





**INFORMATION TECHNOLOGY DEPARTMENT**

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June 1, 2010

**TO:** Kent City Council  
**FROM:** Mike Carrington, Information Technology Director  
**THROUGH:** n/a  
**SUBJECT:** Goldfinch Communications, LLC Cable Franchise

**SUMMARY:** On February 16, 2010 the City received a cable television franchise application from Goldfinch Communications, LLC to construct, operate and maintain a cable communications system in the City of Kent.

The Information Technology Department in concert with the Law Department contracted with Kenyon Disend, PLCC to lead franchise negotiations on the City's behalf.

**DETAIL:** Currently, Comcast is the only cable television provider in the City's Rights-of-Way (ROW). If the franchise request is granted, Goldfinch Communications, LLC would be able to construct a cable television system in Kent. Federal law requires the City to expeditiously consider this application.

As part of the franchise negotiations, extensive consultation and consensus was achieved between the City's IT, Legal, Public Works, Economic & Community Development, Finance, Risk Management and Mayor's Offices.

Tonight has been set as the date of the first introduction of the proposed cable television franchise agreement between the City and Goldfinch Communications, LLC. RCW 35A.47.040 provides that a cable television franchise may not be granted by the City the same day that it is introduced to the City Council. This public hearing has also been set as required by KCC 7.12.070, and notice of the public hearing was posted in the Kent Reporter two (2) weeks prior to tonight's public hearing. Before Council opens the public hearing, staff will make a brief presentation to Council regarding the proposed franchise and will be available to answer Council questions. As provided for under KCC 7.12.080, the Council will consider at the public hearing all views expressed by the public in writing or in person regarding the franchise. Additionally, the Council will consider all written comments received up until the fifth business day following the close of the public hearing, but those written comments will only be considered if they are responsive to written or oral statements made at the public hearing.

At the close of the public hearing, no action will be taken by Council regarding the franchise, though Council may discuss the franchise agreement and the public comments received. The franchise agreement will then be brought back before Council on June 15, 2010, for action.

Prior to taking action on the proposed franchise at its June 15, 2010, meeting, Council must give due consideration to the public comments made and received and to: (1) the quality of the service proposed; (2) the experience, character, background and financial responsibility of the applicant and its management and owners; (3) the financial and commercial interests of the applicant and whether there exists an actual or potential conflict of interest with the interests of the City; (4) the technical and performance quality of the equipment; (5) the program proposed for construction; and (6) the applicant's ability to meet construction and physical requirements and to abide by the terms and requirements of the franchise generally. KCC 7.12.080.

**RECOMMENDATION:** Staff recommends adoption of this franchise for the following key reasons:

- A competitive franchise holder would provide alternatives that benefit the citizens of Kent
- Negotiated terms and conditions of the franchise are advantageous for the City
- The applicant has materially agreed to all of the City's core requirements
- The applicant's proposed technology has the potential to provide unique opportunities for Kent businesses, education, medical, and government agencies further enabling our community.

**BUDGET IMPACT:** Franchise negotiation considerations are budgeted as a technology line item. If the franchise is mutually approved and accepted, provisions in the franchise provide for the City to recoup the costs associated with negotiating the franchise.

We look forward to introducing this franchise request to you at your June 1st, 2010 Council meeting.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE** of the City Council of the City of Kent, Washington, approving a cable franchise agreement with Goldfinch Communications, L.L.C.

**RECITALS**

- A. The City is a franchising authority within the meaning of the Communications Act, 47 U.S.C. § 522(10).
- B. Cable services are currently being provided within the City by an incumbent cable services provider.
- C. Goldfinch Communications, L.L.C. ("Applicant") has made application to the City of Kent for a cable franchise to construct, install, maintain, repair, and operate a cable communications system using a fiber to the home network and is a competitive franchise applicant as that term is defined at 47 C.F.R. § 76.41.
- D. Applicant represents that it has the legal, technical, and financial qualifications to provide the Cable Services authorized herein; and

E. Based on representations and information provided by Applicant, and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions set forth in the franchise agreement and subject to applicable law, are consistent with the public interest.

F. The City is authorized pursuant to RCW 35A.47.040 to grant nonexclusive Franchises within the boundaries of the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

**ORDINANCE**

**SECTION 1.** – *Adoption.* The cable franchise agreement between the City of Kent and Goldfinch, a copy of which is attached and incorporated as Exhibit "A", is hereby granted, and the appropriate City officials are hereby authorized to execute the same on behalf of the City upon acceptance thereof by the Applicant in accordance with the terms and conditions set forth therein.

**SECTION 2.** – *Severability.* If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 3.** – *Corrections by City Clerk or Code Reviser.* Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**SECTION 4.** – *Effective Date.* This ordinance shall take effect and be in force ninety (90) days from and after its passage. However, as provided in KCC 7.12.120, the franchise granted by this ordinance shall not take effect until the Applicant has filed a written acceptance within sixty (60) days following the effective date of this ordinance. All costs incurred by the City to develop and negotiate the franchise granted by this ordinance shall be due on the date of Applicant’s written acceptance of the franchise. Should the Applicant fail to timely file its written acceptance of this franchise, the Applicant will be deemed to have rejected and repudiated the franchise and the franchise will be void and will terminate immediately.

\_\_\_\_\_  
SUZETTE COOKE, MAYOR

ATTEST:

\_\_\_\_\_  
BRENDA JACOB, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
TOM BRUBAKER, CITY ATTORNEY

PASSED: \_\_\_\_\_ day of \_\_\_\_\_, 2010.

APPROVED: \_\_\_\_\_ day of \_\_\_\_\_, 2010.

PUBLISHED: \_\_\_\_\_ day of \_\_\_\_\_, 2010.

I hereby certify that this is a true copy of Ordinance No. \_\_\_\_\_ passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

\_\_\_\_\_  
BRENDA JACOBBER, CITY CLERK (SEAL)

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**EXHIBIT A**

Goldfinch Communications, L.L.C. Cable Franchise Agreement

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FRANCHISE AGREEMENT

BY AND BETWEEN

THE CITY OF KENT AND

GOLDFINCH COMMUNICATIONS, LLC

THIS FRANCHISE AGREEMENT (the “**Franchise**”), is made by and between the CITY OF KENT, a municipal corporation, operating under the laws of the State of Washington as a non-charter code city (hereinafter called the “**City**”), and Goldfinch Communications, LLC, a limited liability company, doing business in Washington as “Goldfinch Communications, LLC” (hereinafter called “**Franchisee**”), and collectively, the “**Parties**”.

WHEREAS, the Public Rights-of-Way within the City belong to the public and are built and maintained at public expense for the use of the general public, the primary purpose of which is public travel, and must be managed and controlled consistent with that intent; and

WHEREAS, the City is a Franchising authority within the meaning of Title VI of the Communications Act (47 U.S.C. § 522(10)); and

WHEREAS, cable services are currently being provided within the City by an incumbent cable services provider; and

WHEREAS, Franchisee has made application to the City of Kent for a cable Franchise to Construct, install, maintain, repair, and operate a cable communications system using an FTTP network and is a Competitive Franchise Applicant as that term is defined at 47 C.F.R. § 76.41; and

WHEREAS, Franchisee represents that it has the legal, technical, and financial qualifications to provide the Cable Services authorized herein; and

WHEREAS, based on representations and information provided by Franchisee, and in response to its request for the grant of a Franchise, the City Council has determined that the grant of a nonexclusive Franchise, on the terms and conditions herein and subject to applicable law, are consistent with the public interest; and

WHEREAS, the City is authorized pursuant to RCW 35A.47.040 to grant nonexclusive Franchises within the boundaries of the City;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and the Franchisee hereby agree as follows:

## ARTICLE 1. DEFINITIONS

Except as provided at Section 3.7 herein (Order of Precedence), for the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given in the most current version of the City of Kent Design and Construction Standards as adopted pursuant to Kent City Code (“KCC”) Ch. 6.02 (the “Construction Standards”). Words not defined herein or in the Construction Standards shall have the meaning given pursuant to the Communications Act (as hereinafter defined). Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation, or rule referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

“Access Channel” shall mean a video Channel, which Franchisee shall make available to the City without charge for non-commercial public, educational or governmental use for the transmission of video programming as directed by the City, or its designees, as applicable.

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

“Annexation Service Area” and “Annexation Area” shall mean and refer to that same term as it is defined at Section 8.1.4 herein.

“Basic Service” or “Basic Service Tier” means any service tier that includes the retransmission of all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system); any public, educational, and governmental programming required by the Franchise to be carried on the basic service tier; and any additional video programming signals or service added to the basic service tier by Franchisee.

“Breach” shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise.

“Buildout” means the permitting, design, Construction and activation of a fully operational Cable System throughout the Franchise Area.

“Cable Operator” shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(5), but does not include direct broadcast satellite providers.

“Cable Service” shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), which currently states: the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, and shall mean and include IPTV.

“Cable System” or “System” shall be defined herein as defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), which currently states: a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system.

“Channel” shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), which currently states: a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

“City” shall mean the City of Kent, a municipal corporation organized as a non-charter code city, operating under the laws of the state of Washington.

“Communications Act” shall mean the Communications Act of 1934, as amended by, among other things, the Cable Communications Policy Act of 1984, the Cable Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 as it may be further amended from time to time.

“Construct” or “Construction” shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, remove, or support.

“Corrective Action” shall mean a Party undertaking action as provided in this Franchise to perform a duty or obligation that the other Party is obligated to but has failed to perform.

“Design Document(s)” shall mean the plans and specifications for the Construction of the Facilities illustrating and describing the refinement of the design of the Cable System Facilities to be Constructed, establishing the scope, relationship, forms,

size and appearance of the Facilities by means of plans, sections and elevations, typical Construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

“100% Design Submittal” means a Design Document upon which Franchisee’s contractors will rely in Constructing the Cable System Facilities.

“Direct Costs” shall mean and include all costs and expenses to the City directly related to a particular activity or activities, including, by way of example and not limitation:

i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods, and other items used or incorporated in connection with and in furtherance of such activity or activities, and any taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;

ii. All costs and expenses of labor inclusive of payroll benefits, non-productive time, and overhead for each of the labor classifications of the employees performing work for the activity, and determined in accordance with the City’s ordinary governmental accounting procedures; and

iii. All costs and expenses to the City for any work by consultants or contractors to the extent performing work for a particular activity or activities, including, by way of example and not limitation, engineering and legal services.

“Dispute” shall mean a question or controversy that arises between the Parties concerning the observance, performance, interpretation, or implementation of any of the terms, provisions, or conditions contained in this Franchise or the rights or obligations of either Party under this Franchise.

“Economically and Technically Feasible” shall mean and refer to the following: capable of being provided through technology that has been demonstrated to be feasible for its intended purpose, in an operationally workable manner, and in a manner whereby the Cable System has a reasonable likelihood of being operated on reasonably profitable and commercially practicable terms.

“Effective Date” shall mean and refer to that term as it is defined at Section 4.3 herein.

“Emergency” shall mean and refer to a sudden condition or set of circumstances that, (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and Franchisee’s ability to continue to provide services if immediate action is not taken, or (b) presents an imminent threat of harm to persons or property if immediate action is not taken.

“Environmental Law(s)” means any federal, state, or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction, or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

“Extended Service Area” shall mean that portion of the Service Area outlined and identified as such in Exhibit H attached hereto and made a part hereof.

“Facility” means any part or all of the facilities, equipment and appurtenances of Franchisee whether underground or overhead and located within the Public Rights-of-Way as part of the Franchisee’s Cable System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, towers, anchors, transmitters, receivers, antennas, and signage.

“FCC” shall mean and refer to the United States Federal Communications Commission or successor governmental entity thereto.

“Franchise” shall mean the grant, once accepted, giving general permission to the Franchisee to enter into and upon the Franchise Area and to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions of this Franchise Agreement.

“Franchise Fee” shall have the same meaning as that same term as it is defined in Section 5.8.1.1 of this Franchise.

“Franchise Ordinance” shall mean and refer to the Ordinance enacted by the City Council authorizing the grant of this Franchise.

“Franchisee” shall mean Goldfinch Communications, LLC and any of its Affiliates.

“Franchise Area” shall mean collectively or individually the Public Rights-of-Way located in the corporate boundaries of the City, as now constituted or as may hereinafter be expanded through annexation or consolidation.

“Gross Revenue” shall mean and refer to any and all cash, credits, property, or consideration of any kind or nature that constitutes revenue which is derived directly or indirectly from Subscribers for Cable Services. Gross Revenue shall include, by way of example and description but not by way of limitation, the following: all Subscriber revenues earned or accrued, net of bad debts, including revenue for: (i) Basic Service, digital service tiers, pay-per-view services, expanded services and premium services; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection, or reconnection of Cable Service;

revenue from late or delinquent charge fees; cable franchise fees passed through to Subscribers paid by Subscribers to Franchisee; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets, and/or other similar Cable Service related Subscriber premises equipment, whether by lease or fee and whether characterized as a lease or other similar fee; (iii) revenue from the collection of bad debts previously written off against Gross Revenue (which items shall be included for the period in which the bad debt is recovered); (iv) any revenue generated by Franchisee or by any Affiliate through any means that has the effect of avoiding the payment of compensation that would otherwise be paid to the City for the Franchise granted in this Agreement.

Gross Revenue **SHALL NOT INCLUDE:**

Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System including professional service fees and insurance and/or bonding costs;

Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

Refunds, rebates, or discounts made to Subscribers or other third parties, such as leased access providers, to the extent such refunds, rebates, or discounts represent an actual refund or rebate of or a reduction in the price paid by Subscribers or other third parties;

Any revenues generated by services that are NonCable Services;

Any revenue of Franchisee or any other Person which is received from the sale of merchandise through any Cable Service distributed over the Cable System, except for that portion of such revenue which is paid to Franchisee as a commission or a fee for cablecasting such programming;

Revenue from the sale of Cable Service on the Cable System in a resale with respect to which the buyer is obligated to collect and pay a franchise fee to the City;

Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal, or any other governmental entity and required to be collected by Franchisee from Subscribers and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and noncable franchise fees);

The provision of Cable Services to customers without charge, including, without limitation, the provision of Cable Services to public institutions as required or permitted herein, provided, however, that such foregone revenue which Franchisee

chooses not to receive in exchange for trades, barter, services, or other items of value shall be included in Gross Revenue;

Sales of capital assets or sales of surplus equipment;

Program launch fees and other programmer reimbursements;

Revenues from the sale or lease of access channel(s) or channel capacity;

Compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel;

Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing;

Investment income; and

Any fees or charges collected from Subscribers or other third parties for PEG/INET Grant payments and FCC regulatory fees.

"Hazardous Substance" means any hazardous, toxic, radioactive, or infectious substance, material, or waste as defined, listed, or regulated under any Environmental Law, and any element, compound, mixture, solution, particle, or substance which presents danger or potential danger for damage or injury to health, welfare, or to the environment, including, but not limited to: those substances which are inherently or potentially radioactive, explosive, ignitable, corrosive, reactive, carcinogenic, or toxic; those substances which have been recognized as dangerous or potentially dangerous to health, welfare, or to the environment by any federal, municipal, state, city, or other governmental or quasi-governmental authority, and/or any department or agency thereof; those substances which use asbestos or lead-based paint or have a component thereof or therein; and petroleum oil and any of its fractions.

"Initial Service Area" shall mean and refer to that part of the Franchise Area outlined and identified as such in Exhibit H attached hereto and incorporated herein by reference, in which Franchise shall initiate its Buildout.

"Internet Access" shall mean and refer to dialup or broadband access service that enables Subscribers to access the Internet.

"IPTV" or "Internet Protocol Television" shall mean and refer to the delivery of video programming via a broadband connection using Internet protocols.

"KCC" shall mean the Kent City Code.

“Law(s)” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, franchises, authorizations, environmental standards, orders, decrees and requirements of all federal, state, city and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Facilities, including the City acting in its governmental capacity, or other requirements. References to Laws shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

“Legal Action” shall mean filing a lawsuit.

“Material Breach” shall mean any of the following circumstances:

- Breach of a Party’s obligation to defend or indemnify the other Party;
- If a Party in bad faith attempts to evade any material provision of this Franchise or engages in any fraud or deceit upon the other Party;
- If Franchisee becomes insolvent, or if there is an assignment for the benefit of Franchisee’s creditors;
- If Franchisee fails to provide or maintain the insurance, bonds, security fund, or other security required by this Franchise;
- Refusal to enter into good faith negotiations in accordance with Section 3.5 (Subsequent Action);
- Breach of Section 7.14 (Abandonment of Facilities);
- Any Breach that cannot practicably be cured;
- Any Non-Material Breach that is not cured as required pursuant to Section 6.3; or
- A pattern of Non-Material Breaches, i.e., three (3) or more in any one year period.

“Middle Service Area” shall mean that portion of the Service Area outlined and identified as such in Exhibit H attached hereto and made a part hereof.

“Network Access Point” shall mean and refer to the location where a physical network services connection point has been designated as a Network Access Point and has been designed into the networks construction build out to physically connect via a network connection device to provide a network access point to the public services network. The network access point could be designed at a building’s minimum point of entry (“MPOE”), a building’s intermediate cross-connect (“IC”), any given point of presence (“POP”), Splice-less Network Access Closure (“SNAC”), a network splice enclosure where network connectivity is available, or a fiber distribution connection panel located within a building or structure located within any given Service Area of the municipal and/or public network.

“NonCable Services” shall mean and include any service that does not constitute a Cable Service including, but not limited to, information services and telecommunications services, as those terms are defined in the Communications Act.

“Non-Material Breach” means any Breach that does not constitute a Material Breach.

“Noticed Party” shall mean the Party in receipt of notice of a Material or Non-Material Breach.

“Party(ies)” shall mean either the City or the Franchisee or both.

“Permit” means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for work to Construct any part of the Cable System and includes by way of example and not limitation, a Construction Permit, building Permit, street cut Permit, and clearing or grading Permit.

“Person” means and includes any individual, corporation, partnership, association, joint-stock-company, limited liability company, political subdivision, public corporation, taxing district, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

“Public Rights-of-Way” and “Public Right-of-Way” mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, pathways, spaces, conduits, manholes or other public right-of-way, including any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover, excluding railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, dedicated but un-opened right of way, and such similar facilities or property owned, maintained, or leased by the City in its governmental or proprietary capacity or as an operator of a utility.

“Public Works Director” means and refers to the Public Works Director for the City, or his or her designee, or such officer or person who has been assigned the duties of Public Works Director, or his or her designee.

“Remedy”, “Remediate” and “Remedial Action” shall have the same meaning as these are given under the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulations at Chapter 173-340 WAC.

“Resident” shall mean and refer to any occupant who resides in a residential dwelling in the City, including, without limitation, occupants of single and multi-family dwellings, rooming houses, condominiums, town homes, or mobile home parks.

“Residential Subscriber” shall mean and refer to a Resident who is a Subscriber.

“Service” shall mean the service or services authorized to be provided by the Franchisee under the terms and conditions of this Franchise.

“Service Area” shall mean collectively the Initial Service Area, the Middle Service Area, the Extended Service Area, and the Annexation Service Areas.

“Service Date” shall mean and refer to the date that the Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area. The Franchisee shall memorialize the Service Date by notifying the City in writing of the same, which notification shall become a part of this Franchise.

“Subscriber” shall mean and refer to a Person who legally receives Cable Service within the Service Area over the Cable System.

“Technology Fee” shall have the same meaning as that same term as it is defined at Section 5.8.1.2 of this Franchise.

“Transfer” shall mean any transaction in which all or a portion of the Cable System is sold, leased or assigned (except a sale or transfer that results in removal of a particular portion of the Cable System from the Public Rights-of-Way); or, the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another Person. A transfer of control of Franchisee shall not constitute a transfer as long as the same person continues to hold the Franchise both before and after the transfer of control. The term “control” (including “controlled by”) means the power or authority, either de facto or de jure, to direct the management or operations of the Franchisee.

“Video Programming” shall mean and refer to that term as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), which currently states: programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

“Video Serving Office” shall mean and refer to a facility of the Franchisee (usually a central office associated with the Public Switched Network for voice services, but includes other similar facilities designated by the Franchisee for this purpose) for which a portion has been equipped with the appropriate equipment to enable Cable Service to be provisioned to Subscribers.

“Work” shall mean any and all activities of the Franchisee, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or franchisees, within the Public Rights-of-Way to Construct the Facilities.

## ARTICLE 2. FRANCHISE GRANT

2.1 Public Rights-of-Way Use Authorized. Subject to the terms and conditions of this Franchise, the City hereby grants to Franchisee a nonexclusive Franchise authorizing the Franchisee to Construct and operate Facilities in, along, among, upon, across, above, over, and under the Public Rights-of-Way located within the Franchise Area. Franchisee shall coordinate its work within the Public Rights-of-Way with the City's Capital Improvement Plans, Transportation Improvement Plan ("Plan"), and Comprehensive Plan.

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to Construct and operate a Cable System to provide Cable Services. This authorization is limited and is not intended nor shall it be construed as granting Franchisee or any other Person the right, duty, or privilege to use its Cable System or the Public Rights-of-Way to provide NonCable Services or any other services not specifically authorized herein, including but not limited to telecommunications or information services. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions for use of the Public Rights-of-Way, should Franchisee provide service other than Service specifically authorized herein.

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

2.3.1 Any other authorization required for the privilege of transacting and carrying on a business within the City that may be lawfully required by the Laws of the City;

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

2.3.3 Any Franchises, leases, easements, or other agreements for occupying any other property or infrastructure of the City or other Persons to which access is not specifically granted by this Franchise including, without limitation, agreements for placing devices on poles, light standards, in conduits, in vaults, in or on pipelines, or in or on other structures, public parks, or public buildings.

2.4 Interest in the Public Rights-of-Way. This Franchise does not convey title, equitable or legal, in the Public Rights-of-Way. The City does not represent or guarantee that its interest, or other right to control the use of such Public Rights-of-Way, is sufficient to grant its use for Franchisee's purposes. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. This grant does not confer rights other than as expressly provided in this Franchise

and is subject to the limitations in applicable Law. This right shall not be Transferred, subdivided or subleased to a person other than the Franchisee.

Franchisee acknowledges that, where City has an ownership interest in a Franchise Area, that ownership interest may be a determinable fee, a Public Right-of-Way dedication, or a right-of-way easement, which may terminate when City either: (i) ceases to use that Public Right-of-Way for Public Right-of-Way purposes; or (ii) uses such Public Right-of-Way for purposes found to be inconsistent with use of the Public Right-of-Way for Public Right-of-Way purposes, and that in such circumstances, City's right to franchise or grant the use of any such Public Right-of-Way, or rights under any franchise of any such Public Right-of-Way, may be subject to termination as of the date the circumstances set forth in either (i) or (ii) above, first arise (unless Franchisee improves the quality of title to the applicable Franchise Area, or acquires additional property interests from other Persons).

Franchisee also acknowledges that, where City has ownership rights, those ownership rights may terminate for other reasons, such as a street vacation. Franchisee further acknowledges that Franchisee's rights under this Franchise as to any Franchise Area, are subject to all outstanding rights and encumbrances on City's Public Rights-of-Way (including City Utilities), and any easements, franchise agreements, licenses, permits, grants, or other agreements in effect on or before the Effective Date; City therefore grants to Franchisee no more right, title, and interest in any Public Rights-of-Way than the City holds in such Public Rights-of-Way at the time of grant, and Franchisee hereby releases City from any and all liability, cost, loss, damage, or expense in connection with any claims that City lacked sufficient legal title or other authority to convey the rights described herein. In case of eviction of Franchisee or Franchisee's contractors by anyone owning or claiming title to, or any interest in, the Franchise Area, City shall not be liable to Franchisee or Franchisee's Contractors for any costs, losses, or damages of any Party.

**CITY DOES NOT WARRANT ITS TITLE OR PROPERTY INTEREST IN OR TO ANY FRANCHISE AREA NOR UNDERTAKE TO DEFEND FRANCHISEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

**2.5 Condition of Franchise Area.** Franchisee has inspected or will inspect Franchise Area, and enters upon each such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on, or near any Franchise Area. **FRANCHISEE ACCEPTS THE FRANCHISE AREA IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY AS TO ANY MATTERS CONCERNING THE FRANCHISE AREA,** including, but not limited to: the physical condition of the Franchise Area; zoning status; presence and location of existing utilities; operating history; compliance by the Franchise Area with Environmental Laws or other Laws and other requirements applicable to the Franchise Area; the presence of

any Hazardous Substances or wetlands, asbestos, or other environmental conditions in, on, under, or in proximity to the Franchise Area; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on, or under the Franchise Area; and the condition of title to the Franchise Area, and the leases, easements, franchises, orders, Permits, or other agreements affecting the Franchise Area (collectively, the “**Condition of the Franchise Area**”).

Franchisee represents and warrants to the City that neither the Franchisee nor its contractors or subcontractors have relied and will not rely on, and the City is not liable for or bound by, any warranties, guaranties, statements, representations, or information pertaining to the Condition of the Franchise Area or relating thereto made or furnished by the City, or any agent representing or purporting to represent the City, to whomever made or given, directly or indirectly, orally or in writing. CITY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE FRANCHISE AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PUBLIC RIGHT-OF-WAY, OR THE CONFORMITY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY TO ITS INTENDED USES. CITY SHALL NOT BE RESPONSIBLE TO FRANCHISEE OR ANY OF FRANCHISEE’S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PART OF THE PUBLIC RIGHT-OF-WAY PRESENT ON OR CONSTITUTING ANY FRANCHISE AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES.

2.6 Franchise Nonexclusive. This Franchise shall be nonexclusive. Subject to the terms and conditions herein, the City may at any time grant authorization to others to use the Public Rights-of-Way for any lawful purpose.

2.7 Transfer. Franchisee may Transfer this Franchise after prior written notice to and approval by the City and Transferee’s written commitment, in substantially the form of the agreement attached hereto as Exhibit “G”, delivered to the City, that Transferee shall thereafter be responsible for all obligations of Franchisee with respect to the Franchise and guaranteeing performance under the terms and conditions of the Franchise and that Transferee shall be bound by all the conditions of the Franchise and will assume all the obligations of its predecessor. Such a Transfer shall relieve the Franchisee of any further obligations under the Franchise, including any obligations not fulfilled by Franchisee’s Transferee; provided that, the Transfer shall not in any respect relieve the Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the Transfer. This Franchise may not be Transferred without filing or establishing with the City the insurance certificates, security fund, and performance bond as required pursuant to this Franchise and paying all Direct Costs to the City related to the Transfer. The Parties agree that it would not be unreasonable for the City to withhold its consent to a Transfer to an incumbent Cable Operator.

Notwithstanding the foregoing, notice to the City shall not be required for a mortgage, hypothecation, or an assignment of Franchisee's interest in the Franchise in order to secure indebtedness.

Franchisee may, without prior written notice to the City: (i) lease the Cable System, or any portion thereof, to another Person; (ii) grant an indefeasible right of user interest in the Cable System, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Cable System to another Person; provided that, Franchisee at all times retains exclusive control over its Cable System and remains responsible for Constructing its Facilities pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such Person that are greater than any rights Franchisee has pursuant to this Franchise; such Persons shall not be construed to be a third-Party beneficiary hereunder; and, no such Person may use the Cable System for any purpose not authorized herein.

Notwithstanding the foregoing, nothing herein shall operate to prevent Franchisee from conveying all or a portion of the Cable System to the City.

2.8 Street Vacation. If any Public Right-of-Way or portion thereof used by Franchisee is to be vacated during the term of this Franchise, unless as a condition of such vacation the Franchisee is granted the right to continue its Facilities in the vacated Public Right-of-Way, Franchisee shall, upon written demand being made by the City and within the time period specified in the written notice, remove its Facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition as may be required by the City.

2.9 Railroad Rights-of-Way. In the event that any portion of the Facilities will be Constructed in the Public Right-of-Way within twenty-five (25) feet of the centerline of any railroad track, Franchisee shall be responsible for coordinating such Work with the owner/operator of such railroad track to conform the Franchisee Work to the design and construction standards of the owner/operator to the extent Facilities will be installed above or below the track, and shall be responsible for complying with those workplace safety requirements that would apply to contractors performing work in the railroad right-of-way on behalf of the railroad owner/operator. Franchisee may also be required to obtain railroad protective liability insurance naming the railroad owner/operator as an additional insured.

2.10 Reservation of City Use of Public Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing or altering any Public Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

### ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE

3.1 Compliance With Laws. Except as provided herein pursuant to Section 3.3, the Franchisee agrees to comply with all applicable Laws as are now or hereafter in effect, and any lawful orders from regulatory agencies or courts with jurisdiction over Franchisee and its Facilities, or over the City and the Public Rights-of-Way. Specifically, Franchisee understands that at the time of the Effective Date of this Franchise, the City will be undertaking to review and revise Chapter 7.12 (Cable Television Communications) of the Kent City Code. Franchisee agrees it shall be subject to the provisions of Chapter 7.12 as revised; provided however, in addition to the right of the Franchisee pursuant to Section 3.5 to enter into good faith negotiations to amend this Franchise, in the event that the provisions of Chapter 7.12 KCC as amended shall operate to materially and detrimentally impact Franchisee's operations, cost of operations, or cost of service, and the City and Franchisee are unable, through good faith negotiations, to agree upon mutually acceptable terms and conditions of an amendment to the Franchise, Franchisee may, upon reaching such an impasse and giving written notice thereof to the City, elect to (a) shorten the term of the Franchise, provided that the remainder of the term is no less than three (3) years, or (b) extend the time period remaining for Buildout in each of the remaining Service Areas by up to two (2) years.

3.2 Police Powers. Franchisee acknowledges that its rights hereunder are subject to those powers expressly reserved by the City and further are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety and welfare of the public. Franchisee agrees to comply with all lawful and applicable general ordinances now or hereafter enacted by the City pursuant to such power. Such powers include, but are not limited to, the right to adopt and enforce applicable zoning, building, permitting, and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations governing work performed in the Public Rights-of-Way.

3.3 Alteration of Material Terms and Conditions. Subject to federal and state preemption, the material rights, benefits, obligations, or duties as specified in this Franchise may not be unilaterally altered by the City through subsequent amendments to any ordinance, regulation, resolution, or other enactment of the City, except within the lawful exercise of the City's police power.

3.4 Reservation of Rights/Waiver. The City is vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable Law, 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. The City expressly reserves all of its rights, authority, and control arising from any relevant provisions of federal, state, or local Laws granting the City rights, authority, or control over the Public Rights-of-Way or the activities of the Franchisee. Nothing in this Franchise Agreement shall be deemed to waive the requirements of the various codes and ordinances of the City regarding Franchises, fees to be paid, or manner of Construction.

Nothing in this Franchise shall be deemed to waive, and Franchisee specifically reserves the right to challenge, any City ordinance, regulation, or resolution that conflicts with its rights under this Franchise.

3.5 Subsequent Action. In the event that after this Franchise becomes effective, (a) there is a change in or clarification of the Law which changes, broadens, or clarifies the authority or obligations of the City or the Franchisee with respect to any act permitted or authorized under this Franchise, or (b) the State of Washington or any agency thereof or any agency of the Federal government require Franchisee or the City to act in a manner which is inconsistent with any provisions of this Franchise, or (c) any term, article, section, subsection, paragraph, provision, condition, clause, sentence, or other portion of this Franchise, or its application to any person or circumstance, shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, or (d) the Construction, maintenance, repair, and/or operation of the Cable System within the Public Right-of-Way causes or results in (i) degradation of the Public Right-of-Way in a way, or to an extent, that was not reasonably foreseen by the City prior to the Effective Date, or was known by the Franchisee, but not disclosed to the City on or before the Effective Date, or (ii) harm or the threat of imminent harm to the public health or safety that was not known by the City upon the Effective Date, or (e) because of a change in circumstances or advancement in technology, the City or the Franchisee believe that amendments to this Franchise are necessary or appropriate, then the City and the Franchisee agree to enter into good faith negotiations to amend this Franchise so as to enable the City and Franchisee to address, in a manner reasonably acceptable to the City and Franchisee, such change or other development which formed the basis for the negotiations. The City and Franchisee recognize that the purpose of the negotiations would be to preserve, to the maximum extent consistent with Law, the intent, scope, and purpose of this Franchise.

Except as may be otherwise provided herein, if the terms of this Franchise are materially altered due to changes in or clarifications governing Law or due to agency rule making or other action, then the Parties shall negotiate in good faith to reconstitute this Franchise in a way consistent with then-applicable Law in a form that, to the maximum extent possible, is consistent with the original scope, intent, and purpose of the City and Franchisee, and preserves the benefits bargained for by each Party.

3.6 Change in Form of Government. Any change in the form of government of the City shall not affect the validity of this Franchise. Any governmental unit succeeding the City shall, without the consent of Franchisee, succeed to all of the rights and obligations of the City provided in this Franchise.

3.7 Order of Precedence.

3.7.1 In the event of a conflict between a provision, term, condition, or requirement of the City Code or City ordinance in effect upon the Effective Date and a provision, term, condition, or requirement of this Franchise, the provision, term, condition, or requirement of the City Code or City ordinance shall control to the extent of such

conflict; provided that, the fact that a provision, term, condition, or requirement contained in the Franchise may be more restrictive than a provision, term, condition, or requirement in the City Code or a City ordinance shall not constitute a conflict.

3.7.2 In the event of a conflict between a provision, term, condition, or requirement of the City Code or City ordinance enacted subsequent to the Effective Date and a provision, term, condition, or requirement of this Franchise, the provision, term, condition, or requirement of the City Code or City ordinance shall control, to the extent of the conflict, subject to Sections 3.3 and 3.4 of this Franchise; provided that, the fact that a provision, term, condition, or requirement contained in the Franchise may be more restrictive than a provision, term, condition, or requirement in the City Code or a City ordinance shall not constitute a conflict. Franchisee agrees it shall be subject to the provisions of Chapter 7.12 KCC as revised subsequent to the Effective Date.

3.7.3 In the event of a conflict between a provision, term, condition, or requirement of this Franchise and a provision, term, condition, or requirement of an Exhibit incorporated herein, the Franchise shall control, to the extent of the conflict.

#### ARTICLE 4. ACCEPTANCE

4.1 Acceptance. Within sixty (60) days after the effective date of the Franchise Ordinance, this Franchise shall be Accepted by Franchisee. For purposes of this Franchise, “Accepted” or “Acceptance” shall mean filing with the City Clerk during regular business hours, or such other person as may be designated by the City, three (3) originals of this Franchise with Franchisee’s original signed and notarized written acceptance of all of the terms, provisions, and conditions of this Franchise in conformance with Exhibit “B”. At the time of Acceptance of the Franchise, Franchisee shall also file with the City Clerk, or such other person as may be designated by the City, the following, if required herein:

4.1.1 The insurance certificate in conformance with the requirements of Section 5.3 herein.

4.1.2 The performance and payment bond in conformance with the requirements of Section 5.4 herein.

4.1.3 The security fund deposit or letter or credit in conformance with the requirements of Section 5.4 herein.

4.1.4 Payment in readily available funds of the administrative costs for issuance of the Franchise in conformance with the requirements of Section 5.8.2 herein.

4.1.5 Payment of the costs of publication of this Franchise in conformance with the requirements of Section 5.8.2 herein.

In the event that the sixtieth day falls on a Saturday, Sunday, or legal holiday during which the City is closed for business, the filing date shall fall on the last business day before such Saturday, Sunday, or legal holiday.

4.2 Failure to Timely File Acceptance. The failure of Franchisee to timely file its written Acceptance shall be deemed a rejection by Franchisee of this Franchise, and this Franchise shall then be void. In the event that Franchisee timely files its written Acceptance but fails to timely comply with the applicable requirements of Sections 4.1.1 through 4.1.5, this Franchise shall be voidable in the sole discretion of the Mayor without further action required by the City Council or the consent of the Franchisee. The Franchise shall be voidable until such time as Franchisee complies with all of the applicable requirements of Sections 4.1.1 through 4.1.5. No opportunity to cure or public hearing is required to void the Franchise pursuant to this Section 4.2.

4.3 Effective Date/Term/Extension.

4.3.1 Effective Date. The Effective Date of this Franchise shall be 12:01 a.m. on the first day following Acceptance timely filed pursuant to Section 4.1 herein. This Franchise and the rights, privileges, and authority granted hereunder, and the contractual relationship established hereby, shall take effect and be in force from and after the Effective Date of this Franchise.

4.3.2 Initial Term. Subject to Section 6.3 below, the initial term of this Franchise shall commence on the Effective Date and shall continue in full force and effect for a period of twenty (20) years, unless sooner terminated, revoked, or declared void. Nothing in this subsection 4.3 shall affect the right of the City to terminate or revoke this Franchise pursuant to Section 6.3 (Termination/Revocation) herein.

4.3.3 Renewal. Any renewal of the Franchise shall conform to the requirements of 47 USC § 546.

4.3.4 Extension. Franchisee may, in lieu of renewal pursuant to Section 4.3.3 above, request an extension of the initial term of this Franchise for an additional term of ten (10) years; provided that, Franchisee shall have complied with the conditions set forth in this Section and shall have notified the City of the request for the extension no less than three (3) years prior to the expiration of the then-current term, unless such notice is waived by the Mayor in writing. The City may deny the extension of the term if Franchisee has failed to comply with the conditions set forth in this Section. Franchisee may request a second ten (10) year extension subject to the same conditions as the first extension, for a maximum cumulative term of forty (40) years.

Franchisee shall have a right to obtain such extensions only if Franchisee is: (1) in substantial compliance with the material terms and conditions of this Franchise; (2) Franchisee provides timely written notice to the City that it seeks a ten (10) year extension (and agrees not to give formal renewal notice under 47 U.S.C. 546(a), before such time); (3) Franchisee and the City mutually agree upon payment of PEG Capital Fees as a condition of

such extension; and (4) Franchisee's Cable Service performance is consistent with current overall industry technical practices and range and level of services, existing and planned for Cable Systems in communities in Washington State comparable to the City, taking into account, size, location, and population. Such a survey of technical practices and range and level of services shall include due consideration of the then current practices and trends in the industry and whether or not Franchisee has the ability and agrees to perform consistently with the industry practice in the ten (10) year extension periods by implementing improvements that are commercially feasible. An expert or experts in the area of cable television shall be designated by the Mayor, after consultation with Franchisee, to conduct a survey, to assess the survey results, in full consultation with Franchisee, and to advise the City whether Franchisee meets these requirements of item number 3 of this paragraph.

4.4 Effect of Acceptance. By accepting the Franchise the Franchisee:

4.4.1 Accepts and agrees to comply with and abide by all of the lawful terms and conditions of this Franchise;

4.4.2 Acknowledges and accepts the City's legal right to grant this Franchise;

4.4.3 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;

4.4.4 Agrees that it enters into this Franchise freely and voluntarily, without any duress or coercion, after free and full negotiations, after carefully reviewing all of the provisions, conditions, and terms of this Franchise Agreement, and after consulting with counsel;

4.4.5 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with its terms, and by entering into or performing this Franchise, Franchisee is not in violation of its charter or by-laws, or any Law, regulation, or agreement by which it is bound or to which it is subject; and

4.4.6 Warrants that acceptance of this Franchise by Franchisee has been duly authorized by all requisite Board action, that the signatories for Franchisee hereto are authorized to sign the Franchise acceptance, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Franchise.

4.5 Effect of Expiration/Termination. Upon expiration, revocation, or termination of the Franchise without renewal or other authorization, or upon the Franchise being declared Void pursuant to Section 4.2 herein, Franchisee shall no longer be authorized to operate the Cable System within the Franchise Area and shall, to the extent it may lawfully do so, cease operation of the Cable System. Forthwith thereafter, except as may be otherwise agreed to in writing between the Parties, Franchisee shall remove its structures or property from the Public Rights-of-Way and restore the Public

Rights-of-Way to such condition as the City may reasonably require all at Franchisee's expense.

## ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC

### 5.1 Limitation of Liability.

5.1.1 INDEMNITY/RELEASE/DEFENSE. EXCEPT AS MAY BE OTHERWISE PROVIDED PURSUANT TO SECTION 5.2 OF THIS FRANCHISE WITH RESPECT TO ENVIRONMENTAL LIABILITY, TO THE FULLEST EXTENT PERMITTED BY LAW, FRANCHISEE SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS (ELECTED OR APPOINTED), EMPLOYEES, AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM, AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES, AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES"), OF ANY NATURE, KIND, OR DESCRIPTION, OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY, ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

5.1.1.1 THIS FRANCHISE;

5.1.1.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS FRANCHISE;

5.1.1.3 FRANCHISEE'S OCCUPATION AND USE OF THE PUBLIC RIGHTS-OF-WAY;

5.1.1.4 FRANCHISEE'S OPERATION OF THE CABLE SYSTEM;

5.1.1.5 THE PRESENCE OF THE CABLE SYSTEM WITHIN THE PUBLIC RIGHT-OF-WAY;

5.1.1.6 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PUBLIC RIGHT-OF-WAY CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY FRANCHISEE OR ITS CONTRACTORS, SUBCONTRACTORS, OR AGENTS;

5.1.1.7 ANY ACT OR OMISSION OF FRANCHISEE OR FRANCHISEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS AND

SERVANTS, OFFICERS OR EMPLOYEES IN CONNECTION WITH WORK IN THE PUBLIC RIGHT OF WAY; OR

5.1.1.8 THE CITY'S PERMITTING FRANCHISEE'S USE OF THE CITY'S PUBLIC RIGHTS-OF-WAY OR OTHER PUBLIC PROPERTY.

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY OF THE INDEMNITEES. THE ONLY LIABILITIES WITH RESPECT TO WHICH FRANCHISEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE SOLE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AN INDEMNITEE OR FOR LIABILITIES THAT BY LAW THE INDEMNITEES CANNOT BE INDEMNIFIED FOR.

This covenant of indemnification shall include, but not be limited by this reference, to Liabilities arising: (1) as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems, or providing other adequate warnings of any excavation, Construction, or work in any Public Right-of-Way or other public place in performance of Work or Services Permitted under this Franchise; (2) solely by virtue of the City's ownership or control of the Public Rights-of-Way or other public properties; and (3) solely by virtue of the City's inspection or lack of inspection of Work in the Public Rights-of-Way.

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

5.1.2 Tender of Defense. Upon written notice from the City, Franchisee agrees to assume the defense of any lawsuit, claim, or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Franchise for which Franchisee has an obligation to assume Liability for and/or save and hold harmless any Indemnatee. Franchisee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Further, said indemnification obligations shall extend to claims that are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend and may participate in the defense of a claim and, in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written approval which shall not be unreasonably withheld. 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 Franchisee to represent the City, Franchisee shall select additional counsel with no conflict with the City and shall assume and be responsible for all costs, including attorneys' fees, for such additional counsel.

5.1.3 Refusal to Accept Tender. In the event Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the Parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause because there was a wrongful refusal on the part of Franchisee.

5.1.4 Title 51 Waiver. THE FRANCHISEE WAIVES IMMUNITY UNDER RCW TITLE 51 AND AFFIRMS THAT THE CITY AND THE FRANCHISEE HAVE SPECIFICALLY NEGOTIATED THIS PROVISION, AS REQUIRED BY RCW 4.24.115, TO THE EXTENT IT MAY APPLY.

5.1.5 Inspection. Inspection or acceptance by the City of any Work performed by Franchisee at the time of completion of Construction shall not be grounds for avoidance of any of these covenants of indemnification.

5.2 Environmental Liability. See attached Exhibit "C".

5.3 Insurance Requirements. See attached Exhibit "D".

5.4 Financial Security. See attached Exhibit "E".

5.5 Parental Guarantee. Intentionally Deleted.

5.6 Contractors/Subcontractors. Franchisee contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity, and insurance requirements as may be required by City code or regulations, or other applicable Law. If no such requirements are set forth in the City code or regulations, the Franchisee contractors and subcontractors shall comply with the requirements set forth in attached Exhibit "F".

5.7 Liens. In the event that any City property becomes subject to any claims for mechanics', artisans', or materialmen's liens, or other encumbrances chargeable to or through Franchisee which Franchisee does not contest in good faith, Franchisee shall promptly, and in any event within thirty (30) days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Franchisee after first giving Franchisee five (5) business days' advance notice of its intention to do so. Nothing herein shall preclude Franchisee's or the City's contest of a claim for lien or other encumbrance chargeable to or through Franchisee or the City, or of a contract or action upon which the same arose.

## 5.8 Financial Conditions.

### 5.8.1 Franchise Fees.

5.8.1.1 Franchise Fee. Commencing upon the Effective Date, Franchisee shall pay to the City quarterly, on or before the thirtieth (30th) day of each January, April, July, and October, a sum equal to five percent (5%) or greater of Gross Revenues, as defined herein (the “Franchise Fee”). Franchise Fees associated with the Gross Revenues in annexed areas shall be paid to the City starting on the effective date of annexation; provided that, the City may, in its sole discretion, agree to accept a reasonable estimate of such Franchise Fees, subject to adjustment, in the event that Franchisee has not identified and correctly associated all service addresses with the Franchise Service Area within the Annexation Area. Revenues that are derived as a portion of a national or regional service shall be computed on a per Subscriber basis if such determination cannot be achieved by other means. The City may raise the Franchise Fee, if so permitted by federal and state law. Prior to implementation of any increase in Franchise Fees, the Franchisee may request, and shall be granted, a public hearing by the City Council to discuss the benefits of said increase to the citizens of Kent. Upon a finding of the City Council that such increase is reasonably required to meet community needs, taking into consideration the cost of providing such increase, the City Council may require the implementation of such increase in accord with the provisions of this Franchise.

5.8.1.2 Technology Fees. The Parties acknowledge and understand that: (a) the proposed Cable System and the anticipated methods for Construction (micro-trenching) are relatively new technologies and methods; (b) the City has no experience with such a Cable System or the proposed Construction methods, and is unaware of the short or long term viability of providing cable and other services using such a Cable System, or the short or long term impacts of such Construction methods upon the Public Right-of-Way and the City’s obligations to manage and maintain the Public Right-of-Way; (c) the Franchisee has not previously deployed such a Cable System in the continental United States; (d) the Franchisee will receive significant benefit from deploying its Cable System and establishing its ability to deliver cable and other services to Subscribers; (e) the City has the right to deny a cable franchise to an applicant that cannot show that it has the legal, technical, and financial qualifications to Construct and maintain a Cable System; (f) the City has agreed to a narrow definition of Gross Revenues to include only Subscriber revenues and to exclude from this definition certain other gross revenues from Subscribers that may be subject to Franchise Fees, such as revenues collected for payment of FCC regulatory fees, and accordingly the City has agreed to reduce its potential Franchise Fee assessment; and, (g) the Franchisee as well as the City will benefit from a City investment in, and use and promotion of, communications technology and infrastructure, and the maintenance and operation of the same, and that toward that end, the Parties will benefit from a consistent and stable source of revenue.

In consideration of the foregoing, Franchisee agrees that, commencing upon the Effective Date, Franchisee shall, at the same time its pays its Franchise Fees, pay to the City a sum equal to five percent (5%) of all gross revenues derived directly or indirectly from NonCable Services provided over the Cable System (the "Technology Fee").

For purposes of this Section 5.8.1.2, "gross revenue" shall mean and refer to any and all cash, credits, property, or consideration of any kind or nature that constitutes revenue. Technology Fees associated with the gross revenues in annexed areas shall be paid to the City starting on the effective date of annexation; provided that, the City may, in its sole discretion, agree to accept a reasonable estimate of such Technology Fees, subject to adjustment, in the event that Franchisee has not identified and correctly associated all service addresses within the Franchise Service Area within the Annexation Area.

The City agrees that between forty percent (40%) and forty-five percent (45%) of the revenues derived from the Technology Fee will be restricted to funding City investment in, and use and promotion of, information technology and infrastructure, and the maintenance and operation of the same.

The Parties agree that the Franchisee's obligations set forth in this Section 5.8.1.2 (Technology Fees) are material terms and conditions of this Franchise, and the Franchise cannot be reformed in the event that the Franchisee's obligations hereunder are held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction.

5.8.1.3 Late Payment. Any quarterly Franchise Fee, Technology Fee, or PEG Fee not paid by the Franchisee within thirty (30) days of the end of a quarter shall bear interest as set forth at Section 5.8.10 herein.

5.8.1.4 Financial Reports. Each Franchise Fee, Technology Fee, and PEG Fee payment shall be accompanied by a legible financial report consisting at a minimum of Franchisee's Franchise Fee, Technology Fee, and PEG Fee payment worksheet and year-to-date totals worksheet showing the bases for the Franchisee's computation and separately indicating revenues received by the Franchisee within the City from Basic Service, pay TV service, NonCable Services, other applicable sources of revenue, and such other information directly related to confirming the amount of the Franchisee's Gross Revenues (including gross revenues from NonCable Services) as may be reasonably required by the City. The financial report shall also be provided to the City electronically in Excel format, or another electronic format acceptable to the City. The City shall have the right to require further supporting information for each Franchise Fee, Technology Fee and PEG Fee payment, or in connection with a City audit pursuant to Section 5.8.1.4 below, and, in that event, Franchisee shall provide such information within fourteen (14) calendar days of receipt of the request, unless extended by mutual agreement of the Parties. The Franchisee shall be responsible for providing the City all

records necessary to confirm the accurate payment of Franchise Fees, Technology Fees, and PEG Fees. The Franchisee shall maintain such records for six (6) years.

5.8.1.5 Audit by City. The City shall have the right, upon reasonable notice of no less than five (5) working days, to inspect, examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records (collectively the "Records") of Franchisee pertaining to all revenue derived by Franchisee and Affiliates from the operation of the Cable System in order to verify the accuracy of payments under this Article 5 (hereinafter "Audit"). Franchisee shall fully cooperate in making available its Records and otherwise assisting in these activities. Any Records that are not available to the City, or its agents conducting the Audit, within fifty (50) miles of the City, shall be made available at City offices, or in the alternative, the Franchisee can fund the cost to the City of accessing such Records at another location reasonably agreed to by the Parties. The City shall extend the time for the provision of such Records upon a reasonable showing by Franchisee that such extension is justified. In the event that such Audit discloses a discrepancy of more than five percent (5%) between the financial report submitted by the Franchisee with a quarterly payment and the actual Gross Revenues collected by the Franchisee that are subject to the Franchise Fees, Technology Fees, or PEG Fees, the Franchisee agrees to pay to the City the costs of such Audit; provided that, (a) the City will not be entitled to reimbursement of such Audit costs more than once in any five (5) year period, and (2) the total reimbursement to the City in any five (5) year period for the Audit costs shall not exceed one hundred and fifty percent (150%) of the amount of the discrepancy. In the event that such Audit results in a determination that additional Franchise Fees, Technology Fees, or PEG Fees are due the City, the Franchisee further agrees to pay interest as required for late payment on such additional fees computed from the date on which such additional Franchise Fees, Technology Fees, or PEG Fees were due and payable.

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

5.8.1.7 Taxes. Nothing in this section shall limit the Franchisee's obligation to pay applicable local, state, or federal taxes.

5.8.1.8 Bundled Services. If Franchisee bundles Cable Service with NonCable Services, Franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the franchise fee payments under this Agreement. In the event that the Franchisee or any Affiliate shall bundle, tie, or combine Cable Services (which are subject to the franchise fee) with NonCable Services (which are not subject to the franchise fee), so that Subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, a reasonable pro rata share of the revenue received for the bundled, tied, or combined services shall be allocated to Gross Revenues for purposes of computing the franchise fee. To the extent that charges can be

calculated on a stand alone rate and it is practicable to do so, the pro rata share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, in the event that legislation or regulations require same, the Parties agree that tariffed telecommunications services that cannot be discounted under state or federal law or regulation are excluded from the bundled discount allocation obligations in this Section. Nothing in this Section 5.8.1.8 is intended to or shall be construed as constituting a waiver of the City's right to require Franchisee to seek and obtain a franchise, license, or other agreement from the City to use the Cable System or any part thereof to provide NonCable Services.

5.8.2 Reimbursement of Direct Costs of Issuance, Renewal, Amendment and Administration. Franchisee shall reimburse the City for the City's Direct Costs relating to the issuance, renewal, amendment (if requested by or for the benefit of the Franchisee) and administration of this Franchise; provided that, to the extent that Franchisee considers such fees, or any portion thereof, to be franchise fees, Franchisee shall give notice and a detailed explanation in writing of such determination by the Franchisee and the basis therefore at the time of acceptance of this Franchise. Franchisee's obligations hereunder shall not exceed \$200,000 except as provided at Section 5.8.13 (Adjustment for Inflation) herein.

5.8.3 Reimbursement of Direct Costs of Design Review and Inspection. Franchisee shall reimburse the City its Direct Costs of design review and approvals, inspections, and other Direct Costs associated with processing a Permit application, to the extent that such Direct Costs are not included in the costs for issuance of and compliance with a Permit. Approvals and inspection, by way of example and not limitation, include review of Design Documents and inspection for compliance with Standards and 100% Design Submittal. Franchisee agrees that such costs are incidental costs. Except as provided pursuant Section 5.8.13 (Adjustment for Inflation), Franchisee's obligations hereunder shall not exceed \$200,000 for each permit application; provided that, for a master permit, the obligations over the life of the master permit shall not exceed \$1,000,000.

5.8.4 Reimbursement of Direct Costs of Altering Public Rights-of-Way. Franchisee shall reimburse the City for the Direct Costs incurred by the City in planning, designing, constructing, installing, repairing, maintaining, or altering any City infrastructure, structure, or facility as the result of the actual or proposed presence in the Public Right-of-Way of Franchisee's Facilities. Such costs and expenses shall include, but not be limited to, the Direct Costs of City personnel and contractors utilized to oversee or engage in any work required as the result of the presence of Franchisee's Facilities in the Public Right-of-Way, and any time spent reviewing Construction plans in order to either accomplish the installation, Construction, or relocation of Franchisee's Facilities or the changes to any public utilities or Public Rights-of-Way so as not to interfere with Franchisee's Facilities. Upon request, as a condition of payment by Franchisee, all billing will be itemized so as to identify specifically the Direct Costs and expenses for each project for which the City claims reimbursement. A reasonable charge for the actual cost incurred in preparing the billing may also be included in said billing. Franchisee agrees that such costs are incidental costs.

5.8.5 Franchisee Responsibility for Costs. Except as expressly provided otherwise in this Franchise, any act that Franchisee, its contractors, or subcontractors are required to perform under this Franchise shall be performed at their sole cost and expense.

5.8.6 Franchisee Work Performed by the City. Any work performed by the City that Franchisee has failed to perform as required pursuant to this Franchise and which is performed by the City in accordance with the terms of this Franchise, shall be performed at the cost and expense of the Franchisee. Franchisee shall be obligated to pay the Direct Costs to the City of performing such work.

5.8.7 Taxes and Fees. Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Franchisee. Any fees, charges, and/or fines provided for in the City code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed, or due from Franchisee.

5.8.8 Itemized Invoice. Upon request by the Franchisee, City shall submit an itemized billing so as to identify specifically the Direct Costs incurred by the City for each project for which the City claims reimbursement.

5.8.9 Time for Payment. Except as provided at Section 5.8.1.1 (Franchise Fees) for payment of franchise fees, all non-contested amounts owing shall be due and paid within thirty (30) days of receipt of invoice; provided that, in the event that an itemized invoice is not provided at the time of receipt of invoice and the City receives a request from Franchisee for an itemized invoice within thirty (30) days of receipt of invoice, such amounts shall be due and paid within thirty (30) days of receipt of the itemized invoice.

5.8.10 Overdue Payments. Any amounts payable under this Franchise by Franchisee which shall not be paid upon the due date thereof, shall bear interest at a rate of eight percent (8%) per annum or whatever maximum amount is allowed under state law, whichever is greater, from the due date until paid.

5.8.11 Contesting Charges. Franchisee may contest all or parts of amounts owed within thirty (30) days of receipt of any invoice. The City shall investigate Franchisee's contest, make appropriate adjustments to the invoice, if necessary, and resubmit the invoice to Franchisee. Franchisee shall pay any amounts owing as itemized in the resubmitted invoice within thirty (30) days of receipt of the resubmitted invoice. However, Franchisee does not waive its rights to take Legal Action to challenge the amount of the invoice.

5.8.12 Receivables. Either Party hereto may assign any monetary receivables due them under this Franchise; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Franchise.

5.8.13 Adjustment for Inflation. The amounts specified in Sections 5.8.2 and 5.8.3 herein shall be adjusted for inflation on March 1, 2015 and every five (5) years thereafter, e.g., 2020, 2025, etc., throughout the term of this Franchise, including each extension thereof. Said inflationary adjustment shall be based upon the cumulative annual average increase in the all urban consumers consumer price index (“CPI-U”) for the Seattle/Tacoma/Bremerton area, as published by the United States Bureau of Labor Statistics, for the preceding five (5) years. For example, if the annual average inflation for 2010 was 0.9%, 2011 was 1.5%, 2012 was 2.2%, 2013 was 3.1%, and 2014 was 3.3%, the rate of inflationary adjustment applicable on March 1, 2015 would be the sum of  $0.9 + 1.5 + 2.2 + 3.1 + 3.3 = 11\%$ . The adjustment shall apply regardless of when a Permit was applied for and shall apply, in the future, to the adjusted amounts.

## ARTICLE 6. ENFORCEMENT AND REMEDIES

6.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the term of this Franchise and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional, and expeditious manner.

6.2 Remedies. The Parties have the right to seek any and all available remedies, including without limitation, the following, singly or in combination, in the event of a Breach:

6.2.1 Specific Performance. Each Party shall be entitled to specific performance of each and every obligation of the other Party under this Permit without any requirement to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that either Party would not have an adequate remedy at law for the commission of a Breach hereunder;

6.2.2 Injunction. Each Party shall be entitled to restrain, by injunction, an actual or threatened Breach and to obtain a judgment or order specifically prohibiting a violation or Breach of this Franchise without, in either case, being required to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that the other Party would not have an adequate remedy at law of a Breach hereunder; and/or

6.2.3 Alternative Remedies. Except as otherwise provided herein, neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages, costs, and expenses arising from the Default

and to recover all such damages, costs, and expenses, including reasonable attorneys' fees.

6.2.4 Damages. Except as otherwise provided or limited herein, each Party shall be entitled to commence an action at law for monetary damages or seek other equitable relief.

Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar the City from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief, mandate, or any other remedy at law or in equity. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, state, or local law.

6.3 Termination/Revocation. In addition to the remedies available to the City as provided at Law, in equity, or in this Franchise, upon a Material Breach, the City may terminate this Franchise in accordance with the procedures set forth in Ch. 7.12 KCC. If for any reason no such procedures are specified in Ch. 7.12. KCC, the following procedures shall be implemented.

6.3.1 Notice. Prior to termination of the Franchise, the City shall give written notice to the Franchisee of its intent to terminate the Franchise and the proposed effective date of such termination, which date shall be no less than sixty (60) days following the effective date of the notice. The notice shall set forth the exact nature of the Material Breach. If Franchisee objects to such termination, Franchisee shall object in writing within fifteen (15) business days of the effective date of the notice, and state its reasons for such objection and provide any explanation and mitigating circumstances. The Mayor shall consider the Franchisee's objections and may, in his or her sole discretion, either, (1) deny the objection, in which case the termination shall be effective upon the date set forth in the notice, (2) modify the notice of termination, (3) rescind the notice of termination, or (4) set a public hearing for the City Council's consideration in accordance with the procedures set forth below.

6.3.2 Hearing. In the event the Mayor determines that a public hearing should be held, the City may then seek a termination of the Franchise in accordance with this subsection.

6.3.2.1 The City Council shall conduct a public hearing to determine if termination of the Franchise is warranted.

6.3.2.2 At least thirty (30) days prior to the public hearing, the City Clerk shall issue a public hearing notice that shall establish the issue(s) to be addressed in

the public hearing; provide the time, date, and location of the hearing; provide that the City Council shall hear any Persons interested therein; and provide that the Franchisee shall be afforded a fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel, and to question witnesses.

6.3.2.3 Within thirty (30) days after the close of the hearing, the City Council shall issue a written decision regarding the termination of the Franchise.

6.3.3 Decision to Terminate. The City Council may, by way of example and not limitation, consider the following factors when determining whether or not to terminate:

6.3.3.1 The history of non-compliance by Franchisee with material terms and conditions of this Franchise;

6.3.3.2 Whether other remedies will achieve compliance with this Franchise;

6.3.3.3 Whether the Franchisee has acted in good faith;

6.3.3.4 Whether the type of services provided by the Franchisee will be available to the general public through other providers; and

6.3.3.5 Whether the City and Franchisee have exercised reasonable and diligent efforts to engage in good faith negotiations in an attempt to resolve the Dispute.

#### 6.4 Right to Cure Breach.

6.4.1 Notice. If a Party believes that the other Party is in Non-Material Breach, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged Non-Material Breach. The Noticed Party shall have thirty (30) days, or such lesser or greater time as specified in the notice, from the receipt of such notice to:

6.4.1.1 Cure the Breach to the reasonable satisfaction of the non-breaching Party; or

6.4.1.2 Notify the other Party that the Noticed Party cannot cure the Breach within the time provided in the notice, because of the nature of the Breach. In the event the Breach cannot be cured within time provided in the notice, the Noticed Party shall promptly take all reasonable steps to cure the Breach to the satisfaction of the non-breaching party and notify the other Party in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the other Party may set a meeting to determine whether additional time beyond the time provided in the notice is indeed needed, and whether the Noticed Party's proposed completion schedule and steps are reasonable.

## 6.5 Assessment of Liquidated Damages.

6.5.1 The Public Rights-of-Way are critical to the travel of persons and the transport of goods and other tangibles in the business and social life of the community by all citizens; are used by the City to provide critical services to its citizens, including electric, water, and sewerage services, services to protect public safety, and other public utilities; and are often used by the City to provide communications and other services to itself and other government agencies. Further, Public Rights-of-Way are a valuable and scarce community resource physically limited in dimension requiring the City to manage them for the most efficient and best use and to minimize the costs to the taxpayers arising from secondary uses; to protect against foreclosure of future economic expansion because of premature exhaustion of the Public Rights-of-Way as an economic resource; and to minimize the inconvenience to and negative effects upon the public from such Facilities' Construction, emplacement, relocation, and maintenance in the Public Rights-of-Way.

The failure of service providers, including Cable Service operators, to abide by Public Rights-of-Way management standards, customer service standards, public access requirements, and Cable System requirements, as set forth in franchise agreements and local codes, and the failure of local government to adequately control Public Rights-of-Way, can lead and has led to damage to the use of the Public Rights-of-Way and other property interests, such as:

- (a) Explosion of facilities in the Public Rights-of-Way;
- (b) Forced evacuation of homes;
- (c) Spillage of raw sewage;
- (d) Broken water mains resulting in flooding and damage to property;
- (e) Severing of communications and power lines;
- (f) Interruption of emergency services, including emergency communications systems;
- (g) Damage to public streets and sidewalks;
- (h) Hazards from improperly installed overhead facilities;
- (i) Excavations made without notice to the City;
- (j) Excavations and restorations done in violation of community standards;
- (k) Use of improper materials and methods in restoring utility street cuts;
- (l) Slow repairs that inconvenience the traveling public;
- (m) Poor workmanship in trench reinstatement and pavement restoration;
- (n) Public dissatisfaction with traffic delays and interrupted utility service;
- (o) Disruption of adjoining public facilities, such as gutters and sidewalks;
- (p) Damage to adjoining utility facilities disturbed by improper excavation;

- (q) Increased maintenance costs from pavements repeatedly cut to access utilities;
- (r) Increased danger to the public and excavators;
- (s) Street cuts into the Public Rights-of-Way that significantly reduce the average life of the street;
- (t) Unnecessary reduction in capacity of the Public Rights-of-Way for other public service utilities;
- (u) Inferior, poor quality, and discriminatory provisioning of Service to customers and rate-payers; and
- (v) Unreasonable rates for services charged to consumers.

The Parties explicitly represent that it will be impractical and/or difficult to ascertain or quantify the amount of damages which may be incurred by the City as a result of any failure by Franchisee to comply, or maintain compliance, with the provisions of this Franchise as enumerated below, and further acknowledge and agree that the City will be damaged as a result of such a Breach(es). Therefore, the City and Franchisee agree that the liquidated damages set forth in subsection 6.5.3 are a reasonable estimate of the damages resulting from a Breach of those provisions of this Franchise set forth therein. If the City exercises its right to impose liquidated damages, such damages shall be the City's sole and exclusive remedy for recovery of the loss resulting from such Breach. Nothing in this subsection is intended to preclude the City from exercising any other right or remedy with respect to other losses not compensated by liquidated damages, including, without limitation, the right to seek specific performance.

6.5.2 Pursuant to the requirements outlined herein, liquidated damages shall not exceed the amounts set forth in Section 6.5.3.

6.5.3 If the Franchisee has failed to cure in accordance with Section 6.4 herein, or otherwise in the event of a Material Breach without opportunity to cure, liquidated damages may be imposed by the City as set forth below for each day beyond the cure period, or the effective date of notice of Material Breach without opportunity to cure, that the Franchisee is in Material Breach:

6.5.3.1 Failure to comply with the Cable Service Requirements in Section 8.1: \$500 per day for each separate violation;

6.5.3.2 Failure to comply with the System Facility Requirements in Section 8.2: \$500 per day for each separate violation;

6.5.3.3 Failure to comply with the PEG requirements of Section 8.3: \$500 per day for each separate violation;

6.5.3.4 Failure to meet customer service requirements set forth in Section 8.6: \$250 per day for each separate violation; provided that, such failure does not arise from an event of Force Majeure or through the fault of the City;

6.5.3.5 Failure to timely respond to any request by the City for information pursuant to Section 5.8.1.5 of this Franchise. Timely response shall mean that the Franchisee has provided the requested records within the time period set forth at Section 5.8.1.5 of this Franchise, or, to the extent that any such records are not immediately available, providing such requested records within a time frame approved to by the City: \$100 per day or part thereof. A violation will continue to occur until the City is satisfied with the information provided by Franchisee;

6.5.3.6 Failure to comply with a material requirement of the following Sections of this Franchise: 2.7 (Transfer); 4.5 (Effect of Expiration/Termination); 5.3 (Insurance Requirements); 5.4 (Financial Security); 7.4.1 (Permits Required); 7.5.3 (Work Subject to Inspection); 7.7.5 (Dangerous Conditions, Authority for City to Abate); 7.5.6 (Emergency Permits); 7.5.7 (Stop Work); 7.8 (Facility Relocation at Request of the City); and 7.11 (Record of Installations), all in the amount of \$500 per day for each separate and continuing failure to timely comply; and

6.5.3.8 All other violations of the Franchise which constitute an imminent threat to the public health, safety or welfare, \$500 per day per occurrence for each day or part thereof that such violation occurs or continues.

The Franchisee and the City agree that any of the above described violations, unless excused, would constitute failure to comply with a material provision of the Franchise.

The liquidated damage amounts listed in this Section shall be adjusted as necessary to compensate for inflation based upon the Consumer Price Index customarily used by the City for such purposes. No penalty, bond, forfeiture, or termination shall be imposed for delays where such delays are the result of causes beyond the control and/or without fault or negligence of the Franchisee, as determined by the City. The Franchisee shall be entitled to an extension of time if compliance with the Franchise is suspended or delayed by the City, or where unusual weather, acts of God (e.g., earthquakes, floods, etc.), extraordinary acts of third parties, or other circumstances that are beyond the control of the Franchisee delay progress, provided that the Franchisee has not, through its own actions or inactions, substantially contributed to the delay. The amount of time allowed shall be determined by the City and the Franchisee. The extension of time in any case shall not be less than the extent of the actual non-contributory delay experienced by the Franchisee. If payment of any of these penalties is delinquent by three (3) months or more, the City may require partial or total forfeiture of performance bonds or other surety.

In addition, and without waiving any other remedies provided by Law, the City may prosecute any violation of this Franchise as a civil violation under Kent City Code Chapter 1.04 for which a monetary penalty may be assessed and abatement may be required and/or otherwise enforced as provided therein.

6.6 Receivership. At the option of the City, subject to applicable Law and lawful orders of courts of jurisdiction, this Franchise or any Permit may be revoked after the

appointment of a receiver or trustee to take over and conduct the business of Franchisee whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless:

6.6.1 The receivership or trusteeship is timely vacated; or

6.6.2 The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise, and has remedied all defaults under the Franchise. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision, and limitation of this Franchise.

## ARTICLE 7. CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY

7.1 Permits. If Franchisee has submitted an application for a Permit to perform work in the Public Rights-of-Way, the City shall, to the extent practicable, consider such application contemporaneously with the design review requirements hereunder.

### 7.2 Submission/Approval of Design Submittal.

7.2.1 Submission. At the time of application for a Permit, or in the event that Franchisee seeks to alter or change the location of the Facilities in the Franchise Area, Franchisee shall provide the City with 100% Design Submittal for review and approval of any Cable System Construction, alteration, or change of location within the proposed Franchise Area.

7.2.2 Use of Public Rights-of-Way. Within parameters reasonably related to the City's role in protecting the public health, safety, and welfare and management of the Public Rights-of-Way, and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to the proposed Franchise Area, and may deny access if Franchisee is not willing to comply with such requirements; and, may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City or which is installed without prior City approval of the time, place, or manner of installation.

7.2.3 Approval of Plans. Work may not commence without prior approval by the City of the 100% Design Submittal submitted by the Franchisee. The City may review and approve the Franchisee's 100% Design Submittal with respect to:

7.2.3.1 Location/Alignment/Depth;

7.2.3.2 The manner in which the Facility is to be installed;

7.2.3.3 Measures to be taken to preserve safe and free flow of traffic;

7.2.3.4 Structural integrity, functionality, appearance, and compatibility with and impact upon roadways, bridges, sidewalks, planting strips, street lights, signals, traffic control signs, intersections, or other facilities and structures;

7.2.3.5 Ease of future road maintenance, and appearance of the roadway;

7.2.3.6 Compliance with applicable Standards and codes; and

7.2.3.7 Compliance and compatibility with the City's six (6)-year transportation plan, capital improvement plan, transportation master plan, comprehensive water plan, comprehensive sewer plan, drainage master plan, comprehensive master plan and related documents, and regional transportation improvement plans.

7.3 Compliance With Standards/Codes. Except as may be preempted by federal or state Laws, all Facilities shall conform to and all Work shall be performed in compliance with the following "Standards" as now enacted or as may be hereafter revised, updated, amended, or re-adopted:

7.3.1 Construction Standards. The applicable provisions of the current and any subsequent edition of the City of Kent Design and Construction Standards;

7.3.2 Road and Bridge Standards. The current and any subsequent edition of the Standard Specifications for Road, Bridge and Municipal Construction as prepared by the Washington State Department of Transportation ("WSDOT") and the Washington State Chapter of American Public Works Association ("APWA");

7.3.3 MUTCD. The Federal Highway Administration Manual of Uniform Traffic Control Devices ("MUTCD"), as amended by the Washington State Department of Transportation;

7.3.4 Special Conditions. Requirements and standards set forth as special conditions;

7.3.5 City Regulations. The Kent City Code, including but not limited to KCC Ch. 6.06, City ordinances, and regulations adopted by the City Engineer or Public Works Director establishing standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way. This shall also include any street design standards that the City shall deem necessary to provide adequate protection to the Public Rights-of-Way, its safe operation, appearance, and maintenance;

7.3.6 Other Regulatory Requirements. Applicable requirements of federal or state governmental authorities that have regulatory authority over the placement, Construction, or design of Franchisee Facilities;

7.3.7 Industry Standards. All Facilities shall be durable and Constructed in accordance with good engineering practices and standards promulgated by the government and industry for placement, Construction, design, type of materials, and operation of Franchisee Facilities;

7.3.8 Safety Codes and Regulations. Franchisee Facilities and Work shall comply with all applicable federal, state, and City safety requirements, rules, regulations, Laws, and practices. By way of illustration and not limitation, Franchisee shall comply with the National Electrical Safety Code and the Occupational Safety and Health Administration (OSHA) Standards, and all regulations enforced by the Department of Labor and Industry; and

7.3.9 Building Codes. Franchisee Facilities and Work shall comply with all applicable City building codes.

7.4 Conditions Precedent to Work. Except as may be otherwise required by applicable City code, rule, regulation, or Standards, Franchisee shall comply with the following as a condition precedent to Work:

7.4.1 Permits Required. Prior to performing any Work in the Public Rights-of-Way requiring a Permit, Franchisee shall apply for, and obtain, in advance, such appropriate Permits from the City as are required by ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite City Permits; and

7.4.2 Compliance With Franchise. Franchisee shall be in material compliance with the Franchise, including by way of example and not limitation, payment of fees invoiced to Franchisee for City reimbursable costs and expenses related to review and approval of the Permit, proof of insurance, and proof of financial guarantees.

Nothing herein shall prevent the Franchisee from seeking expedited approval from the City for issuance of required Permits in the manner and in accordance with the processes and fee schedules as set forth in the Kent City Code or in City policies or procedures for expediting Permit approval. In the event expedited review is granted, the City shall use its best efforts to expedite the review required herein to the extent that such review is independent of issuance of a Permit.

7.5 Work in the Public Rights-of-Way.

7.5.1 Least Interference. Work in the Public Rights-of-Way shall be done in a manner that does not unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property and which causes the least interference with the rights and reasonable convenience of property owners, businesses, and residents along the Public Rights-of-Way. Franchisee Facilities shall be designed, located, aligned, and Constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or City's existing lessees, franchisees, franchises, easement beneficiaries or lien holders, without prior written consent of the City or the parties

whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date. Franchisee's Facilities shall be designed, located, aligned, and Constructed in such a manner as not to interfere with any planned utilities. For purposes of this Section, "planned" shall mean utilities which the City intends to construct in the future, which intent is evidenced by the inclusion of said utility project in the Capital Improvement Program, a comprehensive utility plan, a transportation improvement plan, the City's Comprehensive Plan, or other written Construction or planning schedules.

7.5.2 Prevent Injury/Safety. All Construction Work shall be performed in a manner consistent with high industry standards.

7.5.3 Work Subject to Inspection. The City may observe or inspect the Construction Work, or any portion thereof, at any time to ensure compliance with the applicable Permits, this Franchise, applicable Law, the applicable approved 100% Design Submittal, the Standards, and to ensure the Work is not being performed in an unsafe or dangerous manner.

7.5.4 Publicizing Work.

7.5.4.1 Notice to Private Property Owners. Except in the case of an Emergency, Franchisee shall give reasonable advance notice to private property owners and tenants of Construction Work on or adjacent to such private property if the City or Franchisee reasonably anticipates such Work will materially disturb or disrupt the use of such private property.

7.5.4.2 Notice to the Public. Except in the case of an Emergency, the Franchisee shall notify the public and the City prior to commencing any significant planned Construction that Franchisee and/or the City reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

7.5.4.3 Additional Requirements. Work shall be publicized as the City may reasonably direct, from time to time. The publication of Work may be used to notify the public and operators of other Cable Systems of the impending Work, in order to minimize inconvenience and disruption to the public. The cost of publication shall be borne by the Franchisee.

7.5.5 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors performing Work in the Franchise Area shall be Franchised and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors performing Work within the Public Right-of-Way on behalf of the Franchisee shall be deemed servants and agents of the Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the Work were performed by Franchisee. Franchisee shall be responsible for all Work performed by its contractors and subcontractors and others

performing Work on its behalf as if the Work were performed by it, and shall ensure that all such Work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing Work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the Work performed by them.

7.5.6 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall immediately notify the Public Works Director of the need for such repairs. Franchisee may initiate such Emergency repairs, and shall apply for appropriate Permits within forty-eight (48) hours after discovery of the Emergency. In the event of an Emergency, a Franchisee may perform Emergency Work in the Public Rights-of-Way without first securing a Permit for such Emergency Work, provided that: (1) the Franchisee notifies the City in advance of the performance of such Emergency Work and the type and location of such Work; (2) the Franchisee applies for a Permit on the first business day following commencement of such Work; and (3) the Franchisee, at its sole cost and expense, makes its Work performed in the Public Rights-of-Way available for inspection to determine compliance with Laws and Standards.

7.5.7 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved 100% Design Submittal for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be in writing, given to the Person doing the Work, posted on the Work site, indicate the nature of the alleged violation or unsafe condition, and establish conditions under which Work may be resumed. If so ordered, Franchisee shall cease the non-compliant Work and cause its contractors and subcontractors to cease such activity until the City is satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith and to permanently correct the unsafe condition by a time established by the City. The City has the right to inspect, repair, and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee all associated costs.

7.5.8 Dedication of City Utilities/Public Improvements. Upon substantial completion of Construction of the Facilities and any related restoration of or improvements to or within the Public Rights-of-Way, including without limitation, curbs, gutters, sidewalks, underlayment, roadway surface, pipe, connectors, catch basins, or any part thereof that will be dedicated to City ownership (collectively "Dedicated Improvements"), and upon satisfaction of other applicable conditions of the City and this Franchise, Franchisee shall submit a written request to the City for a final inspection and acceptance of dedication of all Dedicated Improvements. The written request shall certify that the Work is substantially complete. The Work shall be deemed to be "substantially complete" when:

7.5.8.1 Complete record drawings are provided to the City;

7.5.8.2 Franchisee has completely and accurately identified within the record drawings the Dedicated Improvements;

7.5.8.3 The Dedicated Improvements are functioning to the satisfaction of the City and, when appropriate, operationally tested;

7.5.8.4 Franchisee has warranted in writing that the Work is completed in conformance with the 100% Design Submittal approved by the City; except for punch list items which do not substantially prevent the use of the Dedicated Improvements or any component thereof for the purposes intended;

7.5.8.5 No other acts are necessary to assign ownership of any and all Dedicated Improvements to the City free and clear of all liens and encumbrances;

7.5.8.6 Franchisee has assigned to the City any and all manufacturer warranties of the Dedicated Improvements, if any; and

7.5.8.7 Franchisee, or its contractors or subcontractors, warrant the Dedicated Improvements to be free from defects in design, manufacture, and Construction for a period of two (2) years from the date that such Dedicated Improvements are accepted by the City. This warranty shall not operate to waive, alter, or diminish any rights the City may otherwise have under this Franchise, at Law, or in equity.

Upon receipt of Franchisee's request for final inspection and dedication, the City shall within twenty (20) business days thereafter arrange for a final inspection. If the City determines that the Work with regard to the Dedicated Improvements is not substantially complete, it shall promptly provide Franchisee with a written statement indicating in adequate detail in what respects Franchisee has failed to substantially complete the Work, or any component thereof, or is otherwise in default, and what measures or acts are necessary, in the opinion of the City, for Franchisee to take or perform in order to substantially complete such Work. Upon receipt of such detailed statement from the City, Franchisee shall undertake to complete the Work, cure the alleged default in a manner responsive to the stated reasons for disapproval.

When the City is satisfied that the Work related to the Dedicated Improvements is substantially complete, it will, by ordinance, resolution, or other lawful means, accept ownership of such Dedicated Improvements and thereafter become responsible for maintenance, repair, and replacement of the same.

7.6 Alterations. Except as may be shown in the 100% Design Submittal approved by the City or the record drawings, or as may be necessary to respond to an Emergency, Franchisee, and Franchisee's contractors and subcontractors, may not make any material alterations to the Franchise Area, or permanently affix anything to the Franchise Area, without City's prior written consent. Material alteration shall include, by

way of example and not limitation, a change in the dimension or height of the above ground Facilities, or the addition of or change in configuration of an antenna. If Franchisee desires to change either the location of any Facilities or otherwise materially deviate from the approved design of any of the Facilities, Franchisee shall submit such change to City in writing for its approval pursuant to Section 7.2 of this Franchise. Franchisee shall have no right to commence any such alteration change until after Franchisee has received City's approval of such change in writing.

## 7.7 General Conditions.

7.7.1 Right-of-Way Meetings. Subject to receiving advance notice, Franchisee shall make reasonable efforts to attend and participate in meetings of the City regarding issues that may impact the Cable System.

7.7.2 Compliance Inspection. Franchisee's Facilities shall be subject to the City's right of periodic inspection upon at least twenty-four (24) hours' notice, or, in case of an Emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or Permit or other applicable Law over which the City has jurisdiction. Franchisee shall respond to requests for information regarding its Facilities as the City may from time to time issue to determine compliance with this Franchise, including requests for information regarding Franchisee's plans for Construction and the purposes for which the Facility is being Constructed.

7.7.3 One Call. If Franchisee places Facilities underground, Franchisee shall, at its own expense, continuously be a member of the State of Washington one number locator service under Ch. 19.122 RCW, or an approved equivalent, and shall comply with all such applicable rules and regulations. The Franchisee shall locate and field mark its Facilities for the City, or its agents or contractors, at no charge.

7.7.4 Graffiti Removal. Within forty-eight (48) hours after notice from the City, Franchisee shall remove any graffiti on any part of its Cable System, including, by way of example and not limitation, equipment cabinets. If Franchisee fails to do so, the City may remove the graffiti and bill the Franchisee for the reasonable cost thereof.

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining Public Right-of-Way, street, or appurtenances, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require the Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, and City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Rights-of-Way, the public, adjacent public places, and City-owned property, streets, and utilities, to maintain the lateral support

thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the reasonable costs thereof.

7.7.6 No Duty. Notwithstanding the right of the City to inspect the Work, issue a stop work order, and order or make repairs or alterations, the City has no duty or obligation to observe or inspect, or to halt work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed and operated in strict accordance with this Franchise, the approved 100% Design Submittal, the Standards, and applicable Law. Neither the exercise nor the failure by City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

7.7.7 Roadside Hazard. All of Franchisee's Facilities shall be kept by Franchisee at all times in a safe and hazard-free condition. Franchisee shall ensure that Facilities within the Public Rights-of-Way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to maintenance of and along the Public Rights-of-Way. In such event, or in the event that the City determines that a Facility within the Public Rights-of-Way has become or constitutes an unacceptable roadside obstacle, or may interfere with or create a hazard to maintenance of and along the Public Rights-of-Way, the Franchisee shall:

7.7.7.1 If the hazard results from disrepair, repair the Facility to a safe condition;

7.7.7.2 Relocate the Facility to another place within the Public Right-of-Way or underground;

7.7.7.3 Convert the Facility to a break-away design;

7.7.7.4 Crash-protect the Facility;

7.7.7.5 Relocate the Facility to another location off the Public Rights-of-Way; or

7.7.7.6 In the event that the Facility is screened from view (i.e., not readily visible from all directions by persons standing at ground level), remove or trim vegetation in and around the Facility.

Franchisee, at all times, shall employ the standard of care attendant to the risks involved, and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Franchisee's agents or employees. Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Franchisee shall obtain the appropriate permits, per subsection 7.4.1 above, for any activities within the Public Rights-of-Way. Franchisee shall use suitable barricades, flags, flaggers, lights, flares, and other measures

as required for the safety of all members of the general public, and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations with at least thirty (30) days' notice by the City and in order to facilitate the location, alignment, and design of Public Improvements, the Franchisee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the improvement design; PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this Subsection.

## 7.8 Facility Relocation at Request of the City.

7.8.1 Public Project. The City may require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Right-of-Way at Franchisee's sole cost and expense when reasonably necessary for Construction, alteration, repair, expansion, or improvement of any portion of the Public Rights-of-Way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, by way of example but not limitation: Public Rights-of-Way Construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; Construction, installation or repair of sanitary sewers, storm drains, water utility pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation; and the Construction of any public improvement or structure by any governmental agency acting in a governmental capacity.

7.8.2 Alternatives. If the City requires Franchisee to relocate its Facilities located within the Public Rights-of-Way, the City shall make a reasonable effort to accommodate alternative locations for the Franchisee's Facilities within the Public Rights-of-Way. The Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Franchisee in writing if one or more of the alternatives are suitable. If so requested by the City, Franchisee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Franchisee full and fair consideration, within a reasonable time, so as to allow for the relocation Work to be performed in a timely manner. In the event the City ultimately determines, in its sole discretion, that there is no other reasonable alternative, the Franchisee shall relocate its Facilities as otherwise provided in this Section 7.8. In the event that the City reasonably determines that it does not have available resources to evaluate Franchisee's proposal, the City shall not be

obligated to further consider such proposal unless and until the Franchisee funds the additional costs to the City to complete its evaluation; provided that, the City has sufficient opportunity and time available to evaluate such proposals within the project schedule.

7.8.3 Notice. The City shall notify Franchisee as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Franchisee shall respond in writing to such notice within fourteen (14) calendar days of receipt thereof, acknowledging receipt thereof, and stating its acceptance of the proposed relocation date or proposing an alternate schedule. Failure of Franchisee to timely respond shall be deemed an acceptance of the date specified in the notice upon which the relocation must be complete. Except in case of Emergency, such notice shall be given no less than ninety (90) calendar days prior to the date the relocation must be completed. In calculating the date that relocation must be completed, the City shall consult with Franchisee and consider the extent of Facilities to be relocated, the Service requirements, and the Construction sequence for the relocation, within the overall project Construction sequence and constraints, to safely complete the relocation.

Franchisee shall complete the relocation by the date specified, unless the City, or a reviewing court, establishes a later date for completion, after a showing by the Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and Service requirements.

7.8.4 Coordination of Work. Franchisee acknowledges and understands that any delay by Franchisee in performing the Work to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of Construction, alteration, repair, or improvement of the Public Rights-of-Way, and may result in damage to the City, including but not limited to, delay claims. Franchisee shall cooperate with the City and its contractors and subcontractors to coordinate such Franchisee Work to accommodate the public improvement project and project schedules to avoid delay, hindrance of, or interference with such project.

7.8.5 Failure to Comply. Should Franchisee fail to alter, adjust, protect in place or relocate any Facilities ordered by the City to be altered, adjusted, protected in place, or relocated, within the time prescribed by the City, given the nature and extent of the work, or if it is not done to the City's reasonable satisfaction, the City may, to the extent the City may lawfully do so, cause such work to be done and bill the Direct Costs of the work to the Franchisee, including all reasonable costs and expenses incurred by the City due to Franchisee's delay. In such event, the City shall not be liable for any damage to any portion of Franchisee's Cable System. In addition to any other indemnity set forth in this Franchise, the Franchisee will indemnify, hold harmless, and pay the costs of defending the City, from and against any and all claims, suits, actions, damages, or liabilities for delays on Public Improvement Construction projects caused by or arising out of the failure of the Franchisee to adjust, modify, protect in place, or relocate its

Facilities in a timely manner; provided that, the Franchisee shall not be responsible for damages due to delays caused by the City.

7.8.6 Assignment of Rights. In addition to any other rights of assignment the City may have, the City may from time to time assign or transfer to its contractors or subcontractors its rights under Sections 7.8 or 7.10 of this Franchise to require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way. Franchisee acknowledges and consents to such an assignment(s)/transfer(s) and agrees that it is bound by all lawful orders issued by such assignee(s) of the City under color of authority of such assignment(s)/transfer(s) as though such orders had been issued by the City under the terms and conditions of this Franchise. Such assignment/transfer is an assignment/transfer of the City's contract rights under this Franchise and shall not in any way be interpreted or construed as an assignment, transfer, delegation, or relinquishment of the City's rights under its police powers to require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way.

7.8.7 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized in statute.

#### 7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, temporary relocation, or protection in place of the Cable System is required solely to accommodate the construction of facilities or equipment that are not part of a Public Improvement project, Franchisee shall, after at least ninety (90) days advance written notice from the responsible party, take action to effect the necessary changes requested by the responsible entity; provided that, (a) the Party requesting the same pays for the Franchisee's time and material costs associated with the requested work; (b) the alteration, adjustment, relocation, or protection in place is reasonably necessary to accommodate such work; (c) the Person requesting the alteration, adjustment, relocation, or protection in place considers alternatives in the same manner as provided at subsection 7.8.2; and (d) such alteration, adjustment, or relocation is not requested for the purpose of obtaining a competitive advantage over the Franchisee.

7.9.2 Temporary Changes for Other Franchisees. At the request of any Person holding a valid permit and upon reasonable advance notice, Franchisee shall temporarily raise, lower, or remove its wires as necessary to permit the moving of a building, vehicle, equipment, or other item. The expense of such temporary changes must be paid by the permit holder. Franchisee shall be given not less than seven (7) days' advance notice to arrange for such temporary wire changes.

7.10 Movement of Facilities During Emergencies.

7.10.1 Immediate Threat. In the event of an unforeseen event, condition, or circumstance that creates an immediate threat to the public safety, health, or welfare, the City shall have the right to require Franchisee to shut down, relocate, remove, replace, modify, or disconnect Franchisee's Facilities located in the Public Rights-of-Way at the expense of the Franchisee without regard to the cause or causes of the immediate threat.

7.10.2 Emergency. In the event of an Emergency, or where a Facility creates or is contributing to an imminent danger to health, safety, or property, the City retains the right and privilege to protect, support, temporarily disconnect, remove, or relocate any or all parts of the Cable System located within the Public Rights-of-Way, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety Emergency and charge the Franchisee for costs incurred.

7.10.3 Notice. During Emergencies the City shall endeavor to, as soon as practicable, provide notice to Franchisee of such Emergency at a designated Emergency response contact number, to allow Franchisee the opportunity to respond and rectify the problem without disrupting utility service. If after providing notice there is no immediate response, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Cable System located within the Public Rights-of-Way.

7.10.4 Limitation on Liability. The City shall not be liable for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

7.11 Record of Installations.

7.11.1 Map/Record Drawing of Cable System. Upon request by the City, within fourteen (14) calendar days, Franchisee shall search for and provide the City with the most accurate and available maps and record drawings in a form and content prescribed by the City reflecting the horizontal and vertical location and configuration of its Cable System within the Public Rights-of-Way and upon City property, and shall include hard copies and digital copies in a format acceptable to the City. Franchisee shall provide the City with updated record drawings and maps upon request.

7.11.2 Planned Improvements. Upon written request of the City, within fourteen (14) calendar days, Franchisee shall provide the City with the most recent update available of any planned improvements to its Cable System to the extent such plans do not contain confidential or proprietary information or such information can be redacted; provided, however, any such plan submitted shall be for informational purposes only and shall not obligate Franchisee to undertake any specific improvements, nor shall such plan be construed as a proposal to undertake any specific improvements.

7.11.3 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with reasonably accurate copies of all record drawings and maps showing the horizontal

and vertical location and configuration of all located or relocated Facilities within the Public Rights-of-Way. These record drawings and maps shall be signed and stamped by a professional land surveyor, shall be provided at no cost to the City, and shall include hard copies and digital copies in a format specified by the City. As to any such record drawings and maps so provided, Franchisee warrants the accuracy thereof.

7.12 Restoration of Public Rights-of-Way, and Public and Private Property.

7.12.1 Restoration After Construction. Franchisee shall, after completion of Construction of any part of its Cable System, leave the Public Rights-of-Way and other property disturbed thereby, in as good or better condition in all respects as it was in before the commencement of such Construction. Franchisee agrees to promptly complete restoration work to the reasonable satisfaction of the City.

7.12.2 Notice. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of, or alteration or damage to, Public Rights-of-Way or other public or private property, the Franchisee shall promptly notify the property owner within twenty-four (24) hours.

7.12.3 Duty to Restore. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of, or alteration or damage to, the Public Right-of-Way or other public property, it shall promptly remove any obstructions therefrom and restore such Public Right-of-Way and public property to the satisfaction of the City to as good or better a condition as existed before the Work was undertaken, unless otherwise directed by the City. If the City determines that complete or satisfactory restoration is not obtainable, the City shall have the right to require compensation for the less than complete or satisfactory condition of the Public Right-of-Way or public property. Franchisee shall complete the restoration work within forty-eight (48) hours of notification or as authorized by the City's Public Works Director.

7.12.4 Temporary Restoration. If weather or other conditions do not allow the complete restoration required by this Section, Franchisee shall temporarily restore the affected Public Right-of-Way or public property. Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7.12.5 Survey Monuments. All survey monuments which are disturbed or displaced by any Work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and pursuant to all pertinent federal, state, and local standards and specifications.

7.12.6 Approval. The Public Works Director, or his/her designee, shall be responsible for observation and final approval of the condition of the Public Rights-of-Way and City property following any restoration activities therein. Franchisee is responsible for all testing and monitoring of restoration activities.

7.12.7 Warranty. Except as provided in Section 7.12.8 below, Franchisee shall warrant any restoration work performed by Franchisee in the Public Right-of-Way or on other public property for two (2) years, unless a longer period is required by City code, any generally applicable ordinance or resolution of the City, or pursuant to the Construction Standards. If restoration is not satisfactorily and timely performed by the Franchisee, the City may, after prior notice to the Franchisee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials, and equipment, the Franchisee shall pay the City.

7.12.8 Maintenance of Micro-Trench. In the event that the Franchisee uses low-impact deployment methodology in which fiber and conduit are inserted into a slot-cut trench, or such other similar methods, in lieu of more traditional trenching methods, Franchisee agrees that it shall be responsible for inspecting, maintaining, and repairing the integrity of the backfill material to prevent penetration of water and other material that will degrade the useful life of the Public Right-of-Way remaining at the time of the installation. Franchisee further agrees that where the micro-trench exists within the travelled way of the Public Right-of-Way, Franchisee shall be responsible for that portion of the Direct Costs of repair or replacement of any portion of the Public Right-of-Way that, as determined in the sole discretion of the Public Works Director, during its useful life becomes unsuitable for public travel, but only to the extent caused by the presence, or lack of maintenance or repair to, of the micro-trench. The Parties shall agree upon a reasonable inspection and maintenance schedule.

7.12.9 Restoration of Private Property. When Franchisee does any Work in the Public Right-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to the satisfaction of the private property owner.

7.13 Approvals. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's Design Documents or to ascertain whether Franchisee's proposed or actual Construction is adequate, sufficient, or in conformance with the 100% Design Submittal reviewed and approved by the City. No approval given, inspection made, review, or supervision performed by the City pursuant to or under authority of this Franchise shall constitute or be construed as a representation or warranty, express or implied, by the City that such item reviewed, approved, inspected, or supervised complies with applicable Laws or this Franchise, or meets any particular Standard, code, or requirement, or is in conformance with the approved 100% Design Submittal, and no liability shall attach with respect thereto. City approvals and inspections, as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way, and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Cable System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a

governmental entity. City is under no obligation or duty to supervise the design, Construction, or operation of the Cable System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may abandon in place any Facilities in the Public Rights-of-Way by providing the City written notice of its intent, which notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. If the City provides its written approval of the proposed abandonment, Franchisee may, within sixty (60) days of receipt of the City's written approval to abandon Facilities in place, execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances. Absent such request and conveyance, Franchisee shall be and remain responsible for any Facilities abandoned in the Public Rights-of-Way.

7.15 Undergrounding and Relocation Obligations. This Section clarifies the Franchisee's obligations when relocating or undergrounding its Facilities. The following obligations are in addition to and supplement Kent City Code Sections 7.12.190, 7.12.200 (3), (4), and (6), and Kent City Code Chapter 7.10, as now or may be hereinafter amended.

7.15.1 Location of Facilities. New Facilities shall be Constructed in accordance with the following terms and conditions:

7.15.1.1 Facilities shall be installed within the Franchisee's existing underground duct or conduit whenever excess capacity exists;

7.15.1.2 Overhead Facilities shall be installed on pole attachments to existing utility poles only, and then only if space is available;

7.15.1.3 Whenever all existing telephone and electric utilities are located underground within Public Rights-of-Way, the Franchisee must also locate its Facilities underground; and

7.15.1.4 Whenever all new or existing telephone and electric utilities are located or relocated underground within Public Rights-of-Way, the Franchisee that currently occupies the same Public Rights-of-Way shall concurrently relocate its Facilities underground at its expense.

7.15.2 In instances wherein conversion from aerial to underground is caused by the City, the Franchisee shall pay for costs directly associated with labor and materials utilized in the placement of its Facilities.

7.15.3 In instances wherein the City takes the lead in a joint relocation project, the Franchisee shall pay for all costs directly associated with engineering, coordination, labor, and materials utilized in the placement of its Facilities. Trenching and backfill cost allocation shall be based on the proportionate number of ducts

attributable to the Franchisee as that number relates to the total number of ducts being placed, and such other factors that may relate to an equitable allocation of costs among the Franchisee and those Persons with facilities that will be relocated within the joint trench. However, the City shall be responsible for all costs related to surface restoration of any Public Rights-of-Way within the project area as defined by the City's project engineering plans.

7.15.4 Nothing herein shall preclude the City and Franchisee from entering into a separate agreement between the Parties, or among the Parties and other Persons with facilities in the Public Right-of-Way, for the City to undertake on behalf of the Franchisee the work to relocate Franchisee's Facilities within the Public Right-of-Way as part of a Public Improvement project.

## ARTICLE 8. CABLE REQUIREMENTS

### 8.1 Cable Service Buildout.

8.1.1 Initial Service Area. Franchisee shall offer Cable Service to significant numbers of Residential Subscribers in residential areas of the Initial Service Area, and may make Cable Service available to NonResidential Subscribers in the Initial Service Area, within twenty-four (24) months of the Service Date, or within thirty-six (36) months if providing FTTP within the Initial Service Area, and shall offer Cable Service to all residential areas in the Initial Service Area within three (3) years of the Service Date, or within four (4) years of the Service Date if providing FTTP within the Initial Service Area, except: (A) for periods of Force Majeure, such time period will be tolled; (B) for periods of delay caused by the City, such time period shall be tolled; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access Public Rights-of-Way in the Service Area, such time period shall be tolled; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers, such obligation shall be inapplicable; (E) in areas, developments, or buildings where Franchisee cannot access, under reasonable terms and conditions, after good faith negotiation, as reasonably determined by Franchisee, such obligation shall be inapplicable; and, (F) in areas, developments, or buildings where Franchisee is unable to provide Cable Service for technical reasons or which require nonstandard Facilities which are not available on a commercially reasonable basis, until such technical reasons are no longer applicable or such nonstandard Facilities are available on a commercially reasonable basis.

8.1.2 Middle Service Area. Franchisee shall offer Cable Service to significant numbers of Residential Subscribers in residential areas of the Middle Service Area, and may make Cable Service available to Non Residential Subscribers in the Middle Service Area, within four (4) years of the Service Date, or within five (5) years of the Service Date if providing FTTP in the Middle Service Area, and shall offer Cable Service to all residential areas in the Middle Service Area within six (6) years of the Service Date, or within seven (7) years of the Service Date if providing FTTP in the Middle Service Area, subject to the conditions of Subsection 8.1.1 above and other terms set forth in this Franchise.

8.1.3 Extended Service Area. Franchisee shall offer Cable Service to significant numbers of Residential Subscribers in residential areas of the Extended Service Area, and may make Cable Service available to NonResidential Subscribers in the Extended Service Area, within seven (7) years of the Service Date, or within eight (8) years of the Service Date if offering FTTP to all residential areas in the Extended Service Area, and shall provide Cable Service to all residential areas within the Extended Service Area within nine (9) years of the Service Date, or within ten (10) years if providing FTTP within the Extended Service Area, subject to the conditions of Subsection 8.1.1 above and the other terms set forth in this Franchise.

8.1.4 Annexation Areas. Except as may be otherwise agreed to in writing by the Parties, any areas annexed to or consolidated with the City after the Effective Date shall constitute an "Annexation Service Area". In the event that Franchisee does not operate a Cable System within all or part of the Annexation Service Area, Franchisee shall offer Cable Service to significant numbers of Residential Subscribers in residential areas of the Annexation Service Area, not already being served by Franchisee, within twenty-four (24) months of the date of Annexation, or Service date, whichever is the later, or within thirty-six (36) months if providing FTTP for all of its customers within the Annexation Service Area, and shall offer Cable Service to all residential areas in the Annexation Service Area within three (3) years of the date of Annexation, or Service date, whichever is the later, or within four (4) years of the date of annexation, or Service date, whichever is the later, if providing FTTP; provided that, to the extent that any portion of the Annexation Service Area is within the Initial Service Area, the Middle Service Area, or the Extended Service Area, and the Buildout is not complete for that service Area, the Buildout within the Annexation Area shall be completed within the longer of the Buildout period as provided in this Section 8.1.4 or as the remaining Buildout period applicable to the particular service area(s) in which the Annexation Area, or any part thereof, is located.

8.1.5 Availability of Cable Service. Franchisee shall make Cable Service available to all residential dwelling units, and may make Cable Service available to businesses, within the Service Area in conformance with Sections 8.1, 8.2, 8.3 and 8.4, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred twenty-five feet (125') of a network access point not otherwise already served by Franchisee's FTTP network. Franchisee shall be allowed to recover from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty-five feet (125'), and actual costs incurred to connect any Non-residential Subscriber.

8.1.6 FTTP Standard. For purposes of this Article 8, providing "FTTP" or "Fiber to the Premises" shall mean and refer to providing a form of fiber-optic communication delivery in which an optical fiber is run from the central office all the way to the premises of each residential dwelling unit within the Service Area. Unless a different standard is mutually agreed to by the Parties in writing, the phrase "to the premises" shall

mean that the optical fiber connecting to the central office is available within that portion of the Public Rights-of-Way abutting the property boundary of each such residential dwelling unit.

8.1.7 Notice of Election. Franchisee shall not be granted the extensions of time for a Buildout of FTTP, as provided in Section 8.1.1, 8.1.2, 8.1.3, and 8.1.4, unless Franchisee first gives written notice to the City of such intent at least twelve (12) months prior to the completion date applicable to a Buildout that does not meet the standard for FTTP. For example, if Franchisee intends to Buildout FTTP in the Initial Service Area, Franchisee shall not be entitled to the thirty-six (36) month Buildout period unless it gives written notice of its intent to provide FTTP in the Initial Service Area no later than twelve (12) months after the Service Date.

8.2 System Facilities. The City and the Franchisee acknowledge that the City should be provided with a Cable System that has the same general capabilities and capacity as those provided other cities served by the Franchisee in the King-Pierce-Snohomish County area of the State of Washington. The City may, at its discretion, require the Franchisee to provide such interactive services as addressability, security, computer interaction, banking, shopping, or other such relevant technologies. In addition, Franchisee's Cable System shall meet or exceed the following requirements:

8.2.1 Shall have a modern design when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the term of this Franchise;

8.2.2 Shall have protection against outages due to power failures, so that backup power is available at a minimum for at least twenty-four (24) hours at each Video Serving Office;

8.2.3 Shall be comprised of facilities and equipment of good and durable quality, generally used in high quality, reliable, systems of similar design;

8.2.4 Shall have personnel, facilities, and equipment sufficient to cure violations of any applicable FCC technical standards and applicable codes;

8.2.5 Shall have personnel, facilities, and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time;

8.2.6 Shall have facilities and equipment designed to be capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards, except as caused by a Force Majeure event;

8.2.7 Shall have facilities and equipment designed, built, and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer

electronic equipment, and (ii) interference with the reception of off the air signals by a Subscriber;

8.2.8 Shall have facilities and equipment designed, built, and operated in such a manner as to protect the safety of the Cable System workers and the public;

8.2.9 Shall have available sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable Franchisee to substantially comply with Applicable Law, including applicable customer service standards and including requirements for responding to System outages;

8.2.10 Shall have all facilities, equipment, and qualified technical personnel available as required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control, and to quickly respond to customer complaints and resolve System problems. Upon request, Franchisee shall provide the County with available copies of its Cable System maintenance and quality control plan;

8.2.11 Shall be designed to be capable of interconnecting with other Cable Systems in the Franchise Area;

8.2.12 Shall, if applicable, have antenna supporting structures (i.e., towers) designed in accordance with all applicable state and local building codes, as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the FCC, and all other applicable codes and regulations;

8.2.13 Shall have all facilities and equipment at the headend allowing Franchisee to transmit or cablecast signals in substantially the same form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed captioned programming retransmitted over the Cable System shall include the closed captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning;

8.2.14 Shall transmit in high definition on the digital tier any signal carried by the Cable System which is transmitted to Franchisee in a high definition format and three (3) dimensional format;

8.2.15 Shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System. Such equipment shall at a minimum offer as an option that a Person ordering programming must provide a personal identification number or other means provided by Franchisee only to a Subscriber, provided, however, that Franchisee shall bear no responsibility for the exercise

of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls;

8.2.16 Shall conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which the County is permitted by a change in law to enforce, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures. Proof-of-performance shall meet or exceed the minimum requirement set forth in FCC Rules & Regulations Part 76, SubPart K "Technical Standards." There shall be a test point located at the extremities of each node;

8.2.17 Shall include optional equipment so that any pay-per-view programming can only be activated by the positive action of a Subscriber using, for example, a private identification number or other individual selection procedure; and

8.2.18 Shall comply with all requirements of Applicable Law, including, but not limited to, the Americans with Disabilities Act. Franchisee shall comply with FCC rules on transmission of closed captioning for the hearing impaired. For hearing impaired Subscribers, Franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, Franchisee must provide information (upon request) regarding TDD/TTY (or equivalent) equipment, and a publicly listed telephone number for such equipment, that will allow hearing impaired Subscribers to contact Franchisee.

8.2.19 Franchisee shall design the Cable System so that it can be interconnected with other cable systems or any open video systems in the area or within the City at suitable locations as determined by Franchisee. Interconnection capabilities shall be provided for the exchange of all PEG signals designated in Section 8.3 herein carried on the Cable System. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

8.2.20 At the request of the City, the Franchisee shall, to the extent permitted by Applicable Law and its contractual obligations to third parties, use every reasonable effort to negotiate an interconnection agreement with any other franchised cable system in the Franchise Area for the PEG channels on the Cable System; provided, however, that the Persons seeking to interconnect shall bear all reasonable costs of such interconnection. The Franchisee shall notify the City prior to any interconnection of the Cable System with any other cable system in the City;

8.2.21 Franchisee shall comply with the Emergency Alert System ("EAS") requirements of applicable federal or state laws or regulations in order that emergency messages may be distributed over the Cable System.

8.2.22 Franchisee shall ensure that all Service addresses are identified and are correctly associated with the Franchise Service Area through the use of a Geographic

Information System, electronic file format, or equivalent system acceptable to the City. In the event of annexation or consolidation, Franchisee shall ensure that all Service addresses are identified and are correctly associated with the Franchise Service Area within the Annexation Area within sixty (60) days following the later of the effective date of notice given to Franchisee of the annexation date or the annexation date, but no later than the first quarterly payment of Franchise Fees following the date of annexation.

8.2.23 Emergency Override. The Franchisee shall make provisions for an emergency alert system from City Hall or any one of the primary police or fire facilities. The Franchisee shall establish a process that will provide a character generated scroll and make its best effort to furnish a voice override notifying viewers and listeners of the emergency. This emergency alert system shall be compatible with applicable federal, state, and local regulations. Franchisee shall further be obligated to make provisions for interconnection of the Cable System with the Emergency Alert System of King County for the override of cable programming and distribution of emergency messages over the Cable System within the Franchise Area.

Subject to federal and state laws and regional planning authorities, control of these emergency override facilities shall be the responsibility of the City. The City shall hold the Franchisee, its agents, employees, officers, and assigns harmless from any claims arising out of the emergency use of its transmitting facilities by the City. The City, at its option, may elect to share this service with adjoining communities.

### 8.3 Public, Educational, and Government Channels (“PEG”).

8.3.1 The City shall be provided with, at a minimum, one (1) 6 MHz analog or IPTV video Access Channel, eleven (11) 6 MHz analog/digital or IPTV video Access Channels, and three (3) High Definition digital or IPTV video Access Channels capable of live broadcasts from City Hall and two (2) other sites to be determined by the City. The City may share a common public Access Channel with other communities, however, the City may elect, at its option, to provide programming over an individual public Access Channel for the City’s sole use. The City agrees that Franchisee may use two (2) of the High Definition digital video Access Channels to cablecast programming for any lawful purpose until the City gives six (6) months written notice requesting return of control and use of such channel to the City.

8.3.2 Additional channels over and above those set forth in Section 8.3.1 above shall be made available for City purposes when any of the fifteen (15) designated channels is in use for access purposes with programming during fifty percent (50%) of the hours between 10:00 a.m. and 10:00 p.m. during any consecutive ten (10) week period. Programming for additional required channels shall be distinct and non-repetitive of the previous channel. The Franchisee shall, within six (6) months following a request by the City, provide another designated Access Channel to the City.

8.3.4 The Franchisee shall continue to provide additional channels under the same conditions. If additional channels are designated for community use but, after one

(1) year, such channel(s) are not programmed at least twenty-five percent (25%) of the hours between 10:00 a.m. and 10:00 p.m. with programming, the access users shall, within six (6) months of receiving written notice from the Franchisee, group their programming into one (1) contiguous block of time of their choosing. The remaining broadcast time on such channel(s) shall then revert to the Franchisee for its unrestricted use within the terms and conditions of this Franchise Agreement.

8.3.5 Contributions to Public, Educational, and Government (“PEG”) access shall not be considered in lieu of a Franchise Fee or other obligations to the City.

8.3.6 Cable Feed to Public Access Facility. Franchisee shall at no cost to the City or Puget Sound Access, provide connectivity with optical fiber and necessary electronics between the City of Kent Public Access Facility (currently located at the Puget Sound Access Center (“PSA”)) and the nearest Franchisee Hub. The Construction shall be completed within sixty (60) days of the effective date of notice of the City’s request. Franchisee shall provide, at no cost to the City, all end-user equipment necessary to send and receive digital signals at both the public access site and Franchisee’s Hub, including all end-user equipment necessary to transmit and receive TV 21 programming over Franchisee’s Cable System.

8.3.7 HD PEG Channels. All residential subscribers who receive all or any part of the total services offered on the Franchisee’s system shall be eligible to receive all fifteen (15) Access Channels at no additional charge.

8.3.8 On-Demand PEG Programming. Franchisee shall provide to the City video-on-demand (“VOD”) government access with up to sixty (60) hours of government, education, and public access programming stored on the Franchisee’s server at no cost to the City starting on or before the Service Date and continuing through the term of this Franchise. The City may change the video programming stored on the Franchisee’s server on a regular basis.

8.3.9 PEG Location and Signal Quality. Franchisee shall continue to cablecast City PEG channels in analog, digital, or IPTV format.

8.3.10 Upon the Service Date, the Franchisee shall use commercially reasonable efforts to establish its initial PEG Channel assignments consistent with PEG Channel assignments previously assigned by other Cable System operators within the Franchise Area. No PEG Channel assignment shall be relocated thereafter without the mutual consent of the City and Franchisee. Unless mutually agreed otherwise, if Franchisee and the City agree to change the location of a PEG Channel, Franchisee must provide at least six (6) months notice to the City prior to implementing the change, and shall reimburse the City, and its PEG operator (Puget Sound Access or its successor), for any reasonable costs incurred as a result of the relocation of the Channel assignment. Franchisee will use reasonable efforts to minimize the movement of City-designated PEG Channel assignments and maintain common Channel assignments for compatible PEG programming. Franchisee shall include all PEG Channels in its TV-Guide listings.

8.3.11 If Franchisee makes changes in the System and related equipment and Facilities or in signal delivery technology, which change directly causes the signal quality or transmission of PEG Channel programming or PEG services to fall below technical standards under applicable Law, Franchisee shall, at its own expense, provide technical assistance, transmission equipment, and all other assistance so that PEG facilities may be used as intended; provided that, such amount shall not exceed thirty thousand dollars (\$30,000) in any twelve (12) month period. All PEG Channels shall be transmitted in the same format and in the same quality as all other basic Cable Service Channels and shall be carried on the Basic Service Tier. All signal quality issues shall be resolved within twenty-four (24) hours of notice from the City.

8.3.12 PEG Support. Upon the Service Date of this Franchise, the Franchisee shall, in accordance with the schedule below, pay to the City on a quarterly basis, at the same time as the franchise fee, a per Subscriber per month fee (the “PEG Fee”) from all Subscribers receiving and paying for Cable Service. To the extent permitted by applicable Law, the PEG Fee may be itemized on subscriber billing statements. The schedule for PEG Fees shall be as follows:

- 1<sup>st</sup> year – Five (5) cents per Subscriber per month;
- 2<sup>nd</sup> year- Fifteen (15) cents per Subscriber per month;
- 3<sup>rd</sup> year – Twenty-five (25) cents per Subscriber per month;
- 4<sup>th</sup> year – Thirty-five (35) cents per Subscriber per month;
- 5<sup>th</sup> year – Seventy-five (75) cents per Subscriber per month; and
- 6<sup>th</sup> year – One (1) dollar per Subscriber per month.

At the conclusion of the 6<sup>th</sup> year, the PEG Fee shall be adjusted on an annual basis each January by the all urban consumers consumer price index (“CPI-U”) for the Seattle/Tacoma/Bremerton area as published by the United States Bureau of Labor Statistics. The adjustment shall be based upon the change in the CPI-U for the months of July and August in the year prior to the adjustment; provided that, in no event shall the PEG Fee be adjusted down.

The PEG Fees shall not be treated as Franchise Fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from Franchise Fee payments made to the City under this Franchise or applicable Law.

8.3.13 Initial PEG Capital Grant. Five (5) years from the Service Date, Franchisee shall provide an unrestricted and non-recoverable initial PEG capital grant of one hundred thousand dollars (\$100,000.00) to be used for PEG capital purposes. In the alternative, Franchisee may make an earlier payment, on or after the Service Date, by deducting two percent (2%) from the above amount for each full year that payment is received earlier than the date set forth above. For example, if payment is made on or before the Service Date, the PEG capital grant shall be \$90,000. A payment made during the first year following the Service Date would be \$92,000. A payment during the second year following the Service Date would be \$94,000.

The PEG capital grant shall not be treated as Franchise Fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from Franchise Fee payments made to the City under this Franchise or applicable Law.

8.3.14 Additional PEG Grant Obligations. The Parties agree that Franchisee shall be obligated to make additional PEG capital grants on each ten (10) year anniversary of the Effective Date of the Franchise throughout the term of the Franchise, including any extensions thereof, i.e., years 10, 20 and 30. The City shall provide a PEG capital grant request based upon a needs assessment supporting the PEG capital grant, as a pre-condition of Franchisee's obligation to pay each such additional PEG capital grant. The Parties shall mutually agree upon the amount of each such additional PEG capital grant. Such capital grant shall be no more than twenty percent (20%) of Franchise Fees paid (or due and owing) to the City for the twelve (12) month period prior to the date upon which the PEG capital grant becomes due. In the event that the Parties are unable to mutually agree upon such PEG capital grant prior to the date upon which the PEG capital grant becomes due, the Parties agree that the PEG capital grant shall be set automatically at the lesser of the amount requested by the City, based upon its needs assessment, or the twenty percent (20%) cap as set forth above. Such additional PEG capital grants shall be paid in full at the time the payment becomes due and owing.

8.3.15 Government Programming Grant. The Parties desire to establish a grant program to provide a potential source of funding for government programming that will benefit the residents of the City and will provide an opportunity for Franchisee to support local government programming. The Parties agree, therefore, that Franchisee may, but is not obligated to, establish a local government programming grant program. The City agrees that it will participate with the Franchisee in a local government programming grant program upon the following terms and conditions.

1. Administration. The City will administer and manage each grant or series of grants and act as a conduit through which the grant funds would be disbursed from Franchisee to recipient. At no time shall such funds be considered to be funds of the City.

2. Grant Recipients. Recipients of the grant shall be limited to those persons that are contracted by the City to provide government programming for cablecast upon any one or more of the City government access channels.

3. Editorial Control. The City shall retain editorial control over all programming funded through the grant funds.

4. Franchise Fees. The grant funds shall not be treated as franchise fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from franchise fee payments made to the City under this Franchise or applicable Law.

5. Off-Set. Commencing upon the Service Date, any funds committed by Franchisee to the programming grant program contemporaneous with the payment of the PEG capital grant may, at the request of the Franchisee, be off-set, at a two-to-one ratio, against the PEG capital grant to be paid by the Franchisee during the period in which the grant funds are committed; provided that, the total off-set may not exceed fifty percent (50%) of the total PEG capital grant obligation. For example, if Franchisee pays its initial PEG capital contribution of ninety thousand dollars (\$90,000) at the commencement of the Service Date, the maximum off-set to be applied during the period from the Service Date until the commencement of the 10<sup>th</sup> year (the commencement of the next PEG capital grant obligation) would be forty-five thousand dollars (\$45,000). Thus, if Franchisee committed eighty thousand dollars (\$80,000) to the programming grant program contemporaneously with the payment of the initial PEG capital grant, the off-set to be applied against the initial PEG capital grant would be forty thousand dollars (\$40,000).

8.3.16 In the event any payment required by this Section 8.3 is not made on or before the required date, the Franchisee shall pay, during the period such unpaid amount is owed, additional compensation and interest charges computed from such due date, at an annual rate of eight percent (8%) or the statutory maximum, whichever is less. Any interest or penalties imposed hereunder shall not be treated as Franchise Fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from Franchise Fee payments made to the City under this Franchise or applicable Law.

8.3.17 Institutional Network (the "City I-Net"). Reserved.

8.4 Public Buildings. The Franchisee shall provide without charge for installation or a monthly rate, Basic Service and outlets at such public buildings and schools as specified in Appendices "A" and "B", as well as other such buildings that may be constructed during the period of the Franchise that are passed by cable and within 150 feet of the trunk or distribution system. The Franchisee shall make its best efforts to provide regional interconnection of all schools at the appropriate time.

8.5 Customer Privacy. Franchisee shall comply with the Subscriber privacy regulations set forth in 47 U.S.C. § 551 and any lawful state or local laws pertaining to privacy.

8.6 Customer Service. Within seven (7) days of receipt of a customer inquiry or complaint that is referred to the Franchisee, in writing by the City, the Franchisee shall notify City in writing of the resolution or disposition of the inquiry or complaint. If a complaint is not resolved within seven (7) days, the Franchisee shall inform City in writing of the plan to resolve the complaint expeditiously or the reason why it cannot be resolved. Franchisee shall further comply with the minimum customer services standards adopted by the FCC, the customer service standards set forth in this Franchise, the customer service standards in Ch. 7.12 KCC, as amended, and the minimum customer service standards adopted by the City.

8.7 Telephone Response. The Franchisee shall maintain an adequate force of customer service representatives as well as incoming trunk lines so that telephone inquiries are met promptly and responsively. The Franchisee shall have in place procedures for utilization of other manpower and/or recording devices for handling the flow of telephone calls at peak periods of large outages or other major causes of Subscriber concern. A copy of such procedures and/or policies shall be made available to the City. Under normal operating conditions, seconds, average speed of answer, and busy signals shall not occur more than three percent (3%) of the time. This requirement shall be met at least ninety percent (90%) of the time, measured over any consecutive ninety (90) day period. The Franchisee shall use an answering service or be capable of receiving service complaints and System malfunction reports when the business office is closed. In order that the City may be informed of a Franchisee's success in achieving satisfactory customer relations in its telephone answering functions, the Franchisee shall routinely, but no less than quarterly, provide the City with a summary that will provide, at a minimum, the following:

1. Number of calls received in a reporting period;
2. Time taken to answer;
3. Average talk time;
4. Number of calls abandoned by the caller;
5. Average hold time;
6. Percentage of time all lines busy; and
7. An explanation of all abnormalities.

This data shall be compared to minimum standards of the NCTA incorporated herein by reference, or any amendment thereto increasing such standards, and shall be monitored by the City. Calls for service generated during periods of System outages, as defined by the FFC, due to Emergency affecting more than twenty-five (25) customers may be excluded from the service response calculations. The City shall have the sole determination as to what constitutes a System failure due to Emergency and which calls shall be excluded from the service level calculations.

8.8 Outages. The Franchisee shall render repair service to restore the quality of the signal at the same or higher standards existing prior to the failure or damage of the component causing the failure, and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the System. A log of all service interruptions shall be maintained and kept on file by Franchisee. The City, after two (2) working days, upon notice to Franchisee of such a request, may inspect such logs. Installation work shall be performed in a timely manner. The Franchisee shall offer a choice of morning, afternoon, or late afternoon appointments, within a four (4) hour time period. Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If Franchisee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the Subscriber shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is

convenient for the Subscriber. If the Franchisee fails to keep a scheduled appointment with a Subscriber, and fails to give notice to the Subscriber at least two (2) hours prior to the scheduled appointment time, the Franchisee shall give a service credit to that Subscriber unless failure of notice is caused by acts of God.

An employee of Franchisee shall answer and respond to all individual complaints received prior to 5:00 p.m. weekdays. Franchisee may use an answering service to receive complaints after 5:00 p.m. weekdays and on weekends and holidays and shall promptly respond to any System outage.

8.9 Senior Citizen/Disabled Person Low-income Discount. Reserved

8.10 Technical Audit. Franchisee shall annually provide to the City a certification signed by its Vice President of Engineering for the State of Washington, or other senior engineer as agreed upon by the City, certifying that its policies and procedures comply with all applicable Laws and codes, and that all known maintenance issues have been repaired in compliance therewith. In addition, upon reasonable notice by the City, Franchisee shall provide all technical testing and certification materials to the City, or its technical consultant, for audit purposes.

8.11 Live Feeds. Franchisee shall provide, where technically feasible, the ability for live feeds from City Hall, as well as four (4) other sites within the Kent city limits to be designated by the City. The City intends to locate these sites for the purpose of live broadcasting of community meetings and other information as follows: one (1) on the East Hill; one (1) on the West Hill; one (1) additional site in the Valley; and one (1) at Puget Sound Access.

## ARTICLE 9. MISCELLANEOUS

9.1 Headings. Titles to articles and sections of this Franchise are not a part of this Franchise and shall have no effect upon the Construction or interpretation of any part hereof.

9.2 Entire Agreement. The written provisions and terms of this Franchise, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Franchise.

9.3 Incorporation of Exhibits. All exhibits attached hereto at the time of execution of this Franchise, or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

9.4 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of

Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the Effective Date shall be determined as provided at Section 4.3 of this Franchise.

9.5 Time Limits Strictly Construed. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a Breach of this Franchise.

9.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Franchisee and the City. Neither Party is authorized to nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, the Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 9.6 shall be construed to prevent an assignment as provided for at Subsection 7.8.6 of this Franchise.

9.7 Approval Authority. Except as may be otherwise provided by Law or herein, any approval or authorization required to be given by the City, shall be given by the Public Works Director (or his or her successor) or the Public Works Director's designee.

9.8 Binding Effect Upon Successors and Assigns. All of the provisions, conditions, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives, and assigns of the Franchisee; and, all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

9.9 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Breach thereof, shall constitute a waiver of any such Breach or of any of the terms of this Franchise. None of the terms of this Franchise to be kept, observed, or performed by either Party, and no Breach thereof, shall be waived, altered, or modified except by a written instrument executed by the injured Party. No waiver of any Breach shall affect or alter this Franchise, but each of the terms of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent Breach thereof. No waiver of any default of the defaulting Party hereunder shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in

the express waiver, and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of a subsequent Breach of the same covenant, term, or conditions.

9.10 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as “Term”), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid, or unconstitutional shall be severable and the remaining Terms of the Franchise shall remain in full force and effect, unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder; provided, however, that if either Franchisee or the City prevails in any proceeding seeking a finding that any Term is invalid, illegal, or unconstitutional for any reason, this Franchise shall be declared terminated and all rights and obligations hereunder shall immediately cease and be of no force and effect except with regard to those provisions that survive termination of this Franchise pursuant to Section 9.14 herein. In the event that such Term shall be held or otherwise mutually agreed to by the City and Franchisee to be illegal, invalid, or unconstitutional, the Parties shall reform the Franchise pursuant to Section 3.5 herein.

9.11 Signs. No signs or advertising shall be permitted upon Facilities in the Franchise Area except as may be required by Law or as may be required by the City for the protection of the public health, safety, and welfare, to the extent it has authority to do so, or as may be necessary to identify the ownership of such Facilities.

9.12 Discriminatory Practices Prohibited. Throughout the term of this Franchise, Franchisee shall fully comply with all equal employment and nondiscrimination provisions of applicable Law.

9.13 Notice. Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (iii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:

**Franchisee’s address:** \*\*

**And to:** \*\*

**The City’s Address:** **City of Kent**  
**Attn: Chief Administrative Officer**  
**220 Fourth Avenue South**  
**Kent, WA 98032**

**And to the City Attorney: Office of the City Attorney  
Attn: City Attorney  
220 Fourth Avenue South  
Kent, WA 98032**

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than two (2) addresses, except by mutual agreement.

9.14 Survival of Terms. Upon the expiration, termination, revocation, or forfeiture of the Franchise, the Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing Services authorized herein. However, the Franchisee's obligations under this Franchise to the City shall survive the expiration, termination, revocation, or forfeiture of these rights according to its terms for so long as the Franchisee's Cable System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, the Franchisee Transfers ownership of all Facilities in the Franchise Area to a third-Party, or the Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform Franchisee work.

9.15 Force Majeure. In the event Franchisee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes, and unforeseen labor conditions not attributable to Franchisee's employees, Franchisee shall not be deemed in Breach of provisions of this Franchise.

If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as reasonably required by the City to substantiate the Franchisee's claim. Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City; provided that, the Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible; and provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance, as soon as possible under the circumstances, with the Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

9.16 Attorneys' Fees. In any claim or lawsuit for damages arising from a Party's performance of this Agreement, each Party shall pay all its legal costs and attorneys' fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this Section shall be construed to limit either Party's right to indemnification or either Party's duty to defend the other Party under this Franchise.

9.17 Venue/Choice of Law. This Franchise shall be governed by and construed in accordance with the Laws of the state of Washington. If the Parties are unable to settle any Dispute, difference, or claim arising from the Parties' performance of this Franchise, the exclusive means of resolving that Dispute, difference, or claim shall only be by filing suit exclusively under the venue, rules, and jurisdiction of the King County Superior Court, King County, Washington, unless the Parties agree in writing to an alternative Dispute resolution process.

9.18 Recyclable Materials. Pursuant to Chapter 3.80 of the Kent City Code, the City requires its contractors and consultants to use recycled and recyclable products whenever practicable. A price preference may be available for any designated recycled product.

IN WITNESS WHEREOF, this Franchise has been executed by the City as of the last date set forth below (Effective Date).

CITY OF KENT

\_\_\_\_\_  
Suzette Cooke, Mayor

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael Carrington, Director  
Information Technology Department

Dated: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Chris Bacha  
Kenyon Disend, PLLC  
Special Counsel

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- F. Contractor/Subcontractor Insurance Requirements
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**EXHIBIT “A”**

*(Franchise Area)*

The Franchise Area shall consist of all of the Public Rights-of-Way lying within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise or any extension thereof.

DRAFT

**EXHIBIT "B"**

*(Acceptance of Franchise)*

Franchise issued \_\_\_\_\_, 20\_\_\_\_\_.

I, \_\_\_\_\_, am the authorized representative to accept the above-referenced Franchise on behalf of \_\_\_\_\_. I certify that this Franchise and all terms and conditions thereof are accepted by \_\_\_\_\_, without qualification or reservation, and that \_\_\_\_\_ unconditionally guarantee(s) performance of all such terms and conditions.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

Tax Payer ID# \_\_\_\_\_

STATE OF \_\_\_\_\_

ss.

CITY OF \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
Print Name

Notary public in and for the state of \_\_\_\_\_, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

## EXHIBIT “C”

### *(Environmental Indemnity)*

1. Duty to Indemnify/Release/Defend. Franchisee assumes the risk that Hazardous Substances or other adverse matters may affect the Franchise Area that were not revealed by Franchisee inspection and indemnifies, holds harmless, and hereby waives, releases, and discharges forever the City and City’s officers, employees, and agents (collectively “**Indemnitees**”) from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort), costs and expenses (including, without limitation fines, penalties, judgments, and attorneys’ fees), of any and every kind or character, known or unknown, which Franchisee might have asserted or alleged against Indemnitees arising from or in any way related to the condition of the Franchise Area or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal, or other handling of any Hazardous Substances in, on or under the Franchise Area (the “**Franchisee Losses**”). Franchisee Losses shall include, without limitation, (a) the cost of any investigation, removal, or Remedial Action (defined below) that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise reasonable under the circumstances, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law enacted after the date hereof. Except as may be limited below, Franchisee Losses specifically include losses sustained by Franchisee as a result of any obligation of Franchisee to remove, close, Remediate, reimburse, or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Franchise Area. Notwithstanding the above, Franchisee Losses waived, released, and discharged hereunder by Franchisee shall not include losses as a result of releases or contamination caused by the acts of the City after the Effective Date. The rights, duties, and obligations of the City and Franchisee pursuant to Sections 2 and 3 herein apply to the duty to indemnify and defend as provided in this Section 1.

2. Discovery Within Franchise Area. In the event that the Work of the Franchisee in, on, and upon the Franchise Area results in the discovery of the presence of Hazardous Substances (“**Discovered Matters**”) in, on, or upon the areas excavated or otherwise opened or exposed by Franchisee within the Franchise Area (the “**Excavated Areas**”), the Franchisee shall immediately notify the City and take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas. In the event that, as a result of such discovery, an agency with jurisdiction to address Hazardous Substances in, on, or upon the Franchise Area (“**Environmental Authority**”) orders, obtains a judgment or court order requiring, or otherwise exercises its authority to require Remedial Actions to be taken by the City or Franchisee, or Franchisee decides to undertake Remedial Actions independently or enter into a consent order or consent decree with an Environmental Authority, then in such event, Franchisee agrees to indemnify, defend, and hold the City harmless from and against the cost of all Remedial Actions which are required by the

Environmental Authority within the Excavated Areas under the applicable Environmental Laws with respect to the Discovered Matters; provided, however, the City, subject to the provisions of Section 3 below, shall be solely responsible for all necessary Remedial Actions which are required by the Environmental Authority within other portions of the Franchise Area (outside the Excavated Areas) under the applicable Environmental Laws with respect to the Discovered Matters.

3. Release by Franchisee. In the event the Franchisee's Work, in, on, or upon the Franchise Area within the Excavated Areas results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the Excavated Areas, but which after such activities by Franchisee are released beyond the Excavated Areas, and if the release is caused in whole or in part by the Franchisee, then the Franchisee shall indemnify, defend, and hold the City harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of Franchisee's share of the liability for the release. Franchisee's liability for the release may, inter alia, be determined by Franchisee's admission of the same, or as determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by Franchisee and the Environmental Authority.

## EXHIBIT "D"

### *(Insurance Requirements)*

1. General Requirement. Commencing upon issuance of the first Permit under this Franchise, Franchisee must have adequate insurance at all times while Franchisee owns or operates Facilities in the Public Rights-of-Way, to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from, or are connected with this Franchise or involve the Facilities, Franchisee, its agents, representatives, contractors, subcontractors and their employees.

2. Minimum Insurance Limits. The Franchisee shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, with an aggregate limit location endorsement for the Franchise Area, and shall provide coverage for any and all costs, including defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Such insurance shall include broad form and blanket contractual coverage, including coverage for the Franchise as now or hereafter amended, and specific coverage for the indemnity provisions set forth herein. Coverage must be written with the following limits of liability:

\$2,000,000 per occurrence;  
\$4,000,000 general aggregate; and  
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$2,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the life of this Franchise to comply with statutory limits for all employees, and in the case any work is sublet, the Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all their employees. The Franchisee shall also maintain, during the life of this policy, employer's liability insurance with limits of \$1,000,000 each occurrence.

2.4 Excess or Umbrella Liability: \$5,000,000 per occurrence and \$5,000,000 policy limit.

2.5 Pollution Legal Liability Insurance: (At the option of the City) \$5,000,000 per occurrence and \$10,000,000 in the aggregate.

3. Endorsements. Franchisee Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Franchisee's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Franchisee's insurance and shall not contribute to it.

3.2 Franchisee, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.4 The Franchisee's insurance shall name the City as an additional insured, and other Persons to whom the City is obligated under separate agreement or by Law, to protect or insure as an additional insured, from and against Liabilities arising out of work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Franchisee's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17.

3.6 The insurance coverages and limits provided herein shall not be canceled or reduced, nor the intention not to renew be stated so as to be out of compliance with the requirements herein without thirty (30) days written notice, certified mail, return receipt requested, first being given to the City. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy obtained pursuant to this Franchise shall be issued by financially sound insurers who may lawfully do business in the state of Washington with a financial strength rating at all times during coverage of no less than an "A" and in a financial size category of no less than "X", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5. Verification of Coverage. The Franchisee shall furnish the City with signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, Commercial General Liability and Umbrella or Excess insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with

standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

6. Deductible. The Commercial General Liability insurance policy and coverage required herein may include a reasonable deductible not to exceed ten percent (10%) of the minimum per occurrence Commercial General Liability policy limits; provided, however, that if Franchisee elects to include any deductible, Franchisee shall itself directly cover, in lieu of insurance, any and all City Liabilities that would otherwise in accordance with the provisions of this Franchise be covered by Franchisee's insurance if Franchisee elected not to include a deductible. Such direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual deductible.

7. No Limitation. Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at Law or in equity.

8. Modifications of Coverages and Limits. The City reserves the right, during the term of the Franchise, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary utilizing sound risk management practices and principals based upon the loss exposures. Prior to imposing such additional coverage or adjusting existing required coverages or limits, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

9. Public Franchisees. Franchisee Commercial General Liability, Automobile Liability and Umbrella Coverage insurance policies and coverage required herein for Public Franchisees may include a reasonable self-insured retention; provided, however, that as to any self-insured retention, Franchisee shall itself directly cover, in lieu of insurance, any and all City liabilities that would otherwise in accordance with the provisions of this Franchise be covered by Franchisee insurance if Franchisee elected not to include a self-insured retention. Such direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual self-insured retention. "Public Franchisee" for purposes of this Section 9 shall mean and include, any Franchisee organized as a political subdivision of the state of Washington, but shall not mean or include agents, contractors, and subcontractors of Franchisee that are not also organized as political subdivisions. Franchisee shall be required to provide verification of self-insurance retention coverage in a form and content acceptable to the City.

## EXHIBIT "E"

### *(Financial Security)*

#### 1. Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of **\$500,000** to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Rights-of-Way and other property when damaged or disturbed, and to reimburse the City for its Direct Costs.

1.2 The performance bond shall be in a form with terms and conditions acceptable to the City and reviewed and approved by the City Attorney.

1.3 The performance bond shall be with a surety with a rating no less than "A X" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.

1.4 The Franchisee shall pay all premiums or costs associated with maintaining the performance and payment bond, and shall keep the same in full force and effect at all times. If Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

1.5 Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Franchisee, limit the liability of Franchisee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at Law or in equity.

1.6 The amount of the bond may, in the reasonable discretion of the City, be adjusted by the City to take into account (1) cumulative inflation, (2) increased risk to the City, (3) the experiences of the Parties regarding Franchisee compliance with its obligations under the Franchise, and (4) issuance of Permits for installation of new Facilities. Prior to adjusting the amount of the bond, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

#### 2. Cash Deposit/Irrevocable Letter of Credit in Lieu of Bond.

Franchisee may, at its election or upon order by the City pursuant to Section 4 herein, substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee's responsibilities

hereto under this Franchise and all applicable Laws. This includes, but is not limited to, Franchisee's obligations to relocate or remove its Facilities, restore the Public Rights-of-Way and other property to its original condition, and reimburse the City for its costs.

The City shall notify Franchisee in writing, by certified mail, of any default and shall give Franchisee thirty (30) days from the date of such notice to cure any such default. In the event that the Franchisee fails to cure such default to the satisfaction of the City, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.

In the event that the City draws upon the cash deposit or letter of credit, Franchisee shall thereupon replenish the cash deposit or letter of credit to the full amount as specified herein or provide a replacement performance and payment bond.

3. Restoration Bond.

3.1 Unless otherwise provided in a Permit issued by the City for work within the Public Rights-of-Way, or by City ordinance, code, rule, regulation or Standards, the City may require Franchisee to enter into a performance agreement, secured by a restoration bond written by a corporate surety acceptable to the City equal to at least one hundred and fifty percent (150%) of the estimated cost of restoring the Public Rights-of-Way to their pre-Construction condition in accordance with Section 7.12 of the Franchise. Such restoration bond shall be deposited before Construction is commenced. Such restoration bond may be required, when the City determines that the Performance and Payment Bond or cash deposit/letter of credit is not sufficient to protect the interests of the City for Permitted Work.

3.2 Said restoration bond, or a separate bond acceptable to the City, shall warrant all such restoration work for a period of two (2) years.

3.3 In the event that a bond issued to meet the requirements of this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Franchisee shall, prior to expiration of said bond, be responsible for obtaining a replacement bond which complies with the terms of this Section.

3.4 The performance agreement shall guarantee, to the satisfaction of the City:

3.4.1 Timely completion of Construction;

3.4.2 Construction in compliance with applicable approved plans, utility Permits, technical codes, and Standards;

3.4.3 Proper location of the Facilities as approved by the City;

3.4.4 Restoration of the Public Rights-of-Way and other public or private property disrupted, damaged, or otherwise affected by the Construction. The performance agreement shall warrant said restoration work for a period of two (2) years;

3.4.5 The submission of “record” drawings after completion of the Work; and

3.4.6 Timely payment and satisfaction of all claims, demands, or liens for labor, material, or Services provided in connection with the Work.

4. Security Fund.

4.1 If there is a material Breach by Franchisee or a pattern of repeated Breaches, then Franchisee shall, upon written request of the City, establish and provide to the City a cash deposit or irrevocable letter of credit from a local financial institution satisfactory to the City, in a form and content approved by the City Attorney, and in the amount of five hundred thousand (\$ 500,000). Such cash deposit, irrevocable letter of credit shall be established as security for the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example but not limited to, its obligations to relocate and remove its Facilities, to restore the Public Rights-of-Way and other property when damaged or disturbed, and to reimburse the City for its costs.

4.2 If a cash deposit or letter of credit is furnished pursuant to Section 2, the cash deposit or letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.

4.3 Upon a Material Breach, the cash deposit/letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

4.3.1 Failure of Franchisee to pay the City sums due under the terms of this Franchise;

4.3.2 Reimbursement of costs and expenses borne by the City to correct Franchise violations not corrected by Franchisee; and

4.3.3 Monetary remedies or damages assessed against Franchisee as provided in this Franchise.

4.4 Within three (3) days of a withdrawal from the security fund, the City shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Franchisee.

4.5 Within thirty (30) days following notice that a withdrawal from the cash deposit/letter of credit has occurred, Franchisee shall restore the cash deposit/letter of credit to the full amount required by Section 4.1. If at the time of a withdrawal from the

security fund by the City, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Franchisee to the City until it is paid.

4.6 Upon termination of the Franchise under conditions other than those stipulating forfeiture of the security fund, the balance then remaining in the security fund shall be returned to the Franchisee within sixty (60) days of such termination, provided that there is then no outstanding default on the part of the Franchisee.

4.7 Failure to maintain or restore the security fund or letter of credit shall constitute a Breach of this Franchise.

4.8 In the event Franchisee believes that the letter of credit was drawn upon improperly, Franchisee shall give notice to the City.

4.9 The rights reserved to the City herein are in addition to all other rights of the City, whether reserved herein or authorized by applicable Law, and no action, proceeding, or exercise of a right with respect to such security fund or letter of credit will affect any other right the City may have. Neither the filing of a letter of credit with the City, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise. The City reserves the right to increase the amount of the cash deposit or irrevocable letter of credit depending upon factors that bear upon the increased risk of the City and inflation; provided that, such an increase shall be implemented not more often than once every five (5) years, and shall not increase such amount by more than 150% of the then-existing amount required to be on deposit or specified in the irrevocable letter of credit.

## EXHIBIT “F”

### *(Contractor/Subcontractor Insurance Requirements)*

1. General Requirement. Prior to commencing and during the period of Work performed within the Franchise Area, Franchisee contractors and subcontractors (hereafter the “Contractors”) must have in place adequate insurance to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from, or are connected with this Work.

2. Minimum Insurance Limits. The Contractors shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, with an aggregate limit location endorsement for the Franchise Area, and shall provide coverage for any and all costs, including defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability, and completed operations. Coverage must be written with the following limits of liability:

\$1,000,000 per occurrence;  
\$2,000,000 general aggregate; and  
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$1,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the period of such Work to comply with statutory limits for all employees.

3. Endorsements. Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Contractor’s insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor’s insurance and shall not contribute to it.

3.2 Contractor, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 Coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

3.4 The Contractor's insurance shall name the City as an additional insured, and other Persons to whom the City is obligated under separate agreement or by Law, to protect or insure as an additional insured, from and against Liabilities arising out of Work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Contractor's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17.

3.6 The insurance coverages and limits provided herein shall not be canceled or reduced, nor the intention not to renew be stated so as to be out of compliance with the requirements herein without thirty (30) days' written notice, certified mail, return receipt requested, first being given to the City. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy required herein shall be issued by financially sound insurers who may lawfully do business in the state of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "IX", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage the insurer does not meet the foregoing standards, Contractor shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5. Verification of Coverage. The Franchisee shall furnish the City with Contractors' signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, and Commercial General Liability policies of the Contractors. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices.

6. Deductible. Commercial General Liability insurance policies and coverage required herein may include a reasonable deductible not to exceed ten percent (10%) of the minimum per occurrence commercial general liability policy limits; provided, however, if Contractor elects to include any deductible, Contractor shall itself directly cover, in lieu of insurance, any and all City liabilities that would otherwise in accordance with the provisions of these requirements be covered by Contractor's insurance if Contractor elected not to include a deductible. Such direct coverage by Contractor shall be in an amount equal to the amount of Contractor's actual deductible.

7. No Limitation. Contractor's maintenance of insurance policies required herein shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee or Contractor to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at Law or in equity.

8. Modifications of Coverages and Limits. The City reserves the right, during the term of the Franchise, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary utilizing sound risk management practices and principals based upon the loss exposures. Prior to imposing such additional coverage or adjusting existing required coverages or limits, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

**Exhibit "G"**

(Form of Transfer Agreement)

THIS TRANSFER AGREEMENT ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between:

**1. PARTIES.**

1.1 City of \*\*, a legal subdivision of the state of Washington ("City").

1.2 \_\_\_\_\_ ("Franchisee").

1.3 \_\_\_\_\_ ("Transferee").

RECITALS

WHEREAS, the City has issued a single Franchise (the "Franchise") to Franchisee, which was authorized on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to Ordinance No. \_\_\_\_\_; and

WHEREAS, Franchisee has reached an agreement with Transferee on a *(describe transaction, example: conveyance of benefited property)*

\_\_\_\_\_ to *(example: acquire from Franchisee its facilities and equipment located in the Public Rights-of-Way)*

\_\_\_\_\_ ; and

WHEREAS, Franchisee and Transferee have requested that the City approve a transfer of the Franchise from Franchisee to Transferee; and

WHEREAS, as a result of the transfer of the Franchise, Transferee will assume all rights, duties, and obligations that Franchisee has under the Franchise, will be responsible for full compliance with the Franchise, and will meet or exceed all applicable and lawful federal, state, and local requirements; and

WHEREAS, relying on the representations made by the Transferee and Franchisee, the City, on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, has, pursuant to Resolution No. \_\_\_\_\_ and the Franchise, approved the transfer upon the terms and conditions as stated herein;

NOW, THEREFORE, in consideration of the City's approval of the transfer, subject to the terms and conditions of this Agreement, THE PARTIES DO HEREBY AGREE as follows:

**2. TRANSFER.** Transfer of the Franchise shall be effective upon the following conditions precedent:

2.1 Receipt by the City of the fully executed Acceptance of Franchise and Performance Guarantee attached hereto as Exhibit E-1 together with all required certificates of insurance, security funds, and performance bonds.

2.2 Payment to the City of the Transfer fees.

2.3 The date of closing of the sale/conveyance of the property benefited by this Franchise and/or the Cable System Facilities located in the Franchise Area, or upon a date as mutually agreed to by the City, Franchisee and Transferee as follows: \_\_\_\_\_  
\_\_\_\_\_.

**3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.**

3.1 The Franchisee and Transferee hereby accept, acknowledge, and agree that neither the proposed transaction between Franchisee and Transferee nor the City's approval of this Agreement shall diminish or affect the existing and continuing commitments, duties, or obligations, present, continuing, and future, of the Franchisee and Transferee embodied in the Franchise.

3.2 Transferee and Franchisee agree that (a) neither the Transfer nor the City's approval of this Agreement and the resulting Transfer shall in any respect relieve Franchisee, or any of its successors in interest, of any obligation or liability relating to all lawful requirements to Construct, operate, and maintain its Cable System Facilities and equipment located in the Public Rights-of-Way, occurring prior to the Transfer of the Franchise or of responsibility for acts or omissions occurring prior to the Transfer, known or unknown, or the consequences thereof, and (b) neither the Transfer nor the City's approval of the Transfer shall in any respect relieve Franchisee of any obligation or liability occurring prior to the Transfer of the Franchise or of responsibility for acts or omissions occurring prior to the Transfer, known or unknown, or the consequences thereof.

3.3 The Transfer is not intended and shall not be construed to authorize the Franchisee to take any position or exercise any right that could not have been exercised prior to the Transfer.

3.4 Notwithstanding anything to the contrary herein, Transferee shall not be responsible for any of Franchisee's financial liabilities and obligations under the Franchise or pursuant to City code, rules, and regulations and other applicable Laws that accrued before the Transfer of the Franchise.

3.5 The City waives none of its rights with respect to the Franchisee's or Transferee's compliance with the terms, conditions, requirements, and obligations set forth in the Franchise. The City's approval of this Agreement shall in no way be deemed a representation by the City that Franchisee is in compliance with all of Franchisee's obligations under the Franchise.

3.6 Franchisee and Transferee acknowledge and agree that the City's approval and acceptance of this Agreement and the resulting Transfer is made in reliance upon the representations, documents, and information provided by the Franchisee and Transferee in connection with the request for Transfer.

#### **4. MISCELLANEOUS PROVISIONS.**

4.1 Conditions Precedent. The Agreement shall be effective and binding upon the signatories once it has been signed by all signatories; provided that, within 30 days of execution of the Agreement by all of the signatories, Transferee has provided to the City the following: (1) all fees required for this Transfer; (2) its acceptance of the franchise in substantially the form of the document attached hereto as Exhibit E-1; (3) its insurance certificate in conformance with the requirements of the Franchise; (4) a performance bond or cash deposit in conformance with the requirements of the Franchise.

4.2 Entire Agreement. The Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. No statements, promises, or inducements inconsistent with the Agreement made by any Party shall be valid or binding, unless in writing and executed by all Parties.

4.3 Binding Acceptance. The Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported transfer of the Agreement is void without the express written consent of the signatories.

4.4 Severability. In the event that the Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

4.5 Defined Terms. Terms not defined in this Agreement shall have the same meaning as given in the Franchise.

4.6 Governing Law. The Agreement shall be governed in all respects by the laws of the state of Washington.

**(Signatures on the following page)**

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the day and year first written above.

**CITY**

**FRANCHISEE**

\_\_\_\_\_  
By: City Manager/Administrator

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

**TRANSFeree**

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

**TRANSFER EXHIBIT G-1**

Acceptance of Franchise and Performance Guarantee

Franchise issued pursuant to Ordinance No. \_\_\_\_\_ and accepted \_\_\_\_\_,  
20\_\_\_\_; Transfer authorized pursuant to Resolution No. \_\_\_\_\_, effective \_\_\_\_\_,  
20\_\_\_\_.

I, \_\_\_\_\_, am the authorized representative to accept the  
above-referenced Franchise on behalf of \_\_\_\_\_. I certify  
that this Franchise and all terms and conditions thereof are accepted by  
\_\_\_\_\_, without qualification or reservation and that  
\_\_\_\_\_ unconditionally guarantee(s) performance of all such  
terms and conditions.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Tax Payer ID# \_\_\_\_\_

STATE OF \_\_\_\_\_

ss.

CITY OF \_\_\_\_\_

I certify that I know or have satisfactory evidence that  
\_\_\_\_\_ is the person who appeared before me, and said person  
acknowledged that said person signed this instrument, on oath stated that said person was  
authorized to execute the instrument and acknowledged it (as the  
\_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_  
corporation), to be the free and voluntary act of such corporation/individual for the uses  
and purposes mentioned in the instrument.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
Print Name

Notary public in and for the state of \_\_\_\_\_,  
residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

DRAFT