

CITY OF MERCER ISLAND  
ORDINANCE NO. 17-14

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, GRANTING TO QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK, A DELAWARE CORPORATION, A NONEXCLUSIVE CABLE TELEVISION FRANCHISE TO INSTALL CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE A CABLE TELEVISION SYSTEM WITHIN THE PUBLIC RIGHTS OF WAY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, Qwest Broadband Services, Inc., d/b/a CenturyLink, a Delaware corporation (hereafter “Franchisee” or “CenturyLink”) has made application to the City to construct, install, maintain, repair and operate a cable television system within the public rights-of-way of the City; and

WHEREAS, CenturyLink represents that it has the legal, technical and financial qualifications to operate in the rights-of way of the City as a cable television company; and

WHEREAS, based on representations and information provided by CenturyLink, 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, City staff and CenturyLink have been working together to negotiate a franchise agreement allowing CenturyLink to provide its new cable service, “Prism TV” to Mercer Island residents; and

WHEREAS, historically, Comcast has been the sole cable operator within the City, and a franchise agreement between the City and CenturyLink would provide Mercer Island residents additional options for cable service; and

WHEREAS, a franchise agreement allows CenturyLink to locate its facilities (either on utility poles or underground) in City rights-of-ways, and as part of the agreement, CenturyLink will pay a 5% franchise fee and other consideration for use of the right-of-way; and

WHEREAS, staff has negotiated a proposed franchise agreement with CenturyLink with terms that comply with federal law and meet the needs and interests of the community; and

WHEREAS, granting CenturyLink a cable franchise will provide much needed competition in the City’s cable market; and

WHEREAS, the City is authorized by applicable law to grant such nonexclusive franchises within the boundaries of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1:**     **Adoption of Mercer Island Franchise Ordinance.** The Mercer Island City Council hereby approves, adopts and directs the City Manager to execute the Franchise Agreement attached hereto as Exhibit A granting to CenturyLink a nonexclusive cable television franchise to install, construct, operate and maintain a cable television system to provide cable television services under such terms and conditions as are set forth in the aforementioned Franchise Agreement.

**Section 2:** **Severability.** If any section, sentence, clause or phrase of this Ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or its application to any other person, property or circumstance.

**Section 3:** **Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

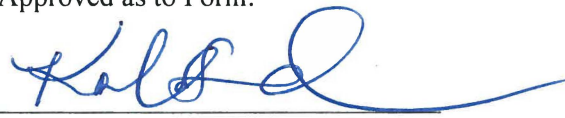
**Section 4:** **Effective Date and Publication.** This Ordinance shall be published in the official newspaper of the City, provided that both the City and CenturyLink execute the Franchise Agreement attached hereto as Exhibit A, and shall take effect and be in full force five (5) days after the date of publication. After the Franchise Agreement is executed, this Ordinance shall be published by an approved summary consisting of the title.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 19<sup>th</sup> day of June, 2017, and signed in authentication of its passage.

CITY OF MERCER ISLAND

  
\_\_\_\_\_  
Bruce Bassett, Mayor

Approved as to Form:

  
\_\_\_\_\_  
Kari Sand, City Attorney

ATTEST:

  
\_\_\_\_\_  
Allison Spietz, City Clerk

Date of Publication: 7/12/2017

**CITY OF MERCER ISLAND  
CABLE TELEVISION FRANCHISE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF MERCER ISLAND**

**AND**

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

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## **SECTION 1. NATURE AND TERM OF GRANT**

### **1.1 Grant of Franchise.**

- 1.1.1 The City of Mercer Island hereby grants to Qwest Broadband Services, Inc., d/b/a CenturyLink, a Delaware corporation, a Franchise to install, construct, operate and maintain a Cable System to provide Cable Services under such terms and conditions as are set forth in this Franchise.
- 1.1.2 Throughout this Franchise, the City of Mercer Island, Washington shall be referred to as the "City," and Qwest Broadband Services, Inc., d/b/a CenturyLink shall be referred to as the "Grantee."
- 1.1.3 Grantee shall be liable for the obligations of the Grantee under the Franchise and other applicable law governing Grantee's operations in the City and for compliance with the terms and conditions set forth herein.
- 1.1.4 Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliated Entity of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the ownership, management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise. However, the parties acknowledge that Qwest Corporation ("QC"), an affiliate of Grantee, will be primarily responsible for the construction and installation of the Facilities in the Rights-of-Way that will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC's construction, installation and maintenance of facilities in the Rights-of-Way is governed by applicable law. Grantee is responsible for all provisions in this Franchise related to: 1) its offering of Cable Services in the Franchise Area; and 2) the operation of the Cable System regardless of what entity owns or constructs the Facilities used to provide the Cable Service.

### **1.2 Duration of Franchise.**

The term of this Franchise, and all rights, privileges, obligations, and restrictions pertaining thereto, shall be five (5) years from the Effective Date of this Franchise, unless terminated earlier as provided herein.

### **1.3 Effective Date.**

The Effective Date of this Franchise is the date that the legislation approving this Franchise becomes effective.

#### 1.4 Competitive Equity.

- 1.4.1 This Franchise is not exclusive. Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City; provided, however, that no such franchise or similar lawful authorization shall contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are generally equivalent taking into account any difference in the number of Subscribers served, the number of PEG Channels and aggregate support provided, the level of fees and taxes imposed, the term of the Franchise, and all other circumstances affecting the relative burdens.
- 1.4.2 Should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a franchise granted by the City, then Grantee shall have all rights which may be available to assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

#### 1.5 Relationship to Other Laws.

- 1.5.1 Grantee's Franchise is subject to all lawful terms, conditions, and provisions of: (1) this Franchise; (2) the Mercer Island Municipal Code as the same is now or hereafter amended by lawful exercise of the City's police powers pursuant to Subsection 1.5.2 herein; and (3) the Communications Act of 1934, as amended by the Cable Consumer Protection Act of 1984, the Cable Communications Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as the same is now or hereafter amended.
- 1.5.2 Grantee's rights hereunder are subject to the lawful exercise of the City's police power. Nothing in this Franchise shall preclude or prohibit the City from enacting any ordinance in the interest of public health, safety and welfare, which may impact the Grantee in its operation of the Cable System, as a proper exercise of the City's police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee reserves all rights it may have to challenge such lawful modifications whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.
- 1.5.3 It is the intent of both parties that each party shall enjoy all rights and be subject to all obligations of this Franchise for the entire term of the Franchise and, to the



extent any provisions have continuing effect, after its expiration. However, both parties recognize that the technology of cable television and related technologies are in a state of flux and that regulatory conditions and franchise rights and powers may change drastically during the term of this Franchise. Should such changes occur, the City and Grantee shall negotiate in good faith to amend the Franchise to preserve the rights and obligations of the City and Grantee hereunder to the fullest extent consistent with such changes. The parties agree that the perpetuation of the substantial equivalent of the current statutory and regulatory structure governing cable television is not a condition of this Franchise, or a fundamental assumption that either party is making in entering into it; provided, however, nothing herein shall prevent either the City or the Grantee from asserting that any part or parts of the Franchise are preempted by state or federal law as a result of such changes.

## **SECTION 2. CITY'S PRINCIPLES AND INTENT**

The following provisions are statements of the City's intent in entering into this Franchise, but do not necessarily reflect Grantee's intent and shall not supplant or modify specific provisions of the Franchise:

- 2.1 Ensure that Mercer Island stays at the forefront of technology by keeping the Cable System up to date with features meeting the current and future cable-related needs and interests of the community;
- 2.2 Encourage the widest feasible scope and diversity of Programming and other services to all City residents consistent with community needs and interests;
- 2.3 Encourage competitive, affordable, and equal access to advanced communications services of all kinds to residents of the City of Mercer Island on a non-discriminatory basis;
- 2.4 Ensure that Mercer Island residents have the opportunity to view public, educational, and governmental Programming;
- 2.5 Ensure that rates and charges for cable Programming, equipment, and services provided over the Cable System are affordable and consistent with federal standards;
- 2.6 Ensure that Mercer Island residents receive high quality customer service;
- 2.7 Ensure that the City receives appropriate compensation for the use of its facilities and property and that installation and maintenance of cable Facilities comply with all applicable City regulations, and do not interfere with the City's legitimate use of its own facilities and property;
- 2.8 Encourage competition among Cable Operators and between Cable Operators and other providers of communications services;

- 2.9 Protect the City's interests and the health, safety, and welfare of its residents; and
- 2.10 Provide for timely mandatory Government Access to all Cable Systems in times of civil emergency.

### **SECTION 3. DEFINITIONS**

For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context clearly mandates a different interpretation. Where the context so indicates, the present tense shall imply the future tense, words in plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory and not merely directory. The definitions are applicable regardless of whether the term is capitalized.

- 3.1 “Access” means the right of certain agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, on a non-discriminatory basis, to use the Cable System for specific non-commercial purposes, including the right to acquire Programming, to create Programming free from outside control including that of the Grantee, and to distribute and receive Programming over the Cable System.
- 3.2 “Access Channel” or “PEG Channel” means any Channel or portion of a Channel on a Cable System required by the Franchise to be set aside by the Grantee for public, educational, or governmental use.
- 3.3 “Affiliated Entity” means any enterprise that owns or controls the Grantee, or is owned or controlled by the Grantee, or otherwise has ownership or control in common with the Grantee, including, without limitation, Grantee's Parent Corporations and any subsidiaries or affiliates of such Parent Corporations that meet this definition.
- 3.4 “Basic Service” or “Basic Service Tier” means the lowest priced tier of Cable Service offered by Grantee and includes, at a minimum, 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 the Grantee.
- 3.5 “Cable Operator” means any Person or group of Persons (1) who provides Cable Services over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System, or (2) who otherwise controls or, through any arrangement, is responsible for the management and operation of such a Cable System.
- 3.6 “Cable Services” means (1) the one-way transmission to Subscribers of (a) Video Programming or (b) other Programming service (i.e., information that the Grantee

makes available to all Subscribers generally), and (2) Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other Programming service.

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

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

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

- 3.9 “City” means the City of Mercer Island, a municipal corporation of the State of Washington.

- 3.10 “City Council” means the legislative body of the City of Mercer Island.

- 3.11 “Customer Service Representative” or “CSR” means any person employed or contracted by Grantee to assist, or provide service to, Subscribers, whether by answering public telephone lines, responding to email, writing service or installation orders, answering Subscribers' questions, receiving and processing payments, or performing other customer service related tasks.

- 3.12 “Demarcation Point” means the physical point at which the Cable System enters a Subscriber's home or building.

- 3.13 “Designated Access Managers” means the entity or entities designated by the City under Subsection 6.1.

- 3.14 “Document” or “Records” means written or graphic materials, however produced or reproduced, or any other tangible permanent documents, including those maintained by computer or other electronic or digital means, maintained by the Grantee in the ordinary course of conducting its business, including, but not limited to, financial documents that may be required for audit purposes.

- 3.15 “Dominant Cable Operator” means a Cable Operator that occupies the most influential market position in the City as a result of having significantly higher Subscriber levels than other Cable Operators.

- 3.16 “Downstream Channel” means a Channel capable of carrying a transmission from a Headend to other points on a Cable System, including Interconnection points.

- 3.17 “Educational Access” means Access for Schools and other educational institutions and entities.

- 3.18 “Effective Date” means the Effective Date of this Franchise pursuant to Subsection 1.3.
- 3.19 “Facility” means any distribution component of a Cable System.
- 3.20 “FCC” means the Federal Communications Commission.
- 3.21 “Fiber Optic” refers to a transmission medium of optical fiber cable and the electronics, software and equipment that support delivery of Cable Services by means of the optical fiber cable.
- 3.22 “Franchise” means this Franchise Agreement.
- 3.23 “Franchise Area” means the area within the City as specified in Subsection 4.1 hereof within which the Grantee is authorized to provide Cable Services under this Franchise, and any modification thereof.
- 3.24 “Franchise Fee” means consideration paid by the Grantee for the privilege granted under this Franchise for the use of Right-of-Ways and the privilege to construct and/or operate a Cable System in the Franchise Area. The term Franchise Fee does not include:
1. Any tax, fee or assessment of general applicability;
  2. Capital costs which are required by the Franchise to be incurred by the Grantee for Access facilities, including the support required in Section 10;
  3. Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
  4. Any fee imposed under Title 17, United States Code.
- 3.25 “Government Access” means Access for governmental entities or their designees.
- 3.26 “Grantee” means Qwest Broadband Services, Inc., d/b/a CenturyLink, its lawful successors, transferees and assignees.
- 3.27 “Gross Revenues” means all revenue derived directly or indirectly by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles, including but not limited to monthly basic, premium and pay-per-view fees, installation fees, and equipment rental fees. Gross Revenues shall not include (1) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (2) any taxes on services furnished by the Grantee which are imposed directly on any Customer by

the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit, including the PEG Fee. In the event any other Cable Operator has a different definition of Gross Revenues in a future franchise agreement, the parties agree to meet to discuss modifications to Gross Revenues for purposes of this agreement.

If a statutory change in State or federal law or a decision of the FCC or a court of competent jurisdiction expands the categories of revenue available to the City for the Franchise Fee assessment beyond those permitted under this definition as of the Effective Date, that change shall automatically be included in the definition of Gross Revenues under this Franchise, provided that the City imposes the same requirement upon any other similarly situated Cable Provider over which the City has jurisdiction and authority to impose such fees.

- 3.28 “Headend” means a facility for signal reception and/or dissemination on the Cable System, including all related equipment, such as cable, antennas and wires, satellite dishes, monitors, switchers, modulators, computers, software, processors for television broadcast signals, equipment for the Interconnection of the Cable System with adjacent cable systems and for Interconnection of any separate networks which are part of the Cable System.
- 3.29 “Initial” or “Initially” means as of the Effective Date of this Franchise.
- 3.30 “Leased Access Channel” means a Channel or portion of a Channel made available by Grantee for Programming by others for a fee.
- 3.31 “Mosaic Channel” means a channel which displays miniaturized media screens and related information for a particular group of channels with common themes. The Mosaic Channel serves as a navigation tool for subscribers, which displays the group of Access Channels on a single channel screen and also provides for easy navigation to a chosen Access Channel in the group.
- 3.32 “Non-Cable Services” means any service that is distributed over the Cable System, other than a Cable Service.
- 3.33 “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some hours on Saturday.
- 3.34 “Normal Operating Conditions” means service conditions within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, strikes, works stoppages, and severe or unusual-weather conditions. Those conditions that are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or Upgrade of the Cable System.

- 3.35 “Parent Corporation” means any existing or future corporation, entity, or Person with greater than fifty percent (50%) ownership or control over Grantee.
- 3.36 “PEG Access” means Public Access, Educational Access, and Government Access, jointly or severally.
- 3.37 “Person” means any sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Washington, and any natural person.
- 3.38 “Programmer” means any Person who prepares, produces or provides Programming that is intended for transmission on a Cable System.
- 3.39 “Programming” means the video, audio, voice, data, multimedia or other material or programs prepared for or capable of transmission on a Cable System, or, as the context requires, the process of causing such material to be created, received, transmitted or distributed on a Cable System.
- 3.40 “Public Access” means Access for the public, including organizations, groups and individuals.
- 3.41 “QC” means Qwest Corporation, d/b/a/ CenturyLink, an Affiliated Entity of the Grantee.
- 3.42 “Qualified Living Unit” means a distinct address in the QC network inventory database, including but not limited to single family homes, Multiple-Dwelling Units, and business locations, that meets the minimum technical qualifications defined by Grantee for provision of Cable Service.
- 3.43 “Right-of-Way” means the surface of and the space alongside, above and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement and road right-of-way now or hereafter held or administered by the City.
- 3.44 “School” means any public educational institution accredited by the State of Washington, including primary and secondary Schools (K-12), and colleges and universities (excluding the dormitories, fraternity and sorority houses of such institutions).
- 3.45 “Service Interruption” means any loss of any element of Programming on any part of the Cable System.
- 3.46 “Subscriber” means any Person who is lawfully receiving, for any purpose or reason, any Cable Service from Grantee whether or not a fee is paid. In the case of multiple office buildings or Multiple- Dwelling Units, the “Subscriber” means the lessee, tenant, or occupant.

- 3.47 “Tier” means Programming Services offered by Grantee to Subscribers as a package.
- 3.48 “Upgrade” means an improvement in any technical aspect of a Cable System.
- 3.49 “Upstream Channel” means a Channel capable of carrying a transmission to a Headend from any other point on a Cable System including Interconnection points.
- 3.50 “Video Programming” means Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## **SECTION 4. FRANCHISE AREA**

### 4.1 Franchise Area.

- 4.1.1 Grantee shall be authorized to provide Cable Services throughout the entire jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.
- 4.1.2 Grantee shall maintain accurate maps and improvement plans of its Franchise Area that show the location, size, and a general description of all Cable System facilities it installed in the Rights-of-Way and any of its power supply sources, including voltages and connections.

### 4.2 Service to Low-income Households.

Within 90 days after the City providing Grantee notice that another Cable Operator offers a needs-based discount in the City pursuant to a franchise agreement, Grantee shall provide a reasonable needs-based discount on Cable Services of not less than the amount provided by other Cable Operators. When applicable, CenturyLink’s discount shall apply to Subscribers that qualify for discounts under the Federal Lifeline program. This Subsection shall not prohibit Grantee from providing a larger discount or offering the discount to other economically or physically challenged Subscribers.

### 4.3 Prohibition on Discrimination.

Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers or any other Persons on the basis of race, color, religion, age, sex, gender identity, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; or the presence of any sensory, mental or physical handicap or any other unlawful basis.

## **SECTION 5. PROGRAMMING**

### 5.1 Grantee Compliance.

Grantee shall meet or exceed the Programming and Channel capacity requirements set forth in this Franchise.

5.2 Maintenance of Existing Conditions.

5.2.1 Without the written consent of the City and except as otherwise specifically provided in this Franchise, Grantee shall not delete, or so limit as to effectively delete, any broad category of Programming identified in Subsection 5.3 carried on the Cable System as of the Effective Date of this Franchise.

5.2.2 In the event of a modification proceeding under federal law, the mix and quality of services provided by the Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of services required under this Franchise throughout its term.

5.3 Expanded Programming and Channel Capacity.

Grantee shall provide:

5.3.1 A minimum of 150 Downstream Channels.

5.3.2 In addition to Programming provided on PEG Channels and local off-air broadcast Channels, if any, Grantee shall provide the following broad categories of Programming:

1. Education
2. News & information
3. Sports
4. Cultural and performing arts
5. Government affairs
6. Weather
7. Foreign language
8. Programming addressed to the City's diverse ethnic and minority interest
9. Audio Programming
10. Business news
11. General entertainment (including but not limited to movies)
12. Children's Programming
13. Family Programming



#### 14. Science/documentary

The requirements for each category of Programming may be satisfied by providing a separate Channel devoted substantially to the category or by Programming from more than one Channel which in the aggregate totals the equivalent of a Channel devoted substantially to the category.

##### 5.4 Deletion or Reduction of Programming Categories.

Grantee shall not delete or so limit as to effectively delete any broad category of Programming within its control for any group of Subscribers without the City's consent, which shall not be unreasonably withheld, and shall provide at least thirty (30) days prior written notice to the City of Grantee's request to do so, including all proposed changes in bandwidth or Channel allocation, and any assignments including any new equipment requirements that may occur as a result of these changes.

##### 5.5 Obscenity.

Grantee shall not transmit, or permit to be transmitted, over any Channel any Programming which is obscene in the sense that such Programming is not protected speech under the Constitution of the United States. The Grantee shall comply with all relevant provisions of federal law relating to obscenity. The City acknowledges that Grantee has no editorial control over Programming carried on PEG Channels.

##### 5.6 Parental Control Device.

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

##### 5.7 Leased Access Channels.

Leased Access Channels shall be provided in accordance with federal law.

#### **SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS**

##### 6.1 Designated Access Managers.

6.1.1 The City shall name Designated Access Managers for Public, Education, and Governmental Access Programming. Designated Access Managers shall have sole responsibility for operating and managing their respective Access Facilities.

6.1.2 Grantee shall cooperate with Designated Access Managers and providers and facilitate their use of the Cable System and Programming of PEG Access

Channels. Grantee shall enter into such operating agreements with Designated Access Managers as are appropriate to meet PEG Access requirements of this Franchise.

6.2 PEG Channel Capacity.

6.2.1 System Capacity. During the term of this Franchise the Grantee's Cable System shall be capable of providing a minimum of 150 channels of video programming to its customers in the Franchise Area.

6.2.2 Access Channel. Within 180 days of the Effective Date, or other mutually agreed to date, the Grantee shall provide one (1) Access Channel, for use by the City for governmental or educational programming. Access to other regional programming will be done through the use of existing available public access mosaics. Additional Access Channels shall be made available upon six (6) months written notice and when the following criteria are met:

1. The City has made a determination, after notice and opportunity for public comment, that an additional dedicated Access Channel is required to meet more fully such community needs and interests.
2. The existing Access Channel provided under this Franchise is in use and programmed with Access programming during at least eighty percent (80%) of the time during any consecutive twelve (12) hour period for ten (10) consecutive weeks.
3. At least one-third (1/3) of the Access programming presented during such ten (10) week period is produced within or related directly to the City.
4. Not more than one-third (1/3) of the aggregate hours of Access programming is repeat programming.

After one hundred and eighty (180) days of operation of a triggered Access Channel, and upon thirty (30) days written notice, the Grantee may make use of the triggered Access Channel for its own purposes if said channel no longer fits the above criteria for a period of ten (10) consecutive weeks. Upon one hundred and eighty (180) days' notice, the City may reclaim use of such channel(s) for transmission of Access programming which cannot be accommodated on other channels then in use for Access programming. Grantee shall never be required to provide more Access Channels than any other cable provider in the City. All of the Access Channels may be made available through a multi-channel display (i.e., a picture in picture feed) on a single TV screen called a "mosaic," where a cable customer

can access via an interactive video menu one of any required Access Channel. The location of the mosaic and Access Channels will be determined through mutual discussion of the parties and must be on an available channel.

6.2.3 Support for Access Capital Costs. In an effort to meet the demonstrated community need for Access Programming, and upon ninety (90) days' written notice by City after imposing such a charge on the Dominant Cable Operator, Grantee shall collect from Subscribers an amount as set by the City periodically throughout the term of this Franchise not to exceed one dollar (\$1.00) per Subscriber per month ("PEG Fee"). The PEG Fee may be used for Access related capital expenditures, such as production equipment and/or a studio. Upon ninety (90) days' notice, the PEG Fee may be adjusted or waived by the City not more than once per year. Grantee shall remit the PEG Fee at the same time as quarterly Franchise Fee payments hereunder are payable. Grantee shall not be responsible for paying the PEG Fees with respect to gratis or Bad Debt accounts. The City can inquire as to the status of any such account, and Grantee agrees to meet with the City, upon request, to discuss such matters as necessary. Grantee's PEG Fee shall never be more than the PEG Fee collected on a per Subscriber per month basis by any other provider in the City. The City and Grantee agree that any PEG Fees shall be referred to on Subscribers' bills as a "PEG Fee," or language substantially similar thereto.

6.2.4 The PEG Fees provided for in this section shall not be offset or credited against any Franchise Fee payments, but are not considered Gross Revenues for purposes of the Franchise Fee.

### 6.3 Changes in Technology.

In the event any change is made in the Cable System and related equipment and Facilities or in the signal delivery technology of Grantee's Cable Services that directly or indirectly materially degrades the signal quality or transmission of PEG Access Programming, Grantee shall at its sole expense and free of charge to the City take necessary steps or provide necessary technical assistance, including, but not limited to, the acquisition of all necessary equipment, to ensure that the capabilities of the Designated Access Managers, PEG Access Programmers, or Programming offerings (quality of Channel or video) are restored.

### 6.4 Technical Quality.

Grantee shall maintain all PEG Channels at the same level of technical quality and reliability as the best commercial channels carried on the Cable System. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including transmitters/receivers, associated cable and equipment in use upon the Effective Date of this Franchise, necessary to carry a quality signal to and from the Demarcation Point at City's or Designated Access Manager's facilities.

- 6.4.1 PEG Channel Signal Quality. Grantee shall deliver to Subscribers PEG Channel Programming contemporaneously with its delivery to Grantee by Designated Access Managers, without change in its content or format such as standard digital or HDTV or successor formats, from that provided by Designated Access Managers. Unless otherwise approved by the City or a Designated Access Manager, Grantee will not alter any PEG signal to either improve or degrade the PEG signal or alter, fail to retransmit or remove any formatting or coding information or data associated with any such signal, such as information associated with stereo closed captioned or digital transmissions.
- 6.4.2 Grantee shall provide all current and future activated downstream Channels for PEG Access use in a standard digital (SD) or high definition (HD), to the extent the City provides it to Grantee in HD, or successor format in Grantee's Basic Service level as specified herein. Grantee shall carry all components of the SD or HD Access Channel signals provided by the Designated Access Managers including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. The Designated Access Manager shall be responsible for providing the Access Channel signal in a SD or HD or successor format (as specified herein) to the Demarcation Point at the designated point of origination for the Access Channel. Grantee shall be responsible for costs associated with the transport and distribution of the Access Channel on its side of the Demarcation Point.
- 6.4.3 Grantee shall permit City to include the basic PEG Channel information in any electronic/interactive program guide. Grantee shall bear the costs to include the basic information in the programming guide for the PEG Channels, free of charge and at no cost to the City. The City shall have the right to pay for more enhanced program information to be made available on the programming guides including the Channel name and logo/icon, program titles scheduled in thirty (30) minute time blocks, program descriptions, information needed for search & record features, and any other information similarly provided for other broadcast channels and commercial cable/satellite Channels.
- 6.4.4 Grantee will ensure construction of Fiber Optic links to the PEG locations designated as of the Effective Date or mutually agreed upon between the City and Grantee for two-way origination and return capacity permitting transmission of originated program material between the Headend and specified facilities located within the City.
- 6.5 Complimentary Service.
- 6.5.1 Service to School Buildings. Upon request, the Grantee shall provide the "Basic" tier of Cable Service and one set top box without charge and free installation of the first outlet to each accredited K-12 public school located in the Franchise Area provided that such schools are designated as Qualified Living Units and no other Cable Operator is providing Cable Services at such location.

6.5.2 Service to Government Facilities. Upon request, the Grantee shall provide the “Basic” tier of Cable Service and one set top box without charge and free installation of the first outlet to each municipal building located in the Franchise Area that is a Qualified Living Unit. Additional outlets may be installed by Grantee at the normal non-discriminatory commercial rate and any services in addition to the “Basic” services may be billed for on a monthly basis at the normal commercial rate as determined by the Grantee’s commercial accounts guidelines, provided that the municipal buildings are designated as Qualified Living Units and no other Cable Operator is providing Cable Services at such location. “Municipal buildings” are those buildings owned or leased and occupied by the City where Cable Service is currently provided and those buildings owned or leased and occupied by the City for government administrative purposes, including without limitation those listed in Exhibit A to this Franchise but not including those buildings owned by the City but leased to third parties at which government employees are not regularly stationed. In instances wherein the City is leasing and occupying the building, the City shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building’s owner.

6.6 Access Channel Viewership Information.

6.6.1 Survey Data. Grantee will share with the City any data it obtains in its normal course of business about PEG Channel viewership and demographics.

6.6.2 Ratings. Grantee shall promptly provide copies of any ratings information it obtains on a regular basis in its normal course of business from a third party concerning viewership of PEG Channels to the City (for Cable Services provided on any Governmental or Educational Channel) and to the Designated Public Access Manager (for Cable Services provided on any Public Access Channel); provided, however, that with respect to any such ratings, Grantee shall redact any personally identifiable information prior to providing such information to the City or PEG providers as applicable. The preceding sentence shall not apply to any information Grantee receives from an ascertainment it has commissioned in connection, with the renewal of the Franchise or to any information Grantee generates on its own in connection with such renewal.

6.7 PEG Information for Subscribers.

6.7.1 Grantee shall include information about Public, Educational and Governmental Access Programming and activities in materials provided to Subscribers at the time of Cable Service installation. The Grantee shall include appropriate designation of the PEG Channel.

6.7.2 Cost Treatment of PEG Costs. Any and all payments and costs of services provided by Grantee to City in support of PEG Access Programming and other commitments shall not be deemed "Franchise Fees" within the meaning

of Section 622 of the Cable Act (47 U.S.C. § 542). Any PEG Access support fees (the “PEG Fee”) required by this Franchise are intended to conform to the provisions of Section 611 of the Cable Communications Policy Act of 1984, and further are intended to be payments of the type described in Section 622(g) (2) (B) and (C) of said Act, and not to be or to constitute Franchise Fees.

## **SECTION 7. GENERAL CABLE SYSTEM REQUIREMENTS**

### **7.1 Baseline Cable System Characteristics and Functionality.**

The Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

#### **7.1.1 Industry-accepted Equipment.**

1. The Cable System shall use equipment generally used in high-quality, reliable, modern systems of similar design, including, but not limited to, backup power supplies rated at a minimum of twenty-four (24) hours at the Headend and Central Offices.
2. In addition, the Cable System's electronics shall be capable of passing through the signals received at the Headend without substantial alteration or deterioration.
3. The Facilities and equipment on the Cable System must be able to deliver high quality signals that meet or exceed applicable FCC technical quality standards, including but not limited to those set forth in 47 C.F.R. § 76.601, regardless of the particular manner in which the signal is transmitted.
4. Grantee shall comply with all applicable laws and regulations concerning Cable System compatibility with Subscribers' television receivers and/or recording devices.

7.1.2 Cable System Functionality. The Cable System shall have a bandwidth capable of providing the equivalent of a typical 750 MHz Cable System. Recognizing that the City has limited authority under federal law to designate the technical method by which Grantee provides Cable Service, as of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing two different methods. First, using a PON platform, the Grantee provides Cable Service to some Qualified Living Units by connecting fiber directly to the household (“FTTP”). Second, the Grantee provides Cable Service to some Qualified Living Units by deploying fiber further into the neighborhoods and using the existing copper infrastructure to increase broadband speeds (“FTTN”). Generally speaking, when Grantee deploys FTTN, households located within 4,000 cable feet of a remote terminal shall receive broadband speeds capable of providing Cable Service. In both the FTTP and FTTN footprint, a household

receiving a minimum of 25Mbps shall be capable of receiving Cable Service after Grantee performs certain network grooming and conditioning. Grantee shall determine in its discretion where to upgrade its network to convert these households to Qualified Living Units.

- 7.1.3 FCC Compliance. Grantee shall comply with all applicable FCC regulations regarding scrambling or other encryption of signals.
- 7.1.4 No Deterioration to Access Signals. The Cable System shall be so constructed and operated that there is no significant deterioration in the quality of PEG Access Channels or leased access signals, either Upstream or Downstream, as compared with any other Channels on the Cable System; however, Grantee shall not be required to alter a PEG Access Channel or leased access signal if the Channel or signal received by Grantee is of poor quality. Deterioration refers to any signal problem, including, but not limited to, ghost images and other interference and distortions.
- 7.1.5 Parental Control. Grantee shall ensure that means are available to enable Subscribers to completely block out audio and video on any undesired Channels on the Cable System.
- 7.1.6 Program Security. The Cable System shall include 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.
- 7.1.7 Service to Persons with Disabilities. The Cable System shall transmit closed captions for all Programming that includes a closed caption signal. In addition, Grantee must have means available, and a publicly listed telephone number for such means, that will allow hearing- or speech-impaired persons to contact the Grantee.
- 7.1.8 Quality of Service. Grantee agrees to provide Cable Service at a level consistent with current applicable FCC standards.
- 7.1.9 Service Connections. Grantee shall provide Cable Services upon request from any person in the City who resides in a Qualified Living Unit within seven (7) business days. A request shall be deemed placed on the date of signing a service agreement, receipt of funds by Grantee, or receipt by Grantee of a verified verbal or written request. Rates and charges may not exceed the Grantee's published rates.
- 7.1.10 Emergency Alert System. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System ("EAS"), consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Washington State Emergency Alert System Plan requirements.

The EAS shall allow authorized officials to override the audio and video signals on all Channels to transmit and report emergency information. In the case of any sudden, unforeseen event that has the potential to cause significant damage, destruction, or loss of life, Grantee shall make the EAS available without charge and in a manner consistent with the Washington State Emergency Alert System Plan (“Plan”) for the duration of such sudden, unforeseen event. Grantee shall cooperate with designated state officials to test the emergency override system, for periods not to exceed one minute in duration and not more than once every six months, and upon request by the City, provide verification of compliance with Washington State’s Plan. The City may identify authorized emergency officials for activating Grantee’s EAS consistent with the State’s Plan, and the City may also develop a local plan containing methods of EAS message distribution, subject to applicable laws.

## **SECTION 8. TECHNICAL OPERATION AND MAINTENANCE STANDARDS AND REQUIREMENTS**

### **8.1 Technical and Safety Standards.**

Grantee will maintain the Cable System using applicable City codes and the following safety codes and construction standards:

1. NEC – the National Electrical Code;
2. NESC – the National Electrical Safety Code;
3. OSHA – the Occupational Safety and Health Act; and
4. WISHA – the Washington Industrial Safety and Health Act.

Nothing herein shall preclude Grantee from raising any and all defenses it may have under applicable codes.

### **8.2 Network Monitoring and Repair.**

Grantee shall monitor all power supplies and fiber nodes, utilizing the latest in status monitoring techniques and will initiate repairs within a twenty-four (24) hour time period as required by applicable FCC rules and regulations.

### **8.3 Component and Cable System Tests, Records and Test Points.**

Grantee will initially test all active components before installation into the Cable System. Initial proof-of-performance will meet or exceed the minimum requirements set forth in FCC Rules and Regulations Part 76, subpart K, “Technical Standards,” as applicable.



#### 8.4 Routine Maintenance and Performance Testing.

Grantee will maintain the Cable System by providing routine maintenance and performance testing to meet the requirements of FCC Rules and Regulations Part 76, including bi-annual proof of performance tests, as applicable.

#### 8.5 Spare Parts.

Grantee shall have immediately available a sufficient supply of spare parts to effect repairs in accordance with the requirements of this Franchise.

#### 8.6 Testing Notification.

Grantee shall notify the City in advance of testing for compliance with applicable FCC signal standards. The City may have a representative present to observe such tests and may designate one location to be tested. Grantee shall provide the City with a report of testing for compliance with applicable FCC standards in accordance with Section 16 and upon request (but not more than twice a year). Such report shall state, in pertinent part, that the Cable System is in full compliance with FCC rules and regulations or, in the alternative, set forth with specificity and in detail all areas of non-compliance their actual or likely scope and causes, and a plan for instituting corrective measures to immediately and permanently correct the non-compliance.

#### 8.7 NESC Records.

Grantee shall provide, consistent with Subsection 16.1, any Records that may be required by the NESC rules which apply to the construction and maintenance of the Cable System in the City.

### **SECTION 9. SUBSCRIBER RELATIONS AND COMPLAINT PROCEDURE**

#### 9.1 Office Hours and Telephone Availability.

9.1.1 The Grantee shall maintain a local or toll free telephone Subscriber service access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

9.1.2 Trained company representatives shall be available to respond to Subscriber telephone inquiries during Normal Business Hours. Grantee shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays, for emergency purposes.

9.1.3 After Normal Business Hours, the Subscriber service access line may be answered by an IVR (interactive voice response). A qualified Grantee representative shall respond on the next business day to inquiries received after Normal Business Hours.

9.1.4 Under Normal Operating Conditions, telephone answer time, including wait time, shall not exceed thirty (30) seconds. If the call needs to be transferred,

transfer time shall not exceed thirty (30) seconds. This standard shall be met no less than eighty percent (80%) of the time under Normal Operating Conditions, as measured on a quarterly basis.

9.1.5 The total number of calls receiving busy signals shall not exceed three percent (3%) of the total telephone calls. This standard shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis, under Normal Operating Conditions.

## 9.2 Quarterly Reports.

9.2.1 Beginning twelve (12) months after the Effective Date, Grantee shall report its compliance with this section on a quarterly basis within thirty (30) days of the end of the quarter.

9.2.2 All data in the report shall reflect activity within an area that reasonably approximates the jurisdictional boundaries of King County, including the City.

9.2.3 To measure the Grantee's compliance with standards related to customer telephone response times, the report shall include, at a minimum, the following information from the Grantee:

1. The total number of calls offered to Grantee;
2. The number of calls handled by the Grantee's IVR within 30 seconds;
3. The total number of calls during which a customer requested, in any fashion, to speak with a CSR;
4. The total number of calls transferred to a CSR;
5. The total number of calls transferred to a CSR that were answered within 30 seconds; and
6. The average wait time before a call to a CSR was answered.

9.2.4 Grantee shall permit the City to review and audit the information required under this section at any time during Normal Business Hours upon reasonable notice.

## 9.3 Installations and Subscriber Service Calls.

9.3.1 Under Normal Operating Conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

- 9.3.2 Standard Installations for Qualified Living Units shall be performed within seven (7) business days after an order has been placed, unless otherwise requested by Subscriber.
- 9.3.3 The “appointment window” alternatives for installations, service calls, and other activities shall be, at maximum, within a four (4) hour block during Normal Business Hours. Subscribers requesting installation of Cable Service or repair service to an existing installation may choose any available four (4) hour block of time during Normal Business Hours. Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the Subscriber.
- 9.3.4 Grantee may not cancel an appointment with a Subscriber after 5 p.m. on the day before the appointment. If the cable installer or technician is running late and will not meet the specified appointment time, he or she must contact the customer and reschedule the appointment at a time which is convenient for the Subscriber.

Grantee shall be deemed to have responded to a request for service if a technician arrives within the agreed-upon time period. If the Subscriber is absent when the technician arrives, the technician shall verify the appointment with the technician’s dispatcher by telephone while at the Subscriber’s door and leave written notification of timely arrival. Grantee shall keep a record of the notification. In such circumstances, the Subscriber must contact Grantee to reschedule the appointment.

- 9.3.5 If a representative of the Grantee will not be able to keep an appointment, the Grantee shall contact the Subscriber before the end of the scheduled appointment and reschedule the appointment at a time convenient for the Subscriber.

#### 9.4 Outages and Other Service Interruptions.

- 9.4.1 An outage is a Service Interruption that involves a loss or substantial impairment in reception on all Channels for a period of one hour or more.
- 9.4.2 Excluding conditions beyond the control of the Grantee, the Grantee will begin working on Service Interruptions promptly and in no event later than 24 hours after the interruption becomes known. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem.

#### 9.5 TV Reception.

- 9.5.1 The signal quality provided by Grantee shall meet or exceed applicable technical standards established by the FCC. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

9.5.2 If a Subscriber experiences poor signal quality or reception, Grantee shall respond and make efforts to repair the problem no later than the next business day following the Subscriber call; provided that the Subscriber is available and the repair can be made within the allotted time. If an appointment is necessary, the Subscriber may choose a four-hour block of time during Normal Business Hours. At the Subscriber's request, the Grantee shall repair the problem at a later time convenient to the Subscriber.

9.6 Communications between Grantee and Information to Subscribers.

9.6.1 Customer Information. Upon installation, annually, and at any time a Subscriber requests, Grantee shall provide the following information to its Subscribers in a clear, concise written form. In addition, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the following, to the extent such changes are under the control of Grantee or an Affiliated Entity:

1. Products and services offered;
2. Prices and options for programming services and conditions of subscription to programming and other services;
3. Installation and service maintenance policies;
4. Instructions on how to use the Cable Service;
5. Channel positions of programming carried on the system; and
6. Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

9.6.2 Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

9.6.3 Grantee shall provide Subscribers with notification and announcements on the Cable System, of any changes in Programming, services, or Channel positions as soon as possible, but no less than thirty (30) days in advance of such changes if the change is within the control of the Grantee. Subscribers shall be given a description of the changes, their options for changing services they receive, the phone number for questions, and the effective date of the change.

9.6.4 All of Grantee's officers, agents, employees, contractors, and subcontractors who are in personal contact with Subscribers shall have visible identification

cards bearing their name and photograph. Grantee shall account for all identification cards at all times. Every vehicle of the Grantee used for providing services to customers shall be clearly visually identified to the public as working for Grantee. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public. Officers, agents, and employees of the Grantee and its contractors and subcontractors shall identify themselves to the customer when making a service call or installation.

9.6.5 All promotional materials advertising Cable Services shall accurately disclose price terms. For non-automated orders, the CSRs shall make clear the price of pay-per-view and pay-per-event Programming before an order is taken.

9.6.6 Grantee shall not charge customers for any services they have not affirmatively requested. This section shall not prevent Grantee from adding Programming to an existing Tier.

#### 9.7 Billing, Credits, Refunds, and Deposits.

9.7.1 Grantee will send Subscribers a clear and concise bill every month. Bills may be fully itemized to the extent allowed by law and this Franchise, provided that all bills shall clearly reflect only a single total amount due. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. Franchise Fees, costs and taxes shall be itemized in a manner that accurately and fairly portrays the basis, for the taxes and fees.

9.7.2 Grantee shall provide a due date on each bill that is at least thirty (30) days from the beginning date of the applicable billing cycle. A monthly bill shall be issued to all Subscribers regardless of balance due, other than Subscribers receiving complimentary service.

9.7.3 Thirty (30) days advance written notice must be given to Subscribers of any changes in rates, if the change is within the control of the Cable Operator.

9.7.4 Credits for service must be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

9.7.5 Refund checks shall be issued promptly and no later than the Subscriber's next billing cycle or thirty (30) days, whichever is earlier, or upon the return of equipment when service is terminated.

#### 9.8 Subscriber Rights.

9.8.1 Discrimination Prohibited. Grantee shall comply at all times with all applicable laws, rules, and regulations including the terms of the Franchise relating to non-discrimination.

1. All Grantee rates and charges shall be published and non-discriminatory. Except as provided hereunder, Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of type of Dwelling Unit, race, color, religion, age, sex, gender identity, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; or the presence of any sensory, mental or physical handicap. Nothing in this Subsection shall be construed to prohibit the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns or discounted rates for provision of Cable Services to Multiple- Dwelling Unit buildings.
2. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Access Programmers or any other Persons on the basis of type of Dwelling Unit, race, color, religion, age, sex, gender identity, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; or the presence of any sensory, mental or physical handicap.
3. The Grantee shall not take any retaliatory action against a Subscriber because of the Subscriber's exercise of any right it may have under federal, state, or local law, nor may the Grantee require a Subscriber to waive such rights as a condition of service.

9.8.2 Privacy. Grantee 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.

9.8.3 Services to People with Disabilities.

9.8.3.1 Within ninety (90) days after the City providing notice to Grantee that another Cable Operator has a similar provision in its franchise agreement, Grantee shall for any Subscriber with a verified disability that prevents the Subscriber from self-installing equipment, at no charge deliver, install, and pick up equipment at the Subscriber's home. In the case of malfunctioning equipment, Grantee shall provide and install substitute equipment, ensure that it is working properly, and remove the defective equipment.

9.8.3.2 Grantee shall provide TDD/TTY service with trained operators who can provide every type of assistance rendered by the Grantee's CSR for any hearing-impaired Subscriber at no charge.

9.8.3.3 Grantee shall install, at no charge, any closed captioning device purchased by a hearing-impaired customer.

9.8.3.4 Grantee shall provide free use of a converter remote control unit to mobility-impaired Subscribers.

9.8.3.5 Any Subscriber with a disability may request the special services and equipment described in this section by providing Grantee with a letter from the Subscriber's physician stating the need, or by making the request to Grantee's installer or service technician, if the need for the special services can be visually confirmed.

9.8.4 Permission of Property Owner or Tenant for Installation, and Treatment of Property Owner's Property.

9.8.4.1 If cable passes over or under private or publicly owned property, Grantee is solely responsible for obtaining all necessary permission from the property owner.

9.8.4.2 Grantee shall not install or attach any of its facilities to any property without first securing the written permission of the owner or tenant of any property involved, or of such other person who has the right to approve or disapprove the attachment (authorized party), except if there is an existing utility easement. If such permission or easement is later revoked, Grantee at the request of the authorized party shall promptly remove any of its facilities and promptly restore the property to its original condition at Grantee's expense. Grantee shall perform all such installations and removals in compliance with state and local law and shall be responsible for any damage to residences or other property caused by the installation or the removal. In the event Grantee fails to perform such restoration, the authorized party has the right to do so at the sole expense of Grantee. Demand for payment for such restoration must be submitted by the authorized party in writing to Grantee.

9.8.4.3 Provision of Cable Services may not be conditioned on any right of entry agreement that requires an exclusive, long-term service commitment. However, the preceding sentence does not affect Grantee's right to furnish additional consideration in exchange for a right of entry agreement.

9.8.4.4 Trees, shrubs, and other landscaping on a Subscriber's property that are damaged by Grantee, or any employee or authorized agent, during installation or construction for the Subscriber or in the process of serving adjacent structures, shall be restored to their prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner of the property on which they are located.

9.8.4.5 Grantee shall, at its own cost and expense, and in a manner approved by the property owner and the City, restore any property to as good condition as before the work causing such disturbance was initiated.

Grantee shall repair or replace any damaged property, or compensate property owners for damage resulting from Grantee's installation, construction, service, or repair activities for a Subscriber.

9.8.4.6 Except in the case of an emergency involving public safety or Service Interruption to a large number of Subscribers, or where Grantee has a legal right of access or entry, Grantee shall give reasonable notice to property owners or legal tenants before entering upon their private property, and the notice shall specify the work to be performed. In the case of construction operations, such notice shall be delivered or provided at least twenty-four (24) hours before entry. In the case of an emergency, Grantee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing in this section authorizes access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. If damage is caused by Grantee's activity, Grantee shall reimburse the property owner one hundred percent (100%) of the cost of repairing the damage or replacing the damaged property. For the installation of pedestals or other major construction or installation projects by Grantee, property owners shall also be notified by mail or door hanger notice at least one (1) week in advance.

9.8.4.7 Grantee shall clean all areas surrounding any work site of debris caused by Grantee's activities and ensure that all materials are disposed of properly.

## **SECTION 10. COMPENSATION AND AUDITING**

### **10.1 Amount of Compensation.**

In consideration of permission to use the Rights-of-Way of the City, the Grantee shall pay annually as a Franchise Fee to the City, throughout the duration of this Franchise, an amount of five percent (5%) of Grantee's Gross Revenues. If during the term of this Franchise, the FCC, federal or state government, or the courts effectively permit the City to impose a Franchise Fee greater than five percent (5%), the City shall have the right to increase the Franchise Fee to take full advantage thereof. Any change in Franchise Fee percentage shall be imposed on all similarly situated multichannel video providers over which the City has jurisdiction and authority to impose such fees.

### **10.2 Effect of Additional Commitments on Franchise Fees.**

Except as specifically provided in this Franchise or permitted by federal or state law, no term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay the Franchise Fee. Although the total sum of Franchise Fee payments and additional financial and other obligations of this Franchise may exceed five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the sole Franchise Fee provided for in this



Franchise is the Franchise Fee called for in Subsection 10.1 and that no other obligation of Grantee under this Franchise constitutes a Franchise Fee, nor shall any such obligations be offset or credited against any Franchise Fee payments due to the City, except as specifically provided by this Franchise, other City Ordinance, or federal or state law.

### 10.3 Payment of Franchise Fees on Bundled Services.

10.3.1 In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with Non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Service revenue no less than a pro rata share of the revenue received for the bundled or combined services or some other methodology provided that any such other methodology does not result in an allocation less than a pro rata share of the Service revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

10.3.2 This Subsection is not intended to apply to reduction in Franchise Fees that result from other causes such as changes in the law, Subscriber losses, Subscriber service downgrades, Force Majeure, or short-term promotional activities (e.g., premium channel discounts or sales).

The City shall have the right to audit Records regarding the allocation of revenues derived from bundles involving Cable Services and Non-Cable Services. Upon the City's request, Grantee will meet with the City or a designated City representative following reasonable advanced notification to explain the methodology Grantee is using to allocate revenues generated from bundled services. If the City reasonably believes Grantee is allocating bundled revenues contrary to the provisions of this Subsection 10.3, the City may submit the matter to a third party for mediation. The cost of the mediation shall be shared equally between the City and the Grantee. Participation in mediation shall not prejudice the right of either party to bring the matter to a court of competent jurisdiction or pursue any other remedies available to them in this Franchise or by law.

### 10.4 Payments and Quarterly Reports.

10.4.1 Payments. Grantee's Franchise Fee payments to the City shall be computed quarterly following the Effective Date of this Franchise. Each payment shall be due and payable at the same time as the Utility Business and Occupation Tax payment for the same period.

10.4.2 Quarterly Reports. Each payment shall be accompanied by a written report to the City, verified by an officer of Grantee or his or her authorized designee,

containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in form and substance satisfactory to the City and shall include revenue by product category.

#### 10.5 Interest on Late Payments.

Within ninety (90) days after the City providing notice to Grantee that another Cable Operator has a similar provision in its franchise agreement, payments not received within forty-five (45) days from the quarter ending date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date or the highest rate allowed by law, whichever is greater, but not to exceed eighteen percent (18%) in any event.

#### 10.6 Acceptance of Payment and Recomputation.

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or any other claim or right. All amounts paid shall be subject to audit and recomputation by the City, provided that such audit and recomputation is completed within six (6) years of the date payment was due. If the City requests in writing that the Grantee provide, or cause to be provided, any information reasonably within the scope of the audit, and the Grantee fails within thirty (30) days of receipt of the request to provide such information or cause it to be provided, then the six (6) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that such failure continues..

#### 10.7 Audits.

10.7.1 The City reserves the right to conduct audits relating to matters arising under this Franchise or to retain an independent Certified Public Accountant to conduct such audits. In the event an audit results in a determination that Grantee has underpaid any Franchise Fee arising under this Franchise by five percent (5%) or more, or materially misstated financial information in any report furnished to the City, Grantee shall reimburse the City for the costs of the audit, such cost not to exceed five thousand dollars (\$5,000).

10.7.2 Grantee shall pay to the City any amounts any audit indicates are owed following an independent review of such audit.

#### 10.8 No Offset or Credit against Franchise Fees.

The City and Grantee agree that any utility tax, business and occupation tax or similar tax shall be in addition to any Franchise Fees required herein and there shall be no offset or credit against Franchise Fees for any utility tax, business and occupation tax or similar tax, subject to applicable law.

## **SECTION 11. INDEMNIFICATION, INSURANCE, BONDS AND SECURITY FUND.**

### 11.1 Indemnification.

The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including without limitation accidental death, copyright, infringement, defamation and all other damages) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs. If a claim or action arises, the City or any other indemnified party shall tender the defense of the claim or action to the Grantee, which defense shall be at the Grantee's expense. The City may participate in the defense of a claim and, in any event, the Grantee may not agree to any settlement of claims financially affecting the City without the City's written approval, which shall not be unreasonably withheld. The City shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by this Section. 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 the Grantee to represent the City, the Grantee shall pay reasonable attorneys' fees and expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by the Grantee. The City's fees and expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by the Grantee. In the event any other Cable Operator has a different Indemnification obligation in a future franchise agreement, the parties agree to meet to discuss modifications to Grantee's Indemnification obligation. The provisions of this Section shall survive the expiration or termination of this Agreement.

### 11.2 Insurance.

11.2.1 Grantee shall maintain on file with the City evidence of insurance coverage satisfactory to the City with minimum coverage and limits of liability specified below.

11.2.2 Grantee shall maintain:

1. Commercial General Liability (CGL) insurance written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$3,000,000 per Occurrence, \$3,000,000 Premises/Operations, Products/Completed Operations Aggregate, Personal/Advertising Injury Liability, Contractual Liability, and Independent Contractors Liability; \$3,000,000 Each Accident/Each Disease/ Policy Limit Employers Liability/Washington Stop Gap. The CGL insurance shall not exclude XCU/subsidence perils or any similar perils;

2. Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased, or hired vehicles, as applicable, with a minimum limit of \$3,000,000 each accident for bodily injury and property damage; and
3. Workers Compensation insurance for Washington State as required by Title 51 RCW Industrial Insurance.

The City may increase the minimum policy limits and coverage from time to time as the City deems appropriate to adequately protect the City and the public. In the event any other Cable Operator has a different policy limit for the items covered in this Section, upon ninety (90) days' notice, Grantee will modify the limits in its insurance policy to match the amount of the other Cable Operator.

The CGL insurance and Excess or Umbrella liability insurance, if any, shall include the "City of Mercer Island, its officers, officials, employees, agents and volunteers" as additional insureds subject to a standard "Separation of Insureds" or "severability" clause, and shall be primary and non-contributory with any insurance or self-insurance coverage maintained by the City.

11.2.3 Grantee specifically acknowledges that the limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by the Grantee, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by the Grantee regarding this Franchise, nor (2) construed as limiting the liability of any of the Grantee's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies. Each insurance policy shall be issued by an insurer rated A: VII or higher in the A.M. Best's Key Rating Guide, unless a surplus lines placement by a licensed Washington State surplus lines broker, or as may otherwise be approved by the City. Grantee shall provide at least thirty (30) days' notice to the City of any change, cancellation or lapse thereof.

11.2.4 Grantee's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Mercer Island from coverage or asserting a claim under Grantee's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Grantee's insurance policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (1) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), (2) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (3) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (4) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (5) any "Insured vs. Insured" or "cross-liability" exclusion, and

(6) any type of punitive, exemplary or multiplied damages exclusion.

11.2.5 The term “insurance” and “insurer(s)” under this Subsection 11.2 shall apply to self-insurance and self-insurer(s). Should Grantee maintain self-insurance (except that subject to a deductible endorsement provision that specifies that the nonpayment of deductible amounts by the named insured shall not relieve the insurer from payment of claims), it shall disclose in writing details of such self-retained limit(s). Should such self-insurance not be fronted by an insurance company, Grantee shall issue a letter stating that it will cover the City as an additional insured for the required coverages as if a commercial insurance policy applied and will specify how and to whom a tender of claim should be directed.

11.2.6 Certification of insurance, notice of cancellation and any other written communication under this Subsection 11.2 shall be addressed to: the Mercer Island Department of Information Technology, Office of Cable Communications (see address in Subsection 19.8).

11.2.7 Evidence of insurance shall be in a form and with such content that is acceptable to the City and shall include an actual copy of the designated additional insured endorsement or blanket additional insured endorsement or policy wording documenting that the City of Mercer Island is covered as an additional insured under Grantee's CGL Insurance.

In the event any other Cable Operator is required in a future franchise to obtain a construction bond, security fund or letter of credit, the parties agree to meet to discuss modifications to Grantee's obligations.

## **SECTION 12. GENERAL USE OF AND CONSTRUCTION IN RIGHT-OF-WAY**

### 12.1 Relationship with Other Laws.

Construction work and maintenance of any and all of Grantee's Facilities within the City's Rights-of-Way shall be done in accordance with the Mercer Island Municipal Code.

### 12.2 Construction.

12.2.1 Subject to the terms of Subsection 1.1.4 of this Franchise, all construction and maintenance of any and all Facilities within the City's Rights-of-Way pursuant to this Franchise shall be and remain the Grantee's responsibility regardless of who performs the construction. Grantee shall apply for and obtain all-permits necessary for construction or installation of any Facilities, and for excavating and laying any Facilities, within the City's Rights-of-Way. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to Grantee, and shall pay all inspection fees and other costs incurred by the City as a result of work authorized by such permit.

- 12.2.2 Before beginning any construction, Grantee shall provide the City with a construction schedule for its work in the City's Rights-of-Way. As Grantee's construction of Facilities in the City's Rights-of-Way is completed or its location subsequently altered during the term of the Franchise, Grantee shall, upon request, periodically provide the City' Office of Cable Communications with maps showing the location of the installed Facility in the City's Rights-of-Way, as built.
- 12.2.3 To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make reasonable efforts to collocate its compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities, in the case that relocation or extension of Grantee's facilities is approved or required by City.
- 12.2.4 Before beginning any work in the City's Rights-of-Way, Grantee shall apply for and obtain appropriate permits from the City, and give appropriate notices to any other Grantees, licensees or permittees of the City, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.
- 12.2.5 When Facilities pass over or under private or publicly owned property it shall be Grantee's sole responsibility to obtain all necessary permission from the owner thereof before commencing work, and to notify all utility companies and property owners who may be subject to damage or inconvenience during such work.

### 12.3 Compliance with Construction and Safety Standards.

Grantee will construct and maintain the Cable System using applicable City codes and the following safety codes and construction standards:

1. NEC – the National Electrical Code;
2. NESC – the National Electrical Safety Code;
3. OSHA – the Occupational Safety and Health Act; and
4. WISHA – the Washington Industrial Safety and Health Act.

Nothing herein shall preclude Grantee from raising any and all defenses it may have under applicable codes.

### 12.4 Construction and Work Permits, Licenses and Permission.

Grantee agrees to file for and secure any required permits and/or licenses prior to its

commencement of any activity in the public Right-of-Way. Grantee shall notify the City when permitted work is completed to facilitate inspection.

#### 12.5 Construction Area Safety and Cleanup.

Grantee agrees to inspect its contractor(s) on a regular basis and ensure that both its personnel and contractor(s) provide clean-up of all workplaces and adhere to industry safety as well as all state and local safety standards. Grantee shall provide specified periodic reports of its inspections to the City.

#### 12.6 Relocation.

Upon thirty (30) days' prior written notice to Grantee (except in the case of emergency), the City shall have the right, as detailed in RCW 35.99.060, to require Grantee to relocate any part of Grantee's Cable System within the Right-of-Ways when required for any public work, capital improvement or when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee to the extent permitted by Washington law. Should Grantee fail to remove or relocate any such facilities by a reasonable date established by the City or in the case of an emergency, City may effect such removal or relocation, and the expense thereof shall be paid by Grantee to the extent permitted by Washington law, including all costs and expenses incurred by City due to Grantee's delay. If City requires Grantee to relocate its facilities located within the Right-of-Ways, City shall make a reasonable effort to provide Grantee with an alternate location within the Right-of-Ways.

#### 12.7 Restoration of City's Rights-of-Way.

Whenever Grantee disturbs the surface of any Right-of-Way for any purpose, the City shall be responsible for restoration of the City's Right-of-Way and its surface within the area affected by the excavation unless the City authorizes the Grantee in the street use permit to perform such restoration work. The cost of all restoration work, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the City's Rights-of-Way shall be properly safeguarded for the prevention of accidents.

#### 12.8 Maintenance and Quality of Work.

12.8.1 The Cable System shall be constructed in compliance with generally accepted industry standard.

12.8.2 The Cable System shall be constructed and maintained so as not to interfere with sewers, water pipes, conduits or any other property of the City, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the City's Rights-of-Way by or under the City's authority.

12.8.3 Grantee shall operate the Cable System so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, at its own expense, shall repair, renew, change and improve its Facilities from time to time as may be necessary to accomplish this purpose.

12.8.4 Grantee shall not construct the Cable System in any manner that requires any Subscriber to install any cable, wire, conduits or other facilities, under or over a Right-of-Way.

12.9 Acquisition of Facilities.

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

12.10 Reservation of City Right-of-Way Rights.

Nothing in this Franchise shall prevent the City from constructing, maintaining, or repairing any City Right-of-Way, or public work or improvement in the City's Rights-of-Way. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of the Cable System. However, if any of the Cable System will interfere with the construction, maintenance, or repair of any City Right-of-Way or public work or improvement in the City's Rights-of-Way, at its own expense the Grantee shall remove or relocate the Cable System as the City directs. Should the Grantee fail to remove, adjust or relocate the Facilities by the date established by the City Engineer's written notice to Grantee, the City may effect such removal, adjustment or relocation and recover the cost thereof from the Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

12.11 Reservation of Rights and Privileges.

Nothing in this Franchise shall deprive the City of any rights or privileges that it now has, or that may hereafter be conferred upon it, including any rights to exercise its police powers in the regulation, control, and use of the Rights-of-Way.

12.12 Street Vacation.

If any street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated street, Grantee shall, without delay or expense to the City, remove its Facilities used exclusively for the provision of Cable Service from such street and the expense thereof shall be paid by Grantee.



### 12.13 Discontinuing Use of Facilities.

Whenever Grantee intends to discontinue using any Facility within the City's Rights-of-Way exclusively for the provision of Cable Service, Grantee shall submit for the approval of the authorizing City department a complete description of the Facility and the date on which the Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place. Notwithstanding the Grantee's request that any such Facility remain in place, the City may require the Grantee to remove the Facility from the City's Right-of-Way or modify or maintain the Facility to protect the public health and safety or otherwise serve the public interest. The City may require the Grantee to perform a combination of modification, maintenance, and/or removal of the Facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the Facility as directed by the City, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for, all necessary repairs and relocations of the Facility, as well as maintenance of the City's Right-of-Way, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

### 12.14 Hazardous Substances.

12.14.1 Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to the Cable System in the City's Rights-of-Way. For purposes of this Subsection 12.14, "Hazardous Substances" shall be all substances so characterized in RCW 70.105D.020(13).

12.14.2 Grantee shall maintain and inspect the Facilities located in the City's Rights-of-Way and immediately inform the City of any release of Hazardous Substances. Upon reasonable notice to Grantee, the City may inspect the Facilities in the City's Rights-of-Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to the Facilities. In removing or modifying the Facilities as provided in this Franchise, Grantee shall also remove all residue of Hazardous Substances related thereto; provided, however, if it is determined that the Facilities did not cause the release of Hazardous Substances, Grantee shall have no duty to remove such substances.

12.14.3 Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of Hazardous Substances arising from, connected to or incident to the Grantee's Facilities in the City's Rights-of-Way.

### 12.15 Undergrounding of Cable.

Grantee is strongly encouraged to locate and construct its present and future cables and other Facilities underground. Grantee shall install cables or other Facilities underground wherever and at the same time existing utilities in the immediate vicinity are installed underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed

underground. Previously installed aerial cable shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the City or applicable state law, or in the event that a telecommunications utility or a public utility decides to underground its facilities on a voluntary basis, unless the City grants an exception.

#### 12.16 Construction Codes.

Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal relocation of the Grantee's lines, cables, and other appurtenances from the property in question at Grantee's expense.

#### 12.17 Pruning of Trees.

Within ninety (90) days after the City provides notice to Grantee that another Cable Operator has a similar provision in its franchise agreement, Grantee shall comply with the provision in this section with respect to its construction in the rights-of-way with respect to its pruning of trees, and shall make every effort to avoid unnecessary pruning of any trees or vegetation in the vicinity of its facilities. Grantee shall also make every effort to avoid damaging any trees or vegetation in the vicinity of its facilities in the rights-of-way.

##### 12.17.1 Trees on Public Property.

12.17.1.1 Grantee shall apply for a tree permit to prune a tree on public property in accordance with chapter 19.10 of the Mercer Island City Code (MICC) as now enacted or hereafter amended as it relates to its construction in the rights-of-way.

12.17.1.2 Grantee shall provide 7 days' advance notice to the City's Right-of-Way Manager before its pruning of trees on public property. Grantee shall also provide 7 days' advance notice to the adjacent property owners before pruning a tree on public property.

12.17.1.3 Any Grantee pruning shall be supervised by the City's Right-of-Way Manager or Arborist to minimize damage to the tree and to ensure best practices are employed.

12.17.1.4 All Grantee's tree pruning operations should comply with the Manual on Uniform Traffic Control Devices (MUTCD) on temporary traffic control standards when utilizing the City's Right-of-Way.

12.17.2 Trees on Private Property. Grantee shall not prune any trees on private property, unless Grantee has the express, written permission of the property owner and a tree permit is obtained, if applicable.

12.17.3 The City shall not be liable for any damages, injuries, or claims arising from Grantee's actions under this section.

### **SECTION 13. TRANSFER OR ASSIGNMENT**

- 13.1 Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined as an acquisition of 50% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (1) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (2) a transfer to an entity directly or indirectly owned or controlled by CenturyLink Inc. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.
- 13.2 Except as allowed in this Section 13, the Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person without the prior written consent of the City, which consent shall not be unreasonably withheld.
- 13.3 The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stock ownership but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented thereto.
- 13.4 The parties to the sale, transfer or change of control shall make a written request to the City for its approval of a sale, transfer or change of control and shall furnish all information required by law.
- 13.5 The City may condition said sale, transfer or change of control upon such terms and conditions as it deems reasonably appropriate, including, for example, any adequate guarantees or other security, as allowed by applicable law. Additionally, the prospective controlling party or transferee shall effect changes as promptly as practicable in the operation of the Cable System, if any changes are necessary, to cure any violations or defaults presently in effect or ongoing.

- 13.6 The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all information required by law, such as a complete FCC Form 394. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.
- 13.7 Within thirty (30) days of any transfer, sale or change of control, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee or new controlling entity. In the event of a sale or transfer of ownership, the transferee shall also file its written acceptance agreeing to be bound by all of the provisions of this Franchise. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise and will not be required to file an additional written acceptance. The approval of any change in control shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise.
- 13.8 Notwithstanding the foregoing, the City's consent shall not be required for a hypothecation or an assignment of Grantee's interest in the Franchise in order to secure indebtedness or for a transfer to an intra-company Affiliate, provided that the Grantee must reasonably notify the City within thirty (30) days and the Affiliate must have the requisite legal, financial and technical capability.

#### **SECTION 14. PROCEDURES IN THE EVENT OF EXPIRATION, TERMINATION, REVOCATION, OR NON-RENEWAL**

- 14.1 Continuity of Service.
- 14.1.1 Grantee shall operate the Cable System pursuant to this Franchise without interruption, except as otherwise provided by this Franchise. If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, Grantee shall, at the City's request, as trustee for its successor in interest, operate the Cable System for a temporary period (the "transition period") as necessary to maintain service to Subscribers and give Subscribers an opportunity to get another provider.
- 14.1.2 During the transition period, Grantee shall neither sell any of the Cable System assets serving City customers nor make any physical, material, administrative, or operational change that would tend to degrade the quality of service to Subscribers, decrease Gross Revenues, or materially increase expenses without the express permission, in writing, of the City.
- 14.1.3 The transition period shall be no longer than the reasonable period required to arrange for an orderly transfer of the Cable System to the City or for Subscribers to get another provider, unless mutually agreed to by Grantee and the City. During the transition period, Grantee will continue to be

obligated to comply with the terms and conditions of this Franchise, and applicable laws and regulations.

- 14.1.4 If Grantee abandons the Cable System during the Franchise term or fails to operate the Cable System in accordance with the terms of this Franchise during any transition period, the City, at its option, may operate the Cable System, designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City or until the Franchise is revoked and a new grantee selected by the City is providing service or Subscribers are given a reasonable period of time to get a new provider, or obtain an injunction requiring Grantee to continue operations.

## **SECTION 15. REGULATION OF RATES AND CHARGES, CITY REGULATION**

To the extent consistent with state and federal law, Grantee's rates and charges shall be subject to City regulation and approval.

### 15.1 Reserved City Authority.

The City reserves all regulatory authority arising from the Cable Television Consumer Protection and Competition Act of 1992, as now in effect or hereafter amended.

## **SECTION 16. RECORDS AND REPORTS**

### 16.1 Open Records.

- 16.1.1 Grantee shall maintain Records of its operations that are open and accessible to the City. The City shall have the ability to inspect such Records of the Grantee as are reasonably necessary to monitor compliance with the Franchise at a local office during Normal Business Hours and upon reasonable notice. Such notice shall specifically reference the Section of the Franchise that is under review, so that the Grantee may organize the necessary books and records for easy access by the City. Such notice shall not apply to the Public Records File required by the FCC. If any such Records are under the control of an Affiliated Entity or a third party or are stored in a computer, Grantee shall promptly take steps to secure access to such records as are reasonably necessary for the City's inspection. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the City's representative to view the books and records at the appropriate location.

- 16.1.2 Grantee acknowledges that information submitted to the City is subject to the Washington Public Records Act, chapter 42.56 RCW, and is open to public inspection, subject to any exceptions permitted by law (unless an exemption applies).

- 16.1.3 Grantee may identify documents submitted to the City that Grantee believes are

non-disclosable, such as trade secrets. Grantee shall prominently mark any document for which it claims confidentiality with the mark "Confidential," in letters at least one-half (1/2) inch in height, prior to submitting such document to the City. The City shall treat any document so marked as confidential and will not disclose it to Persons outside of the City, except as required by law and as provided herein. If the City receives a public disclosure request for any documents or parts of documents that Grantee has marked as "Confidential," the City shall provide the Grantee with written notice of the request, including a copy of the request. While it is not a legal obligation, the City, as a courtesy, will allow Grantee up to ten (10) business days to obtain and serve the City with a court injunction to prevent the City from releasing the documents. If Grantee fails to obtain a Court order and serve the City within the ten (10) business days, the City may release the documents. The City will not assert an exemption from disclosure on Grantee's behalf.

## 16.2 Annual Reports.

Grantee shall annually present a written report to the City (the "Annual Report"). Grantee shall submit the Annual Report no later than one hundred twenty (120) days after the close of its fiscal year. The Annual Report shall include information for the Grantee's operations within the City for the immediately preceding year, including, but not limited to:

16.2.1 Cable System structural and operating information;

16.2.2 Changes, additions or deletions made in the Cable System since the last Annual Report. Complete and accurate Cable System maps, which shall include but not be limited to detail of trunks, distribution lines, and nodes, shall be available at Grantee's offices for City review. In addition, the City may request a copy of the Cable System route maps annually or as needed to update the City's maps;

16.2.3 Cable System ownership, including all levels of Affiliated and Parent Corporations and controlling ownership percentages;

16.2.4 An organization chart for Grantee, listing its officers, directors, department heads, and supervisors for major activity centers by category including names, positions, and business addresses;

16.2.5 Cable Services provided on the Cable System, including services begun or dropped during the previous year;

16.2.6 A schedule of all Grantee's rates and charges with notations of changes occurring during the year and the dates of such changes;

16.2.7 For the Cable System in the City: (1) number of Qualified Living Units; (2) numbers of Subscribers of Basic Service and other Tiers of Cable Service; and (3) number of pay television units;

- 16.2.8 A summary of all Cable System outages in a form acceptable to the City. An outage includes a loss of one or more video or audio Channels of four hours or longer, but does not include instances where the sound or video is lost prior to its receipt by the Cable System;
- 16.2.9 An executive summary of Subscriber Complaints received in the previous year.
- 16.2.10 The current complaint procedures followed by the Grantee and the total number of Subscribers in the Franchise Area who received service credits from Grantee;
- 16.2.11 Annual proof-of-performance tests, showing performance of the Cable System with respect to applicable FCC technical standards and certification that all tests required by the FCC have been completed;
- 16.2.12 Copies of current form contracts between Subscribers and the Grantee;
- 16.2.13 A list of all petitions, applications, communications, and reports having a direct and material effect on the Cable System, submitted by the Grantee and its Parent Corporations to the FCC, the Securities and Exchange Commission or any other federal or state regulatory agency. Grantee shall make copies of any such documents and any related communications with the respective agencies available to the City upon request;
- 16.2.14 A copy of its equal employment opportunity plan and Form 396C or other applicable equal employment opportunity form filed with or submitted to the FCC; and
- 16.2.15 Financial information as follows:
1. To the extent available, financial statements for the Mercer Island Area Cable System and, separately, for the Cable System within the City, prepared in accordance with generally accepted accounting principles. For purposes of this Subsection, "Mercer Island Area Cable System" means the regional Cable System of which the Cable System serving the Franchise Area is a part;
  2. Such other information as the City may reasonably request;
  3. Grantee's (or ultimate Parent Corporation's) annual corporate report, including their audited financial statements; and Statement describing joint ventures or partnerships in which the Grantee owns at least a five percent (5%) interest.

### 16.3 Reports of Regulatory Violations.

Grantee shall provide copies to the City of any report, order, consent decree, or other formal determination of any regulatory agency having jurisdiction over Grantee pertaining to any alleged violation by Grantee of any applicable rule or law of the agency regarding Grantee's provision of Cable Services under this Franchise.

## **SECTION 17. EQUAL EMPLOYMENT**

### 17.1 Non-Discrimination in Employment and Benefits.

During the performance of this Franchise, Grantee agrees as follows:

1. Grantee shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, age, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Grantee will make affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, age, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but are not limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. The Grantee shall substitute the name of the subcontractor wherever the word "Grantee" appears in Subsection 17.1(A) and insert these revised provisions in all subcontracts for work covered by this Franchise.
3. By acceptance of this Franchise, Grantee is affirming that it complies with all applicable federal, state, and local non-discrimination laws.

### 17.2 Women and Minority Business Enterprises ("WMBE").

This Section shall apply upon ninety (90) days' notice from the City to Grantee that another Cable Operator has similar obligation in its franchise agreement.

- 17.2.1 Grantee shall use good faith efforts to promote and seek utilization of women and minority businesses for any subcontracting opportunities that arise in connection with this Franchise.



- 17.2.2 Efforts may include the use of solicitation lists, advertisements in minority community publications, breaking requirements into tasks or quantities that promote WMBE utilization, making schedule or requirement modifications likely to assist WMBE firms, targeted recruitment, and using minority community and public organizations to perform outreach.
- 17.2.3 Record-Keeping: Grantee shall maintain, for at least twenty-four (24) months after the expiration or earlier termination of this Franchise, relevant Records and information necessary to document all Grantee's solicitations to subcontractors and suppliers, all subcontractor and supplier proposals received, and all subcontractor and suppliers actually utilized in meeting Grantee's Franchise obligations. The City shall have the right to inspect and copy such Records.
- 17.2.4 Grantee shall ensure that all employees, particularly supervisors, are aware of, and adhere to, their obligation to maintain a working environment free from discriminatory conduct, including, but not limited to, harassment and intimidation of women or minority businesses.
- 17.2.5 Non-Discrimination: Grantee shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.

## **SECTION 18. REMEDIES FOR NON-COMPLIANCE**

### **18.1 Notice of Violation or Default.**

In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

### **18.2 Grantee's Right to Cure or Respond.**

The Grantee shall have forty-five (45) days from receipt of the City's written notice to: (1) respond to the City, contesting the assertion of noncompliance or default; or (2) to cure such default; or (3) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

### **18.3 Public Hearings.**

In the event the Grantee fails to respond to the City's notice, that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the City shall schedule a public hearing to investigate the alleged default. Such public hearing shall be held at the next regularly scheduled meeting of the City that is scheduled at a time that is no less than ten (10) business days

therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and shall provide the Grantee with a reasonable opportunity to be heard.

#### 18.4 Enforcement.

Subject to applicable federal and state law, in the event the City, after such public hearing, determines that the Grantee is in default of any provision of the Franchise, the City may:

1. Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or
2. In the case of a substantial default of a material provision of the Franchise, declare the Franchise to be revoked in accordance with the following:

The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City on a "de novo" basis and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the City's issuance of its decision to revoke the Franchise.

#### 18.5 Technical Violations.

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

1. Instances where a breach of the Franchise by the Grantee was a good faith error that resulted in no or minimal negative impact on its Subscribers within the Franchise Area; or
2. Instances where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

#### 18.6 Non-Waiver.

Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

### **SECTION 19. MISCELLANEOUS PROVISIONS**

#### 19.1 Compliance with Laws.

19.1.1 Subject to Subsection 1.5, Grantee shall comply with all applicable federal, and state laws and City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority and other agreements or contracts entered into with the City that specifically make such agreements or contracts subject to the enforcement provisions of this Franchise.

19.1.2 Nothing in this Franchise is intended to authorize the Grantee to engage in any activity that violates the law.

#### 19.2 Severability.

If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in this Franchise.

#### 19.3 No Recourse against City.

Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief, except where the Grantee's claim arises from acts or omissions of the City acting in a proprietary capacity, but only to the extent such relief is not prohibited by federal law. For purposes of this Subsection, the City shall not be considered to be acting in a proprietary capacity in granting, modifying, denying, terminating, or enforcing Franchises.

19.4 Action by Agencies or Courts.

Grantee shall promptly notify the City in the event that any agency of the federal government or the State of Washington or any court with competent jurisdiction requires the Grantee to act inconsistently with any provisions of this Franchise.

19.5 Other Cable Franchises.

The City shall not be limited or prevented by any provision in this Franchise from issuing any franchise, permit, license or other agreement of any kind for all of Grantee's Franchise Area or any portion thereof, to other cable providers. This provision shall not alter any rights of Grantee under Subsection 1.4.

19.6 Choice of Forum.

Any litigation between the City and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the King County Superior Court, and if in the federal courts, in the United States District Court for the Western District of Washington.

19.7 Force Majeure.

If Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, or sabotage, to the extent such event prevents performance by Grantee and such event is beyond Grantee's control, Grantee shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to get a substitute for such obligation to the satisfaction of the City. If Grantee claims a force majeure event, Grantee shall give prompt written notice of the same to the City and shall set forth its plan of action to meet the obligations of this Franchise once the force majeure event no longer prevents Grantee's performance.

19.8 Notice.

Unless otherwise agreed to by the parties, any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City:

City of Mercer Island  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

If to the Grantee:

Qwest Broadband  
Services, Inc., d/b/a CenturyLink  
ATTN: Public Policy  
931 14<sup>th</sup> Street, Suite 1230  
Denver, CO 80202


With a copy to:

Qwest Broadband Qwest Broadband Services,  
Inc., d/b/a CenturyLink  
1600 7<sup>th</sup> Ave.  
15<sup>th</sup> Floor  
Seattle, WA 98101

IN WITNESS WHEREOF, and with an intention to be fully and legally bound, Grantee and the City hereby execute this Franchise, which shall become effective pursuant to the City legislation authorizing it:

CITY OF MERCER ISLAND

QWEST BROADBAND SERVICES, INC.

  
By: JULIE UNDERWOOD  
Title: CITY MANAGER

  
By: John F. Jones  
Title: SUP Policy