. QC's construction, installation, and maintenance of Facilities in the Rights-of-Way shall be subject to applicable laws and permit requirements. To the extent Grantee uses any third-parties (whether or not affiliated with Grantee) to fulfill its obligations under this Franchise, Grantee shall ensure such parties comply with the terms and conditions of this Franchise. To the extent Grantee constructs, installs, and maintains Facilities in the Rights-of-Way, such Facilities will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for compliance with all provisions in this Franchise related to: 1) its offering of Cable Services in the Franchise Area; and 2) the operation of the Cable System regardless of which entity owns or constructs the Facilities used to provide the Cable Service

2.3 Franchise Subject to Federal, State and Local Law. Subject to Section 2.8 and notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions now existing or hereafter amended of federal, State and local laws and regulations.

2.4 Use of Rights of Way for non-Cable Service. This Franchise expressly authorizes Grantee to provide only Cable Services as allowed by applicable law, and to construct, operate or maintain Cable System facilities in the Franchise Area. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide non-Cable Services or

relieve Grantee of its obligation to comply with any such authorization(s) that may be lawfully required.

2.5 No Rights by Implication. No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

2.5.1 Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

2.5.2 Any permit, agreement or authorization required by the City for Rights-of-Way users in connection with operations on or in Rights-of-Way or public property; or

2.5.3 Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise.

2.6 Conveyance of Rights. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Rights-of-Way; it does not provide the Grantee with any interest in any particular location within the Rights-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

2.7 No Waiver. The failure of City on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Cable Act or any other applicable State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.8 Other Ordinances. Grantee agrees to comply with the terms of any lawful, generally applicable local ordinance, including but not limited to Chapter 5.20 of the Shoreline Municipal Code in effect upon adoption of this Franchise. In the event of a conflict between any ordinance and a specific provision of this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the City.

2.9 Term of Franchise. The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be seven (7) years (the "Term") from the Effective Date of this Franchise. The Term shall be automatically extended for an additional two (2) years, provided that such an automatic extension shall not occur if the City or Grantee provides written notice to the other party of their intent to not automatically extend the Term. Written notice to not automatically extend the Term must be provided to the other party no later than two (2) years prior to the expiration of the initial Term.

2.10 Effective Date.

2.10.1 This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the Effective Date of this Franchise. The Effective Date of this Franchise shall be the date upon which Grantee executes acceptance of this franchise agreement.

2.10.2 Within sixty (60) calendar days after the date of City Council approval of this Franchise and receipt of the approved document, Grantee shall signify its acceptance of this Franchise by executing this Franchise. Grantee shall return the executed Franchise along with any accompaniments as required by this Section 2.10.2 to the City Clerk. The executed Franchise shall be accompanied by the certificates of insurance specified in Section 9.2 and the evidence of the Security as specified in Section 9.5. This Franchise is voidable unless executed and returned with the required accompaniments as specified by this Section 2.10.2 by Grantee within this timeframe.

2.11 Effect of Acceptance. By accepting the Franchise, Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and (3) 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.

2.12 Reservation of Authority. Nothing in this Franchise shall (1) abrogate the right of the City to perform any public works or public improvements of any description, (2) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (3) be construed as a waiver or release of the rights of the City in and to the Public Rights-of-Way.

2.13 Grant Not Exclusive. The Franchise and the rights granted herein to use and occupy the Rights-of-Way to provide Cable Services shall not be exclusive, and City reserves the right to grant other franchises for similar uses or for other uses of the Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the Term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System.

2.14 Grant of Other Franchises; Competitive Equity. 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 more beneficial 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; 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 any more materially favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.

2.14.1 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.

2.14.2 In the event that any non-wireless facilities based entity provides Cable Service or video service to the residents of the City under the authority granted by federal or 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 non-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.

2.15 Conditions of Sale. If a renewal or extension of Grantee's Franchise is denied or the Franchise is lawfully terminated, and the City lawfully acquires ownership of the Cable System, used exclusively for the provision of Cable Service, or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

2.16 Transfer upon Revocation. Grantee and the City agree that in the case of a final determination of a lawful revocation of the Franchise, the City shall give Grantee at least one hundred twenty (120) days to effectuate a transfer of its Cable System to a qualified third party. Furthermore, Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the City, Grantee and the City may avail themselves of any rights they may have pursuant to federal or State law. It is further agreed that Grantee's continued operation of the Cable System during the one hundred twenty (120) day period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or Grantee.

2.17 Police Powers. Grantee's rights hereunder are subject to the police powers of City to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to comply with all applicable laws, ordinances and regulations lawfully enacted pursuant to the police powers of City, or hereafter enacted in accordance therewith, by City or any other legally constituted governmental unit having lawful jurisdiction over the

subject matter hereof. The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary.

SECTION 3. Construction and Maintenance of the Cable System

3.1 Permits and General Obligations. Grantee 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 its facilities in the rights of way prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe manner using materials that meet or exceed industry standards. All facilities, poles, conduits, cables, and equipment installed by Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise shall be located so as to minimize interference with the designated use of the Public Rights-of-Way at the time of Cable System facilities installation.

3.2 Conditions on Occupancy of Public Rights-of-Way.

3.2.1 Relocation at Request of City. To the extent allowed by law, and except as provided herein, upon thirty (30) days prior written notice to Grantee, City shall have the right to require Grantee to relocate any part of Grantee's Cable System within the Public Rights-of-Way when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. City is not required to provide thirty (30) days prior written notice in the event of an emergency. Should Grantee fail to remove or relocate any such facilities by the date established by City, City may remove or relocate such facilities, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by City due to Grantee's delay. If City requires Grantee to relocate its facilities located within the Public Rights-of-Way, City shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights-of-Way. This Section 3.2.1 does not apply to overhead facilities that are converted to underground facilities, consistent with Section 3.4. If public funds are available to any Person using such Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall upon written request of Grantee make application for such funds on behalf of Grantee.

3.2.2 Temporary Relocation at Request of Third Party. Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its facilities to permit the moving of such structure; provided (i) Grantee may impose a reasonable charge on any Person for the movement of its facilities, and such charge may be required to be paid in advance of the movement of its wires or cables; (ii) Grantee is granted a permit for such work by the City if a permit is needed; and (iii) Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.3 Restoration of Rights-of-Way. Whenever Grantee disturbs the surface of any Rights-of-Way for any purpose, Grantee shall promptly restore the Rights-of-Way to a condition reasonably comparable to the condition of the Rights-of-Way immediately prior to

such disturbance. When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way, Grantee shall promptly refill the opening and restore the surface as required by its permit. If Grantee fails to promptly restore the Rights-of-Way, the City may, after providing reasonable notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-Way, and the reasonable expense thereof shall be paid by Grantee. The City may, after providing reasonable notice to Grantee, repair any work done by Grantee that, in the determination of the City, does not conform to applicable City specifications. The reasonable cost thereof, including the costs of inspection and supervision, shall be paid by Grantee.

3.3 Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent accidents that may cause damage or injuries. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and State regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Public Rights-of-Way.

3.4 Aerial and Underground Construction. If all of the distribution lines of all of the wireline service providers, such as telecommunications service providers, as defined in RCW 35.99.010, a utility service provider or a Cable Operator (collectively "Service Providers") in any portion of the Franchise Area are underground, Grantee shall place its Cable System's distribution cables underground within that area; provided that such underground locations are actually capable of accommodating Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any portion(s) of the Franchise Area where the distribution lines of any of the respective Service Providers are both aerial and underground, Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aurally or underground. In areas where a Service Provider's wiring is aerial, Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. In those areas where neither aerial or underground distribution lines of any of the respective Service Providers exists, Grantee shall place its Cable System's distribution cables and other equipment underground. If funds exist, are set aside for such purpose, or provided by a third party, Grantee shall be entitled to seek reimbursement for its share of funds to offset the cost of placing its facilities underground. Grantee shall utilize existing conduit wherever possible.

3.4.1 The City shall not be required to obtain easements for Grantee. Grantee 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 utilities are being converted to underground facilities.

3.4.2 Nothing in this Section shall be construed to require Grantee 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.

3.4.3 To the extent allowed by law, in the event of a City driven facilities relocation project that requires conversion of overhead facilities to underground for purposes of health, safety or public welfare, Grantee agrees to bear the costs of converting Grantee'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, Grantee shall only pay for the work hours necessary to complete Cable System related engineering coordination with the other utilities involved in the project.

B. Conduit and Vaults/Pedestals Placement: Grantee 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 and/or solo cable trench as follows:

1. If the City contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project.

2. If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the City or its contractor, Grantee shall have the option to hire its own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.

3. If Grantee chooses to hire its own contractor(s), the City and its contractor(s) are responsible to coordinate with Grantee's contractor(s) to provide reasonable notice and time to complete the placement of Grantee's conduits and vaults/pedestals in the supplied joint trench.

C. Within the conversion area, Grantee 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. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed in Section 3.4.3 B above.

3.4.4 In the event of a Local Improvement District (LID) project that requires relocation of Grantee's facilities, Grantee shall be reimbursed by the LID funding for all expenses incurred as a result of the project.

3.4.5 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.

3.4.6 Grantee shall utilize existing poles and conduit wherever possible.

3.5 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 property and personal damages and for correcting all damage caused by any contractor or subcontractor working on Grantee's behalf.

3.6 Construction and Maintenance.

3.6.1 Subject to applicable laws and this Franchise, including Section 2.2 Grantee shall perform all maintenance, construction, repair and upgrades necessary for the operation of its Cable System in the Rights-of-Way. Grantee's Cable System shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way by, or under, the City's authority.

3.6.2 If the Facilities' technology so requires, Grantee shall provide and use any equipment necessary to control and carry Grantee's signals so as to prevent damage to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities and equipment to keep them in good repair and in a safe and presentable condition.

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

3.6.4 Grantee shall give reasonable notice to private property owners of its construction work in adjacent Rights-of-Way.

3.6.5 In the event that emergency repairs are necessary, Grantee shall notify the City of the repairs made on the next business day or as soon as reasonably practical. Grantee may initiate such emergency repairs and shall apply for appropriate permits within two (2) business days after discovery of the emergency, or as soon as reasonably practical.

3.7 One Call Notification. Prior to doing any work in the Rights-of-Way, Grantee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes. Grantee shall also comply with generally applicable ordinances and permitting requirements before digging in the Rights-of-Way.

3.8 Rights-of-Way Vacation. To the extent allowed by law, if any Rights-of-Way or portion thereof used by Grantee is vacated by the City during the Term of this Franchise,

unless the City specifically reserves to Grantee the right to continue the use of vacated Rights-of-Way, Grantee shall, without delay or expense to the City, remove its facilities from such Rights-of-Way and restore, repair or reconstruct the Rights-of-Way where such removal has occurred. In the event of failure, neglect or refusal of Grantee to restore, repair or reconstruct such Rights-of-Way after thirty (30) days written notice from the City, the City may do such work or cause it to be done, and the reasonable cost thereof shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation.

3.9 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.

3.9.1 Grantee shall ensure that all cable drops are properly bonded and grounded at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by Grantee as necessary.

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

3.9.3 All installations of equipment, lines and facilities by Grantee shall be installed in accordance with good engineering practices and of sufficient height to comply with all federal, State and local regulations, ordinances and laws.

3.9.4 Any opening or obstruction in the Rights-of-Way or other public places made by Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible at night.

3.9.5 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.

3.10 Stop Work. On notice from the City that any work is being conducted contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the City. The stop work order shall:

3.10.1 Be in writing;

- work site; 3.10.2 Be given to the Person doing the work and be posted on the
- herein; 3.10.3 Be sent to Grantee by overnight delivery at the address given
- and 3.10.4 Indicate the nature of the alleged violation or unsafe condition;
- 3.10.5 Establish conditions under which work may be resumed.

3.11 Joint Trenching/Boring. To the extent it is technically and economically feasible, Grantee shall joint trench or share bores or cuts and work with other providers (such as, but not limited to, telecommunications, gas and electric companies), licensees, permittees and franchisees so as to reduce the number of Right-of-Way cuts within the City.

3.12 GIS Mapping. A route map that depicts the general location of the Facilities placed in the Rights-of-Way shall be available for City review upon thirty (30) days written request by the City. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Grantee shall also provide, if requested, an electronic format of the aerial/underground Cable System facilities in relation to the Right-of-Way centerline reference to allow the City to add this information to the City's GIS program.

3.13 Trimming of Trees and Shrubbery. Grantee shall have the authority to trim trees or other natural growth interfering with, damaging, or restricting access to any of its Cable System facilities in the Rights-of-Way. All such trimming shall be done at Grantee's sole cost and expense. Grantee shall be responsible for any damage caused by such trimming and shall make every attempt to trim such trees and shrubbery in a fashion that maintains their aesthetic appeal. Grantee shall comply with all local laws and regulations with respect to trimming of trees and shrubbery and with all generally applicable landscaping regulations.

3.14 Reservation of Rights-of-Way. Nothing in this Franchise shall prevent the City or public utilities from constructing any public work or improvement in the Public Rights-of-Way. All such work shall be done insofar as practicable so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

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

3.14.2 Removal of Property. In the event that the franchise has been terminated, Grantee shall, within 180 days of prior written demand from the City, completely remove, at its expense, all property of Grantee's system utilized exclusively for the provision of cable service. Post-removal, the Grantee must promptly restore the street or other affected areas to a condition satisfactory to the City.

SECTION 4. Service Obligations

4.1 General Service Obligation. Grantee shall provide Cable Services upon valid request, from any person in the City who resides in a Qualified Living Unit within seven (7) business days. A request shall be deemed placed on the date of signing a service agreement, receipt of funds by Grantee, or receipt by Grantee of a verified verbal or written request. Rates and charges may not exceed the Grantee's published rates.

4.2 Complimentary Cable Service. Grantee shall, upon request through the designated City representative and without charge, provide a standard installation and a minimum of one outlet of Basic and Expanded Basic Cable Services (and if necessary one (1) set top box) to City administrative buildings as designated by the City (whether they are owned or leased), and fire station(s), police station(s), libraries, Access facilities and K-12 public School(s), provided that such City buildings are designated as Qualified Living Units and no other Cable Operator is providing Cable Services at such location. If the City building is designated as a Qualified Living Unit and another Cable Operator is providing Cable Services at such location, and the City building requests that Grantee be its Cable Operator, Grantee shall install and furnish, at its sole cost, Complimentary Cable Service to said building once the other Cable Operator's service is disconnected. The recipient of the service will secure any necessary right of entry. The Cable Service will not be used for commercial purposes, and the outlets will not be located in jail cells or areas open to the public, except for one outlet to be located in a public lobby in City Hall that will be used by the public for viewing the Government Access Channel. The City will take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, loss or damage to the Cable System. If additional outlets of Cable Service are needed in such buildings, only the Grantee is authorized to complete the Cable Service expansion to support the outlet installation(s) and the building occupant will pay the standard installation fees, and pay the costs of any additional set top boxes. In instances where the City is leasing and occupying the building, the City shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building's owner. If the City wishes to discontinue its use of this service, it is responsible for the return of any and all equipment to the Grantee. The City and/or its designees are responsible for all Grantee's on premise equipment.

4.2.1 The Cable Service provided in accordance with this subsection shall not be distributed beyond the originally installed outlet without authorization from Grantee. If additional outlets are requested, the building owner and/or occupant shall be required to pay the usual installation fees associated therewith, including the charges for any additional set top boxes. To the extent that complimentary service is provided, there shall be no offset against Franchise Fees for such service. Outlets of Cable Service provided in accordance with this

Section 4.2.1 may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption, general technical standards are maintained, and they City pays for additional set top boxes. Such outlets may only be used for lawful purposes consistent with Grantee's regular service practices. In the event that there is another wireline service provider (or providers) providing Cable Service within the City, the decision of which service provider will provide the complimentary service shall be decided on a case by case basis in an effort to maintain equitable burdens on each provider.

4.2.2 The Cable Service provided herein, shall not be used for commercial purposes, and the City shall take reasonable steps to limit display in public areas. In addition, the City shall take reasonable precautions to prevent any inappropriate use of the Cable Service or the Cable System that could result in damage to the Cable System.

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

4.4 Services for the Disabled. Grantee shall comply with applicable provisions of the Americans with Disabilities Act and any amendments or successor legislation thereto.

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

4.6 No Discrimination. Neither Grantee 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, and other business obligations to Grantee are satisfied, and the person resides in a Qualified Living Unit. Grantee shall not however be required to continue service to a Subscriber who cannot meet their financial obligations to Grantee or who is verbally or physically abusive, harassing, or threatening to Grantee or any of its employees, agents, representatives, contractors, subcontractors, or consultants. Nothing contained herein shall prohibit Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.7 New Developments. The City shall provide Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within the Franchise Area requiring underground installation and/or conversion of cable facilities as part of the approval condition(s). The City agrees to require the developer, as a condition of issuing land use and building permits, to give Grantee access to all open trenches for deployment of cable facilities throughout the development and at least ten (10) business days written notice of

the date of availability of open trenches, if the Grantee constructs pursuant to this Franchise. The developer shall be responsible for the digging and backfilling of all trenches. Grantee shall be responsible for engineering and deployment of labor relative to its installation of cable facilities within the development.

SECTION 5. Rates, Fees, Charges and Deposits

5.1 Rate Regulation. Grantee shall provide thirty (30) days prior written notice to both the City and its Customers of any changes to its rates in conformance with federal law and Chapter 5.20 of the Shoreline Municipal Code. The notice shall identify each category of rate increase together with the former rate, the new rate and the amount of such increase.

No Rate Discrimination. Rates 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:

5.1.1 The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;

5.1.2 The offering of reasonable discounts to similarly situated Persons;

5.1.3 The offering of bulk discounts for multiple Dwelling Units.

5.2 Low Income Discount. Grantee shall provide reasonable needs-based discounts on Cable Services of not less than the amount provided by other Cable Operators serving the City as of the Effective Date of this Franchise, at a minimum to Subscribers that qualify for discounts under the Federal Lifeline/Link-up program. This subsection shall not prohibit Grantee from providing a larger discount or offering the discount to other economically or physically challenged Subscribers.

5.2.1 Federal Program qualifications. To participate in the program, subscribers must either have an income that is at or below 135% of the Federal Poverty Guidelines or participate in one of the following assistance programs:

- [Medicaid](#);
- [Supplemental Nutrition Assistance Program](#) (Food Stamps or SNAP);
- [Supplemental Security Income](#) (SSI);
- [Federal Public Housing Assistance](#) (Section 8);
- [Low-Income Home Energy Assistance Program](#) (LIHEAP);
- [Temporary Assistance to Needy Families](#) (TANF);
- [National School Lunch Program's Free Lunch Program](#);
- [Bureau of Indian Affairs General Assistance](#);

- [Trially-Administered Temporary Assistance for Needy Families](#) (TTANF);
- [Food Distribution Program on Indian Reservations](#) (FDPIR);
- [Head Start](#) (if income eligibility criteria are met); or
- State assistance programs (if applicable).

Grantee recognizes that the Federal Government may amend these standards in the future and, therefore, agrees that it will provide a discount under this Section based on the most current federally adopted standards for the Federal Lifeline/Link-up program.

5.3 Leased Access Channel Rates. Grantee shall offer Leased Access Channel capacity on such terms and conditions and rates as may be negotiated with each lessee, subject to the requirements of Section 612 of the Cable Act.

5.4 Late Fees. For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with State law.

SECTION 6. Customer Service

6.1 Customer Service Standards. Customer Service requirements are set forth in Attachment A, which shall be binding unless amended by written consent of the parties.

6.2 Privacy Protection. Grantee 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

7.1 Franchise Fees. Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of Gross Revenues derived from the operation of the Cable System to provide Cable Service in the Franchise Area (“Franchise Fee”). In accordance with Title VI of the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year provided, however, that Grantee shall not be compelled to pay any higher percentage of Franchise Fees than any other Cable Operator providing Cable Service in the same portion of the Franchise Area. If during the Term of this Franchise, the FCC, federal or State government, or the courts change the amount an City can collect for Franchise Fees, then this Franchise shall be amended and such change shall be imposed on all similarly situated Cable Operators operating in the same portion of the Franchise Area. Franchise Fees are not a tax.

7.2 Payments. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Grantee shall be allowed to submit or correct any payments that were inadvertently omitted, provided such correction is made within ninety (90) days following the close of the calendar quarter for which such payments were applicable, without incurring any interest expenses pursuant to Section 7.5.

At City's option, if there are overpayments of Franchise Fees, City may choose to either refund any such overpayments to Grantee, or Grantee shall withhold future Franchise Fee payments until such time as said overpayment is recovered. If City chooses the option to refund such overpayments, then no interest shall accrue on such overpayments provided City refunds the overpayments within sixty (60) days notice from Grantee. Notwithstanding the foregoing, the parties may agree on a different timeframe or terms of repayment.

7.3 Additional Compensation. In the event that Franchise Fees are prohibited by any law or regulation, Grantee shall pay to the City that amount, if any, which is required in accordance with applicable law.

7.4 Quarterly Reports. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Grantee showing the basis for the computation of the Franchise Fees paid during that period.

7.5 Interest Charge on Late Payments. Late payments for any Franchise Fees due pursuant to this Section, EG Fees due pursuant to Section 11.7 and liquidated damages due pursuant to Section 13.1.1 shall be subject to interest at the then-current rate set forth in RCW 19.52.020, which as of the date of execution of this Franchise is twelve percent (12%) per annum from the date that such payment is due.

7.6 No Release. The City's acceptance of payment shall not be construed as an agreement that the amount paid was correct, nor shall acceptance be construed as a release of any claim which the City may have for additional sums due under this Franchise. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by Grantee was due.

7.7 No Limitation on Taxing Authority. Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee, or assessment of general applicability. Nothing in this Franchise is intended to preclude Grantee from exercising any right it may have to challenge the lawfulness of any tax, fee, or assessment imposed by the City or any State or federal agency or authority, or intended to waive any rights the Grantee may have under 47 U.S.C. § 542.

7.8 Additional Commitments Not Franchise Fees. No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments regarding EG funding and Access Channels are excluded from the definition of Franchise Fees herein and are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to the City. Additionally, complimentary Cable Service, as described in Section 4.2, shall not be offset against Franchise Fees either, unless otherwise mutually agreed upon by Grantee and City. City and Grantee agree that any utility tax, business and occupation tax or similar tax shall be in

addition to any Franchise Fees required herein and there shall be no offset against Franchise Fees subject to applicable law.

7.9 Franchise Fee Audit

7.9.1 Upon thirty (30) days prior written notice, but not more often than once each calendar year, the City shall have the right to inspect Grantee's financial records necessary to enforce the provisions of the Franchise and to calculate any amounts determined to be payable pursuant to this Franchise. Provided Grantee cooperates in making all relevant records available upon request, the City will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous three (3) years, unless the City has information relating to previous years beyond the three (3) years which, in its reasonable judgment, raises doubt as to the accuracy of payments made under this or previous franchises, in which case an additional three (3) years may be audited. If the audit shows that there has been an underpayment of Franchise Fees by five percent (5%) or more in a calendar year, then Grantee shall pay the cost of the audit, such amount not to exceed Fifteen Thousand Dollars (\$15,000).

7.9.2 Upon the completion of any such audit by the City, the City shall provide to Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, Grantee shall have thirty (30) days from the receipt of the report to provide the City 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 seek to agree upon a "Final Settled Amount." For purposes of this Section, the term "Final Settled Amount(s)" shall mean the agreed upon underpayment, if any, by Grantee to the City. If the parties cannot agree on a "Final Settled Amount," either party may bring an action to have the disputed amount determined by a court of law.

7.9.3 Any "Final Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by Grantee within sixty (60) days from the date the parties agree upon the "Final Settled Amount." Once the parties agree upon a Final Settled Amount and such amount is paid by Grantee, the City shall have no further rights to audit or challenge the payment for that period. If it was found that there was an underpayment of Franchise Fees pursuant to this Section, Grantee shall pay, in addition to the amount due, interest, calculated from the date the underpayment was originally due until the date payment is made by Grantee.

7.9.4 In the event the "Final Settled Amount(s)" is an overpayment by Grantee, the City shall either reimburse Grantee within sixty (60) days of the date the parties agree upon the Final Settled Amount or, upon Grantee's approval, the City may choose to have Grantee withhold future Franchise Fee payments until such time as said overpayment is recovered. If the City fails to refund the overpayment to Grantee within sixty (60) days, then interest at the rate specified in Section 7.5 shall accrue beginning on the sixty-first (61st) day following the determination of the Final Settled Amount.

7.10 Bundled Services. If Cable Services subject to the Franchise Fee required under this Section 7 are provided to Subscribers in conjunction with Non Cable Services, the Franchise Fee shall be applied only to the Gross Revenues of the Cable Services, as reflected on the books and records of Grantee in accordance with GAAP. Grantee shall equitably allocate charges for Cable/Non Cable Services so as not to unfairly diminish Franchise Fees to the City.

7.11 Maintenance of Books, Records, and Files.

7.11.1 Books and Records. Throughout the Term of this Franchise, Grantee agrees that the City, upon reasonable prior written notice to Grantee, may review Grantee's books and records necessary to determine compliance with the terms of this Franchise. The review of such books and records shall occur at Grantee's business office (unless a substitute location is otherwise agreed upon), during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by Grantee 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 City shall be retained by Grantee for a minimum period of six (6) years.

7.11.2 File for Public Inspection. Throughout the Term of this Franchise, Grantee shall maintain a file available for public inspection which shall include all documents required pursuant to the FCC's rules and regulations. The public inspection file shall be maintained at Grantee's business office and will be available to the public during normal business hours.

7.11.3 Proprietary Information. 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 treat any information disclosed by Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise and who agree to maintain the confidentiality of all such information. 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. For purposes of this Section 7.11, 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 Grantee to be competitively sensitive. In the event that the City receives a public records request under RCW 42.56 or similar law for the disclosure of information Grantee has designated as confidential, trade secret or proprietary, the City shall promptly provide notice of such disclosure so that Grantee can take appropriate steps to protect its interests. While it is not a legal obligation, the City, as a courtesy, will allow Grantee up to ten (10) business days to obtain and serve the City with a court injunction to prevent the City from releasing the Documents. If Grantee fails to obtain a Court order and serve the City within the ten (10) business days, the City may release the Documents. The City will not assert an exemption from disclosure on Grantee's behalf.

7.11.4 Records Required. Upon written request, but no more frequently than once a year, 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 a period of up to three (3) years. 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 where a technician was dispatched 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) If specifically requested by the City:

1. The most recent annual report.

(E) Such other reports kept within the normal course of business, with respect to its local operation as are necessary to monitor compliance with this Franchise.

7.12 Performance Evaluations. Upon written notification, the City may hold performance evaluation sessions no more than once every twelve months to ensure proper performance of the provisions of this Franchise.

7.12.1 All evaluation sessions shall be open to the public.

7.12.2 Topics which may be discussed at any evaluation session include, but are not limited to, construction issues, Franchise Fee payments, liquidated damages, free or discounted Cable Service, application of new technologies, Cable System performance, Cable Services currently provided and programming offered, future plans of Grantee for new services or programs, Subscriber Complaints, privacy, modifications to this Franchise, judicial and FCC rulings, and the City’s or Grantee’s rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

7.12.3 During evaluations under this Section 7.12, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

SECTION 8. Transfer or Renewal of Franchise

8.1 Franchise Transfer. Subject to Section 617 of the Cable Act, the Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person (hereinafter "Transfer of the Franchise") without the prior written consent of the City, which consent shall not be unreasonably withheld.

8.1.1 Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of Control of Grantee. The word "control" as used herein is not limited to majority stock ownership but includes actual working Control in whatever manner exercised. Every change, transfer or acquisition of Control of Grantee, except as noted in Section 8.1.7, shall make this Franchise subject to cancellation unless and until the City shall have consented thereto which consent shall not be unreasonably withheld.

8.1.2 The parties to the Transfer of the Franchise or change of Control shall make a written request to the City for its approval of the Transfer of the Franchise or change of Control and shall furnish all information required by law. In reviewing a request related to a Transfer of the Franchise or change in Control, the City may inquire into any matter reasonably related to the ability and willingness of the prospective transferee or controlling party to perform, in accordance with 47 CFR § 76.502.

8.1.3 In seeking the City's consent to any change in ownership or Control, the proposed transferee or controlling party shall indicate whether, as applicable, it:

(A) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law, or is currently under an indictment, investigation or complaint charging such acts;

(B) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against it by any court of competent jurisdiction;

(C) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable System;

(D) Is financially solvent, by submitting financial data, including financial information as required by FCC Form 394; and

(E) Has the legal, financial and technical capability to enable it to maintain and operate the Cable System for the remaining Term of the Franchise.

8.1.4 In reviewing a request for the Transfer of the Franchise 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 Transfer of the Franchise or change of Control upon such terms and conditions as it deems reasonably appropriate and as 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. Additionally, such Person shall effect changes as promptly as practicable in the operation of the Cable System, if any changes are necessary to cure any violations or defaults presently in effect or ongoing.

8.1.5 The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all information required by law, such as a completed FCC Form 394. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

8.1.6 Within sixty (60) days of Closing of any Transfer of the Franchise or change of Control, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed(s), agreement(s), lease(s) or other written instrument(s) evidencing such Transfer of the Franchise or change of Control, certified and sworn to as correct by Grantee and the transferee or new controlling entity. In the case of a Transfer of the Franchise or change of Control, the transferee or the new controlling entity shall upon request by the City file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law.

8.1.7 Notwithstanding anything to the contrary in this Section 8.1, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an Affiliate; provided that the proposed assignee or transferee agree in writing to comply with all of the provisions of the Franchise, subject to applicable law. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise. In the event of a change in Control, the Grantee will continue to be bound by all provisions of the Franchise.

8.1.8 The consent or approval of the City to any Transfer of the Franchise or change in Control shall not constitute a waiver or release of any rights of the City.

8.2 Renewal of Franchise.

8.2.1 The City and Grantee agree that any proceedings undertaken relative to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

8.2.2 In addition to the procedures set forth in Section 626 of the Cable Act, the City shall notify Grantee of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Grantee under the

current Franchise Term. The City further agrees that such assessments shall be provided to Grantee promptly so that Grantee has adequate time to submit a proposal under Section 626 of the Cable Act.

8.2.3 Notwithstanding anything to the contrary, Grantee and the City further agree that at any time during the Term of the current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the Franchise and the City may grant a renewal thereof.

SECTION 9. Insurance and Indemnity

9.1 Insurance Requirements.

9.1.1 General Requirement. Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

A. Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than two million dollars (\$2,000,000) per occurrence.

B. Commercial Automobile Liability Insurance with minimum combined single limits of at least two million dollars (\$2,000,000) per occurrence.

C. Employer's Liability with limits of at least one million dollars (\$1,000,000).

D Umbrella/Excess Liability Coverage in the amount of three million dollars (\$3,000,000).

E Workers' Compensation insurance shall be maintained during the Term of this Franchise to comply with State law.

9.1.2 Additional Insured. The City shall be included as an additional insured under each of the insurance policies required in this Section except Workers' Compensation and Employer's Liability Insurance. Except for Workers' Compensation and Employer's Liability Insurance, all insurance policies required hereunder shall provide or be endorsed so that the City is covered as, and have the rights of, an additional insured with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise, including construction, operation, upgrade, maintenance, repair, replacement or ownership of the Cable System or applicable law. Grantee shall provide to the City either (1) a true copy of an endorsement covering City as an Additional Insured for each insurance policy required in this Section and providing that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by City of any certificate showing less coverage than required is not a waiver of

Grantee's obligations to fulfill the requirements. Grantee's insurance coverage shall be primary insurance with respect to the City. Any insurance or self insurance maintained by the Additional Insureds shall be in excess of Grantee's insurance and shall not contribute to it. Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

9.1.3 Each policy shall provide that the insurance shall not be canceled or terminated so as to be out of compliance with these requirements without forty-five (45) days written notice first provided to the City via mail, and ten (10) days notice for nonpayment of any premium. If the insurance is canceled or terminated so as to be out of compliance with the requirements of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, until all work required to be performed under the terms of this Franchise is satisfactorily completed and, in the case of Commercial General Liability Insurance, for at least one (1) year after expiration of this Franchise. Any failure of Grantee to comply with the claim reporting provisions of the policy(ies) or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City. However, if coverage is not afforded under these circumstances, Grantee will indemnify the City for losses the City otherwise would have been covered for as an additional insured.

9.1.4 Grantee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Franchise. Each of the required insurance policies shall be with sureties qualified to do business in the State of Washington with an A- or better rating for financial condition and financial performance by Best Key Rating Guide, Property/Casualty Edition.

9.2 Verification of Coverage. In addition to the other requirements of this Section, Grantee shall furnish the City with certificates of insurance reflecting at least the minimum coverage and policy limits required hereunder. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received by the City within forty-five (45) days of the time of acceptance of this Franchise by Grantee with existing insurance coverage to be maintained by Grantee until that date. Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

9.3 Indemnification.

9.3.1 Indemnity. Grantee agrees to indemnify, save and hold harmless, and defend the City, its elected officials, officers, authorized agents, boards and employees, acting in official capacity, from and against any liability, damages or claims, costs, expenses, settlements or judgments arising out of, or resulting from any act done pursuant to the terms of this Franchise by Grantee, its authorized agents, employees, or independent contractors, provided that the City shall give Grantee timely written notice of its obligation to indemnify the City. Notwithstanding the foregoing, Grantee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct, sole or concurrent negligence, or breach of obligation of the City, its officers, authorized agents, employees, attorneys, consultants, or

independent contractors for which the City is legally responsible, or for any activity or function conducted by any Person other than Grantee in connection with Educational and Government Access or the emergency alert system.

9.3.2 Defense of Claims. With respect to Grantee's indemnity obligations set forth in this Section 9.3, Grantee shall provide the defense of any claims or actions brought against the City. Nothing herein shall be deemed to prevent the City from cooperating with Grantee and participating in the defense of any litigation by its own counsel at its own cost and expense; provided, however, that after consultation with the City, Grantee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Grantee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the City, and the third party is willing to accept the settlement, but the City does not consent to the terms of any such settlement or compromise, Grantee shall not settle the claim or action, but its obligation to indemnify the City shall in no event exceed the amount of such settlement.

9.3.3 Separate Representation. 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, Grantee shall pay reasonable attorneys' fees and expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The City's fees and expenses shall include all reasonable out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the City Attorney/Prosecuting Attorney's Office or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

9.3.4 Indemnification for Relocation. Subject to applicable law, Grantee shall indemnify the City 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.

9.3.5 Indemnification of Grantee. To the extent permitted by law, the City shall indemnify, defend and hold harmless Grantee for claims arising out of the City's use of the EG Access Channels and/or the Emergency Alert System.

9.3.6 Grantee's Further Responsibilities. 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 as a result of losses caused by and to the extent of Grantee's acts or omissions. 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.

9.4 Security. Within 30 days after the effective date of this Franchise, Grantee shall provide a performance bond in the amount of thirty thousand dollars (\$30,000) (the “Security”) to ensure the faithful performance of its responsibilities under this Franchise and applicable law. Grantee may be required to obtain additional security, such as generally applicable construction bonds, in accordance with the City’s permitting requirements. Grantee shall pay all premiums or costs associated with maintaining the Security, and shall keep the same in full force and effect at all times. Except as expressly provided herein or as otherwise specified in the City’s construction permitting requirements, the Grantee shall not be required to obtain or maintain other security as a condition of being awarded the Franchise. System Description and System Facilities.

SECTION 10. System Facilities

10.1 Technical Requirement. Grantee shall operate, maintain and construct the Cable System so as to continue the provision of high quality signals and reliable delivery of Cable Services. The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC as published in subpart K of 47 C.F.R. §76, the National Electrical Safety Code, the National Electrical Code and any other applicable federal law and the laws of the State of Washington as amended (the “Technical Requirements”).

10.2 Cable System Performance Testing. Grantee shall perform all applicable tests on its Cable System as required by the FCC and shall maintain written records of its test results. Copies of such test results will be provided to the City upon request. Upon request, Grantee shall notify the City prior to any required technical proof of performance testing and, the City may witness such testing. If the Cable System fails to meet any portion of a proof of performance test, Grantee shall promptly take such measures as are necessary to correct any performance deficiencies identified as part of the technical testing. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

10.3 Additional Tests. Where there exists a pattern of poor technical performance or signal quality, the City may upon thirty (30) days prior written notice, require Grantee to conduct applicable performance testing on other test points located within the City. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report if requested, within thirty (30) days after such testing. This report shall include the following information:

- 10.3.1 The nature of the complaint or problem which precipitated the special tests;
- 10.3.2 The Cable System component tested;

- 10.3.3 The equipment used and procedures employed in testing;
- 10.3.4 The method, if any, in which such complaint or problem was resolved; and
- 10.3.5 Any other information pertinent to said tests and analysis which may be required.

10.4 Standby Power. Grantee shall provide standby power generating capacity at the Cable System Headend and Central Office capable of providing at least twenty-four (24) hours of emergency operation.

10.5 Emergency Alert System. The Grantee shall provide an operating Emergency Alert System (EAS) in accordance with the provisions of State and federal laws, including FCC regulations.

SECTION 11. Educational and Governmental Access

11.1 Access Channels. In order to meet the demonstrated community need for Access Channels and programming, Grantee shall make available the Governmental and Educational Access Channels active and programmed within 180 days of the Effective Date of this Franchise, or other mutually agreed upon date. If the City is not currently programming any Access Channel(s), then one Governmental Access Channel and one Educational Access Channel shall be made available to it for use throughout the Term of this Franchise. Grantee shall never be required to carry more Access Channels than any other Cable Operator in the franchise area.

11.2 Change in Cable System Technology. In the event Grantee makes any change in the Cable System technology, which affects the signal quality or transmission of any Access Channel programming, Grantee shall take all necessary technical steps to ensure the delivery of Access programming is not diminished or adversely affected.

11.3 Triggers for Additional Access Channel. The City may require Grantee to make available one (1) additional activated Downstream Channel when any of the Access Channels required by Section 11.1 are used for Locally Scheduled Original Programming at least forty-eight (48) hours per week between 10:00 A.M. and 10:00 P.M., Monday through Friday during any consecutive ten (10) week period ("Threshold Requirement"). The initial showing and first repeat shall count towards the Threshold Requirement. To meet the Threshold Requirement the City must produce distinct Locally Scheduled Original Programming. Programming from either of the Access Channels cannot be included in the calculation of the Threshold Requirement.

11.4 Management and Control of Access Channels. Grantee does not have any editorial Control over the Access Channel programming. The City may authorize Designated Access Providers to Control, operate, and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of the

Access Channels. The City or its designee may formulate rules for the operation of the Access Channels. Nothing herein shall prohibit the City from authorizing itself to be a Designated Access Provider. Grantee shall cooperate with City and Designated Access Providers in the use of the Cable System for the provision of Access Channels.

11.5 Underutilized Access Channels. Grantee and the City agree that it is their mutual goal to fully and efficiently use the Channel capacity of the Cable System, which may include Grantee's use of underutilized Access Channels. If Grantee believes that any Access Channel is underutilized, it may file a request with the City to use that Access Channel. The City shall in its sole discretion render a decision regarding the matter within sixty (60) days of receiving the request. Should the City find that the Access Channel may be used by Grantee, then Grantee may begin using such Channel ninety (90) days after receipt of the decision. If a Designated Access Provider wants to begin using the Channel and has adequate amounts of programming to place on the Channel, then upon sixty (60) days written notice from the City, Grantee shall discontinue using the Access Channel.

11.6 Access Channel Location. Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall provide to the City a minimum of sixty (60) days notice, and use its best efforts to provide ninety (90) days notice, prior to any relocation of its Access Channels, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible. In the event of Access Channel relocation, Grantee shall provide notice to Subscribers in the same manner as notice is provided for any other Channel relocation. Grantee may make all Access Channels available on a Mosaic.

11.7 Support for Access Capital Costs. In an effort to meet the demonstrated community need for Access programming, Grantee shall collect from Subscribers and remit to the City an EG Fee that may be used for Access related capital expenditures, such as production equipment or a studio.

11.7.1 Upon forty-five (45) days from the Effective Date hereof, Grantee shall collect from Subscribers an amount of fifteen (\$0.15) cents per Subscriber per month ("EG Fee"). Subsequently, this EG Fee amount may be modified or waived by the City as determined by the City Council no more than once each year, and the EG Fee shall be no greater than twenty-five (\$0.25) cents per Subscriber per month in the Franchise Area. Grantee shall remit the EG Fee at the same time as quarterly Franchise Fee payments. At no time during the life of this Franchise shall Grantee be required to collect and remit a per subscriber, per month amount greater than any other cable provider in the franchise area.

11.7.2 Grantee shall not be responsible for paying the EG Fees with respect to gratis or Bad Debt accounts. The City can inquire as to the status of any such accounts, and Grantee agrees to meet with the City, upon request, to discuss such matters as necessary.

11.7.3 The City shall have the discretion to allocate the EG Fees in accordance with applicable law, and shall submit a summary of capital expenditures from the EG

Fees to Grantee within sixty (60) days of the end of each calendar year. The summary shall include financial information showing all EG Fees received, EG expenses used for EG Access purposes and the ending balance.

11.7.4 To the extent the City makes Access capital investments using City funds prior to receiving the EG Fees, the City is entitled to apply the EG Fee payments from Grantee toward such City capital investments necessary for the programming of its Access Channels. The City and Grantee agree that any EG Fees shall be referred to on Subscribers' bills as an "EG Fee," or language substantially similar thereto.

11.7.5 The EG Fees provided for in this Section shall not be offset or credited against any Franchise Fee payments.

11.8 Return Connectivity.

11.8.1 Upon written request of the City, Grantee may construct and maintain origination sites at EG locations within the Franchise Area, for the purpose of delivering Access programming. All costs for fiber optic connectivity to EG origination sites shall be paid by the City in advance of construction. All requests for construction of EG origination sites must be made one year prior to when construction would occur. Grantee may require that a reasonable deposit of the estimated project cost be paid in advance.

11.8.2 Upon completion of the requested work by the City and upon submission by Grantee of a proper invoice for payment of the cost incurred, City shall pay Grantee within thirty (30) days of receipt. All work shall be performed in a cost-effective manner to minimize the costs to the City.

SECTION 12. Enforcement of Franchise

12.1 Notice of Violation or Default. In the event the City believes that Grantee has not complied with a term or provision of the Franchise, the City shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem within a reasonable time frame, the City shall then notify Grantee in writing of the exact nature of the alleged noncompliance (the "Noncompliance Notice").

12.2 Grantee's Right to Cure or Respond. Grantee shall have thirty (30) days from the receipt of the City's Noncompliance Notice: (A) to respond to the City, contesting the assertion of the alleged noncompliance or default; (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

12.3 Public Hearing. In the event Grantee fails to respond to the City's Noncompliance Notice or that the alleged default is not remedied within thirty (30) days or the date projected by Grantee (provided such projection is also acceptable to the City), the City may

schedule a public hearing to investigate the alleged default. Such public hearing may be held no less than thirty (30) business days therefrom. The City shall notify Grantee in writing of the time and place of such hearing and provide Grantee with a reasonable opportunity to be heard, to present evidence in its defense, and to question witnesses.

12.4 Options Following Public Hearing. If, after the hearing, 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 breach within such reasonable timeframe as the City shall determine. In the event Grantee does not cure the default within such time to the City's reasonable satisfaction, the City may:

12.4.1 Pursue the revocation of this Franchise pursuant to the procedures in Section 13 in the event of a material breach of this Franchise; or

12.4.2 Pursue any other legal or equitable remedy available under this Franchise or any applicable law; provided, however, recovery of liquidated damages under Section 13.1 shall be the exclusive remedy with respect to breaches for which liquidated damages are specified or assessed by the City.

SECTION 13. Liquidated Damages

13.1 Liquidated Damages. The City and Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of Grantee's breach of certain provisions of this Franchise. Accordingly, instead of requiring such proof, the City and Grantee agree that Grantee shall pay to the City, the sums set forth below for each day or part thereof that Grantee 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 City would suffer in the event of Grantee's breach of such provisions of this Franchise.

13.1.1 Subject to the provision of written notice to Grantee and a right to cure period as set forth in Section 12, the City may assess against Grantee liquidated damages as follows: one hundred dollars (\$100.00) per day for failure to provide the Access Channel(s); one hundred fifty dollars (\$150.00) per day for each material violation of the Customer Service Standards; fifty dollars (\$50.00) per day for failure to provide reports or notices as required by this Franchise; and up to two hundred dollars (\$200.00) per day for any other material breaches of the Franchise

13.1.2 City shall provide Grantee a reasonable extension of the thirty (30) day right to cure period described in Section 13.1.1 if Grantee has commenced work on curing the violation, is diligently and continuously pursuing the cure to completion and requested such an extension, provided that any such cure is completed within one hundred and twenty (120) days from the written notice of default.

13.1.3 If liquidated damages are assessed by the City, Grantee shall pay any liquidated damages within forty-five (45) days after they are assessed. Liquidated damages may be assessed for no more than seventy-five (75) calendar days for any individual incident.

13.1.4 In the event Grantee fails to cure within the specified cure period, or any agreed upon extensions thereof, liquidated damages accrue from the date the City notifies Grantee that there has been a violation.

13.2 Recovery of Amounts. The recovery of amounts under Section 9.4 and 13.1.1 shall not be construed as a limit on the non-monetary liability of Grantee under the Franchise or an excuse of unfaithful performance of any obligation of Grantee. Similarly, the imposition of liquidated damages are not intended to be punitive, but rather, for City cost recovery purposes.

SECTION 14. Termination of Franchise

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

14.1.3 Grantee 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 Grantee willfully fails to provide services as specified in this Franchise;

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

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

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

14.3 Revocation Notice. , should the City seek to revoke this Franchise after following the procedures set forth in this Section 14, the City shall give written notice to Grantee

of such intent to revoke this Franchise (“Revocation Notice”). The Revocation Notice shall set forth the specific nature of the noncompliance. Grantee shall have thirty (30) days from receipt of such Revocation Notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from Grantee, it may then seek revocation of the Franchise at a hearing in front of the City’s Hearing Examiner (the “Revocation Hearing”). The City shall cause to be served upon Grantee at least thirty (30) days prior to the Revocation Hearing a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

14.4 Revocation Hearing. At the Revocation Hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the testimony of Persons as permitted by law, and to question and/or cross examine witnesses. The Revocation Hearing shall be on the record and a written transcript shall be made available to Grantee within ten (10) business days.

14.5 Findings and Conclusions. Following the Revocation Hearing, the Hearing Examiner shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing to the City Council and Grantee and thereafter the City Council shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event or default has been cured or will be cured by Grantee. The City Council shall also determine whether to revoke the Franchise based on the information presented or, where applicable, grant additional time to Grantee to effect any cure. If the City Council determines that the Franchise shall be revoked, the City Council shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of the City Council to an appropriate court, which shall have the power to review the decision of the City “de novo”. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within thirty (30) days of Grantee’s receipt of the determination of the City.

14.6 Enforcement in Lieu of Revocation. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City’s rights under the Franchise in lieu of revocation of the Franchise.

14.7 Technical Violation. The City agrees that it is not its intention to subject Grantee 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:

14.7.1 Instances or matters where a violation or a breach of the Franchise by Grantee was good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area or on the City; or

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

SECTION 15. Miscellaneous Provisions

15.1 Authority and Changes in the Law. Subject to Sections 2.3 and 2.8, the City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted under law, to any agent in the sole discretion of the City. Grantee and the City shall be entitled to all rights and be bound by all changes in local, State and federal law that occur subsequent to the Effective Date of this Franchise. Grantee and the City acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes;

15.2 Actions of Parties. In any action by the City or Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

15.3 Amendments. Amendments to this Franchise shall be mutually agreed upon, in writing by the parties.

15.4 Attorneys' Fees. If any court action or suit arises in connection with this Franchise (excluding Franchise renewal proceedings), the substantially prevailing party shall be entitled to recover all of its reasonable attorneys' fees, costs and expenses in connection therewith along with such other relief that the court deems proper.

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

15.6 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.

15.7 Costs to be Borne by Grantee. Grantee shall pay all costs of publication of this Franchise and any and all notices prior to any public meeting or hearing in connection with this Franchise.

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

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

15.10 Force Majeure. Grantee 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, 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 Grantee's ability to Control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

15.11 Governing Law. This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington as amended, federal law including the Cable Act as amended, any applicable rules, regulations and orders of the FCC as amended and ,subject to Section, 2.8, applicable local laws now existing or hereafter amended or adopted; provided, however, in the event of a conflict between any such future amendments of laws and regulations and a specific provision of this Franchise, the Franchise shall control.

15.12 Equal Employment Opportunity. Grantee shall comply with all applicable federal and State laws affording nondiscrimination in employment to all individuals regardless of their race, color, religion, age, sex, national origin, sexual orientation or physical disability.

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

15.14 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.

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

To the City:

City of Shoreline
Attn: City Manager
17500 Midvale Avenue N
Shoreline, WA 98133

To the Grantee:

Qwest Broadband Qwest Broadband
Services, Inc., d/b/a CenturyLink
1801 California St.
10th Floor
Denver, Colorado 80202-2658

with a copy to:

Qwest Broadband Qwest Broadband
Services, Inc., d/b/a CenturyLink
1600 7TH AVE, 15th Floor
SEATTLE WA 98191
Attn: Public Policy

15.16 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.

15.17 Reservation of Rights. Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, Grantee or City may have under Federal or State law unless such waiver is expressly stated herein.

15.18 Preemption. In the event that federal or State law preempts a provision or limits the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent required by law. In the event such federal or State law is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or Grantee.

15.19 Recitals. The recitals set forth in this Franchise are incorporated into the body of this Franchise as if they had been originally set forth herein.

15.20 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in part, by any court,

agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

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

15.22 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.

15.23 Independent Review. The City and Grantee each acknowledge that they have had opportunity to receive independent legal advice in entering into this Franchise and that both the City and Grantee understand and fully agree to each and every provision of this Franchise.

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

City:

By: _____

Name: Debbie Tarry

Title: City Manager

Date: _____

QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

, City Attorney

Attest:

, City Clerk

Attachments

Attachment A: Customer Service Standards

Customer Service Standards

SECTION 1. DEFINITIONS

When used in these Standards, the following words, phrases, and terms shall have the meanings given below.

“Complaint” shall mean an initial or repeated Customer expression of dissatisfaction, whether written or oral, that is referred beyond a Customer Service Representative or their supervisor at the Call Center, or to the Grantee’s system office or regional office or corporate headquarters, or to the LFA for resolution. This does not include routine inquiries and service requests.

“Customer” shall mean any person who lawfully receives Cable Service from the Grantee.

“Customer Service Representative” or “CSR” shall mean any person employed by the Grantee to assist, or provide service to Customers, whether by answering telephone calls, answering Customers’ questions, or performing other customer service related tasks.

“Grantee” Qwest Broadband Services, Inc. d/b/a CenturyLink.

“LFA” shall mean the City of Shoreline, Washington.

“Normal Business Hours” shall mean those hours during which most similar businesses in the LFA are open to serve Customers. In all cases, “Normal Business Hours” must include some evening hours, with Customer Service Representatives available, at least one night per week and some weekend hours.

“Normal Operating Conditions” shall mean those service conditions that are within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

“Service Interruption” shall mean the loss of picture or sound on one or more cable channels.

SECTION 2. POLICY

- A. The Grantee shall be permitted to resolve citizen Complaints prior to action or involvement by the LFA.
- B. If a Complaint is not resolved by the Grantee to the citizen’s satisfaction, the LFA may intervene. In addition, where a pattern of, or unremedied, noncompliance with the

Customer Service Standards (“Standards”) is identified, the LFA may choose to follow the procedures contained in these Standards. If the noncompliance is not addressed to the satisfaction of the LFA, monetary or other sanctions may be imposed to encourage compliance as permitted by Section 13 of the Franchise, these Standards are intended to be of general application; however, the Grantee shall be relieved of any obligations hereunder if it is unable to perform due to circumstances beyond its reasonable control, as described in Section 15.10 of the Franchise. The Grantee shall seek to render efficient service and to make repairs promptly. In addition, the Grantee may, and is encouraged, to exceed these Standards for the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

SECTION 3. COURTESY

All employees of the Grantee shall be courteous and helpful and shall provide effective and satisfactory service in all contacts with Customers.

SECTION 4. ACCESSIBILITY

- A. The Grantee shall make available its web site and e-mail address to its Customers. The Grantee is also encouraged to provide customer service centers and encouraged to operate those centers at Normal Business Hours. The Grantee shall also provide free exchanges of faulty converters at the Customer’s address via drop shipping.
- B. The Grantee shall maintain toll free telephone access lines or a toll free telephone number that shall be available 24 hours a day.
- C. The Grantee shall have dispatchers and technicians on call 24 hours a day, 7 days a week, including legal holidays.
- D. Trained Customer Service Representatives will be available to respond to Customer telephone inquiries during Normal Business Hours. Under Normal Operating Conditions, telephone answer time shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis. Under Normal Operating Conditions, the Grantee shall maintain adequate telephone line capacity to ensure that telephone calls are answered as provided in these Standards.
- E. After Normal Business Hours, the telephone lines may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Customer Service Representative on the next business day.
- F. Under Normal Operating Conditions, the total number of calls receiving busy signals shall not exceed three percent (3%) of the total telephone calls. This standard shall be met ninety percent (90%) or more of the time measured quarterly.

- G. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with any of the telephone answering standards above unless and until the LFA requests such actions based on a historical record of Customer inquiries or Complaints indicating a clear failure to comply.

SECTION 5. RESPONSIVENESS

A. Residential Installation

1. Under Normal Operating Conditions, Grantee shall complete all residential installations requested by Customers residing in qualified living units within seven (7) business days after the order is placed. This standard shall be measured on a quarterly basis and must be met ninety-five percent (95%) of the time.
2. Absent unusual circumstances, all underground cable drops from the curb to the home shall be buried at a depth of no less than twelve inches (12”), and within a reasonable period of time from the initial installation, or at a time mutually agreed upon between the Grantee and the Customer. In all instances, the Grantee must comply with the State’s One Call requirements.

B. Service Appointments

1. Customers requesting installation of Cable Service or service to an existing installation may choose an available four-hour block of time for the service appointment between 8:00 a.m. and 6:00 p.m. Monday to Friday, and a minimum of four hours on Saturdays, or another time mutually agreed upon by the Customer and the Grantee. The Grantee may not cancel an appointment with a Customer after 5:00 p.m. on the day before the scheduled appointment, except for appointments scheduled within twelve (12) hours after the initial call.
2. If the Grantee’s representative is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Grantee or the Grantee’s representative shall contact the Customer. The appointment shall be rescheduled as necessary at a time that is convenient for the Customer.
3. The Grantee shall be deemed to have responded to a request for service under the provisions of this section, when a technician arrives at the Customer’s location or begins the work in the field within the agreed upon time to initiate the work specified in the work order. If the Customer is absent when the technician arrives, the technician shall leave written notification of timely arrival.

C. Outages and Service Interruptions

1. Except in times of emergency, if there is a system outage (loss of reception on all channels) resulting from Grantee equipment failure affecting five (5) or more Customers, the Grantee shall respond in accordance with its outage response procedures, and in no event more than two (2) hours after the third (3rd) Customer call is received and shall remedy the problem as quickly as possible.

2. Under Normal Operating Conditions, the Grantee shall use its best efforts to correct service interruptions resulting from Grantee's equipment failure by the end of the next calendar day, but in no event fail to begin repairs within forty-eight (48) hours of equipment failure and make its best effort to complete repairs within same. Customers will not be charged for such service calls.
3. In the event of a service interruption through Grantee's error, service shall be restored at the earliest time possible and Customers will not be charged for such service calls.
4. The Grantee shall keep an accurate and comprehensive file of any and all Complaints regarding the Cable System or its operation of the Cable System, in a manner consistent with the privacy rights of Customers, and the Grantee's actions in response to those Complaints. Upon request, Grantee shall provide the LFA an executive summary of all Customer Complaints received within the past twelve (12) months.
5. Absent unusual circumstances, the Grantee shall use its best efforts to initiate repairs on all outages and service interruptions for any cause beyond the control of the Grantee within thirty-six (36) hours, after the conditions beyond its control have subsided but not later than forty-eight (48) hours.

D. TV Reception

1. The Cable Service signal quality provided by the Grantee shall meet or exceed applicable technical standards established by the Federal Communications Commission ("FCC"). The Grantee shall interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

E. Problem Resolution

A Customer Service Representative shall have the authority to provide credit, waive fees, schedule service appointments and change billing cycles, where appropriate. Any difficulties that cannot be resolved by the Customer Service Representative shall be referred to the appropriate supervisor who shall contact the Customer within twenty-four (24) hours of the initiating call and resolve the problem within forty-eight (48) hours or within such other timeframe as is acceptable to the Customer and the Grantee.

F. Billing, Credits, and Refunds

1. Grantee shall provide a clear and concise bill every month and shall allow 30 days from the billing date for payment of a Customer's bill for that period.
2. The Grantee shall issue refund checks promptly but no later than either the Customer's next billing cycle following resolution of the request or within thirty (30) business days, whichever is earlier, or the return of the equipment supplied

by the Grantee if service is terminated. Credits for service will be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.

3. Grantee shall not, except to the extent permitted by law, impose any fee or charge for service calls to a Customer's premises to perform any repair or maintenance work related to Grantee's equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Customer (including, but not limited to a situation in which the Customer reconnects Grantee's equipment incorrectly or installs Customer provided equipment) or by the failure of the Customer to take reasonable precautions to protect Grantee's equipment (for example, a dog chew).
4. Upon request, Grantee shall provide the LFA with a rate card with all applicable rates and charges related to Cable Service. In addition, Grantee shall provide the LFA, upon request, a copy of any billing insert related to rates or customer service, provided it is not promotional material.

G. Notice/Work

1. Except in the case of an emergency involving public safety or service interruption to more than 50% of Customers, or where Customer has provided the Grantee with a legal right of access or entry, the Grantee shall give reasonable notice to property owners or legal tenants prior to entering private property. The notice shall specify the type of work to be performed. In the case of an emergency, however, the Grantee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property. Any work on private property shall be conducted in accordance with an agreement between the Grantee and the property owner. If damage is caused by any Grantee activity, the Grantee shall replace or repair the damaged property to as good a condition as before the Grantee's activity commenced. Adjacent or affected property owners shall be notified by mail or door hanger at least one week in advance of the installation of pedestals or other major construction or installation projects in the Rights-of-Way or on private property.

SECTION 6. SERVICES FOR CUSTOMERS WITH DISABILITIES

- A. For any Customer with a disability that prevents the Customer from self-installing equipment, the Grantee shall, at no charge, deliver, install and pick up equipment at the Customer's home. In the case of a malfunctioning equipment, Grantee shall provide and install substitute equipment, ensure that it is working properly, and shall remove the defective equipment.
- B. The Grantee shall make available TDD/TTY or utilize toll free telephone relay service (711) with trained operators, who can provide every type of assistance rendered by the Customer Service Representatives, for any hearing-impaired Customer at no charge.

- C. The Grantee shall install, at no charge, any standard closed captioning device purchased from Grantee by a hearing-impaired customer and provide free use of a remote control unit to mobility-impaired Customers (if disabled, in accordance with Subsection D of this Section) who are paying for a set top box.
- D. Any Customer with a disability may request the special services described above by providing the Grantee with proof of disability, that may include, a letter from the Customer's physician stating the need, or by making the request to the Grantee's installer or service technician, where the need for the special service can be visually confirmed.

SECTION 7. CUSTOMER INFORMATION

- A. Upon installation and at any time thereafter, the Customer may request, or upon its own initiative, the Grantee shall provide the following information:
 - 1. Products and services offered by the Grantee, including its channel lineup;
 - 2. The Grantee's complete range of service options and the prices for these services;
 - 3. Instruction on the use of cable TV service and standard device hookups;
 - 4. The Grantee's billing, collection and disconnection policies;
 - 5. Customer privacy requirements;
 - 6. All applicable Complaint procedures, including Complaint forms, and the telephone numbers and mailing addresses of the Grantee and the FCC, as well as the contact information for the LFA;
 - 7. Use and availability of parental control/lock out devices;
 - 8. Special services for Customers with disabilities; and
 - 9. A URL web address identifying the Days, times of operation, and location of the service center(s).
- B. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to Customers a minimum of thirty (30) business days in advance of such change(s) if the change is within the control of the Grantee. The Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment or charge of any kind imposed by any federal agency, State or the LFA.
- C. All officers, agents, and employees of the Grantee or its contractors or subcontractors who are in personal contact with Customers shall wear on their outer clothing identification cards bearing their name and photograph. Every vehicle of the Grantee shall be visually identified to the public as working for the Grantee. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor or

subcontractor, and shall be further identified as contracting or subcontracting for the Grantee. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public.

- D. The Grantee shall notify customers of the estimated cost of the service, repair, or installation prior to delivery of the service or before any work is performed.

SECTION 8. CUSTOMER PRIVACY

- A. The Grantee shall not monitor cable television signals to determine the individual viewing patterns or practices of any Customer without prior written consent from that Customer, except as needed to maintain system integrity or for other lawful purposes.
- B. The Grantee shall not sell or otherwise make available Customer lists or other personally identifiable information without the prior written consent of the Customer, except as otherwise permitted by law. The Grantee is permitted to disclose such information if necessary to render, or conduct, a legitimate business activity related to a Cable Service provided by the Grantee to its Customers.

SECTION 9. SAFETY

The Grantee shall install and locate its facilities, cable system, and equipment in compliance with all federal, state and local safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever the Grantee receives notice that an unsafe condition exists with respect to its equipment, the Grantee shall investigate such condition immediately, and shall promptly take such measures as are necessary to remove or eliminate any unsafe condition.

SECTION 10. SATISFACTION GUARANTEED

The Grantee currently offers a Customer satisfaction guarantee to every Customer who requests installation of Cable Service.

SECTION 11. COMPLAINTS TO THE GRANTEE

- A. The Grantee shall establish written procedures for receiving, acting upon, and resolving Complaints without intervention by the LFA (except where necessary) and shall publicize such procedures through written documents on the company's website at the Grantee's sole expense.
- B. Said written procedures shall describe a simple process by which any Customer may submit a Complaint by telephone or in writing to the Grantee regarding a disputed matter, or an alleged violation of any provision of these Standards or any terms or conditions of the Customer's contract with the Grantee, or reasonable business practices.
- C. Within a reasonable period of time after receiving a Complaint, the Grantee shall notify the Customer of the results of its investigation and its proposed action or credit.
- D. Upon request, Grantee's Complaint procedures shall be provided to the LFA.

SECTION 12. VERIFICATION OF COMPLIANCE

Beginning Twelve (12) months after the Effective Date of the Franchise, the Grantee shall establish its compliance with all of the Standards required through annual reports that demonstrate said compliance, or at any time as requested by the LFA.

SECTION 13. OVERALL QUALITY OF SERVICE

The LFA may evaluate the overall quality of Customer service provided by the Grantee to Customers:

- A. In conjunction with any performance review provided for in the Franchise; or
- B. At any other time, in its sole discretion, based on the number of Complaints received by the Grantee or the LFA, and the Grantee's response to those Complaints.

SECTION 14. PROCEDURES FOR REMEDYING VIOLATIONS

If the LFA has reason to believe that the Grantee has failed to comply with any of these Standards, or has failed to perform in a timely manner, or if similar Complaints repetitively arise, the LFA may require in writing that the Grantee remedy the alleged noncompliance as outlined in Section 12 of the Franchise. If the alleged noncompliance is denied or not remedied to the satisfaction of the LFA, the LFA may opt to follow the liquidated damages procedures, revocation procedures or seek other remedies set forth in the Franchise, or pursue any other remedies at law or in equity.

SECTION 15. SEVERABILITY

Should any section, subsection, paragraph, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, paragraph, or provision of these Standards, all of which shall remain in full force and effect.

SECTION 16. NON-WAIVER

Failure of the LFA to enforce any provision(s) of these Standards shall not operate as a waiver of the provision(s) or of the Standards.