

PLEASE NOTE SPECIAL MEETING TIME

CHEHALIS CITY COUNCIL AGENDA

CITY HALL

350 N MARKET BOULEVARD, CHEHALIS, WA 98532

Dennis L. Dawes, Position at Large
Mayor

Terry F. Harris, District 1, Mayor Pro Tem
Daryl J. Lund, District 2
Dr. Isaac S. Pope, District 4

Anthony E. Ketchum Sr., District 3
Chad E. Taylor, Position at Large
Bob Spahr, Position at Large

July 14, 2014

4:30 p.m.

EXECUTIVE SESSION

- | | | |
|---|-----|--|
| 1. <u>Executive Session Pursuant to RCW 42.30.110(1)(i) – Potential Litigation.</u> (City Manager, Community Development Director, Human Resources Administrator) | --- | |
|---|-----|--|

Regular Meeting of Monday, July 14, 2014

5:00 p.m.

ITEM

ADMINISTRATION
RECOMMENDATION

PAGE

- | | | |
|---|--|--|
| 2. <u>Call to Order.</u> (Mayor) | | |
| 3. <u>Pledge of Allegiance.</u> (Mayor) | | |

CITIZENS BUSINESS

This is an opportunity for members of the audience to address the council on matters not listed elsewhere on the agenda. Speaker identification forms are available at the door and may be given to the city clerk prior to the beginning of the meeting.

CONSENT CALENDAR

4. <u>Minutes of the Regular Meeting of June 23, 2014.</u> (City Clerk)	APPROVE	1
5. <u>Vouchers and Transfers.</u> (Finance Manager)	APPROVE	7
6. <u>Ordinance No. 931-B, Second and Final Reading -- Amending the Chehalis Municipal Code Pertaining to Firearms and Panhandling.</u> (City Manager, Police Chief)	PASS	9

ADMINISTRATION AND CITY COUNCIL REPORTS

7. <u>Administration Reports.</u>		
8. <u>Council Reports.</u>		
a. Councilor reports. (City Council)	INFORMATION ONLY	
b. Council committee reports. (City Council)	INFORMATION ONLY	

NEW BUSINESS

9. <u>Ordinance No. 930-B, First Reading -- Adopting Cable Television System Franchise Agreement between the City and Comcast Cable Communications Management, LLC.</u> (City Manager, City Attorney)	PASS	12
---	------	----

THE CITY COUNCIL MAY ADD AND TAKE ACTION ON
OTHER ITEMS NOT LISTED ON THIS AGENDA

NEXT REGULAR CITY COUNCIL MEETING WILL BE ON MONDAY, JULY 28, 2014

June 23, 2014

The Chehalis city council met in regular session on Monday, June 23, 2014, in the Chehalis city hall. Mayor Dawes called the meeting to order at 4:15 p.m. with the following council members present: Terry Harris, Bob Spahr, Daryl Lund, and Chad Taylor. Councilors Ketchum and Pope were absent (excused). Staff present included: Merlin MacReynold, City Manager; Bill Hillier, City Attorney; Judy Schave, City Clerk; and Peggy Hammer, Human Resources Administrator.

1. **Executive Session.** Mayor Dawes announced the council would be in executive session pursuant to RCW 42.30.110(1)(g) – evaluate qualifications; and RCW 42.30.140(4)(a) – collective bargaining for approximately 45 minutes and there would be no decision following conclusion of the executive session.

Mayor Dawes closed the executive session at 4:57 p.m. and announced the council would take a three minute recess before opening the regular meeting at 5:00 p.m. Additional staff included Glenn Schaffer, Police Chief; Judy Pectol, Finance Manager; Dennis Osborn, Community Development Director; Becky Fox, Court Administrator; Rick Sahlin, Public Works Director; and Don Schmitt, Street Superintendent. Members of the media included Dameon Pesanti from *The Chronicle*.

2. **Well City Award.** Wellness Committee Chair Becky Fox reported the committee was very excited to receive the Well City Award for 2014. She noted the city would receive a two percent premium discount of approximately \$28,000 in 2015.

Mayor Dawes presented the Well City Award (plaque) to Chairman Fox and certificates of achievement to each of the committee members, to include: Chairman Fox, Betty Brooks, Julie Hampson, Peggy Hammer, Judy Schave, and Don Schmitt. Committee members not in attendance include: Danyell Zavodsky, Melody Guenther, and Tracey Paddock. Mayor Dawes stated he couldn't thank the committee enough for all of their hard work.

3. **Citizens Business.** Holly St. Clair (371 Zandecki Road) reported a meeting was recently held at the Matrix (Coffeehouse) to discuss the dangers of oil trains passing through our area. Some of the concerns discussed included: safety, increased rail traffic, and environmental and economic impact.

Ms. St. Clair talked briefly about her personal concerns and her concern for others living near the tracks, including the Chehalis fire department. She provided the council with a copy of a draft resolution for their consideration, noting the Safe Rails Lewis County group is trying to get the resolution passed as soon as possible.

Mayor Dawes reported there are number of issues when it comes to rail that need to be taken into consideration. He noted he and the administration would work to see if they can come up with a resolution that the council could support.

4. **TIGER Grant for Corridor Improvement/Safety Projects from Blakeslee Junction to Grays Harbor.** Donald Seil from Puget Sound and Pacific Railroad (PSAP) provided information on the TIGER grant funding application submitted by the Port of Centralia. He noted the Port worked with PSAP to develop the grant application in order to acquire funding for infrastructure and capacity improvements on the PSAP line.

Mr. Seil reported the TIGER grant had been around for about six years and provides funding for transportation investment generating economic recovery, as well as preservation of existing routes and environmental concerns. He noted the Port's objective for the TIGER grant is to provide grade crossing safety improvements; improvements toward the safety of the infrastructure, and economic factors, such as local jobs and competitive growth.

Mr. Seil reported on the improvements that the grant funding would support in Lewis County, which will include:

- Track Improvements (3,000 ties in 4.4 miles)
- Track surfacing – 5 miles
- Upgrades to the bridge over the Skookumchuck River
- Partner with City of Centralia to review quiet zone for railroad horn reduction
- Enhance two crossings' warning protection devices
- Increase speed of trains

Community benefits would include: less delays at crossings, reduced emissions, enhanced crossing warning devices, and a positive ripple effect on the passenger corridor.

June 23, 2014

Mr. Seil noted their core purpose is to be the safest and most respected rail service provider in the world. He noted they can see growth coming and they need to be able to handle it to ensure the economic livelihood of the communities.

Mr. Seil talked briefly about the specifics of the TIGER grant application, to include:

- Seven (7) bridges - \$2 million for improvements
- Ties and Surfacing – 15 miles of ties; 20 miles of surfacing to increase speed
- Expansion of Line Capacity and Interchange Portal – Construct 8500' siding at Montesano; and, expand Blakeslee Junction three yard tracks to 8000'
- Enhance Livability – work with the City of Centralia to develop quiet zone, upgrade warning protection at two crossings, and close four passive warning crossings

Mr. Seil reported the plan fits into the long-term goals of the Washington State Department of Transportation Plan submitted two years ago to improve the track structure to the Port of Grays Harbor. He stated they see their growth in autos and grain continuing and need additional capacity. Mr. Seil suggested the city send a letter of support to the Port of Centralia for their application.

Councilor Spahr reported he was told passenger trains couldn't cross the PSAP line. Mr. Seil stated that would be a legal matter and he would have to research the answer. He noted it all has to do with their sales agreement with the railroad, and the lease agreements with their Class 1 carriers.

Councilor Spahr inquired about the possibility of oil trains running on the line. Mr. Seil reported they have three customers going through the permitting process at the Port of Grays Harbor, but he had no knowledge of what the outcome will be.

Mayor Dawes asked Mr. Seil if PSAP would be interested in the oil trains if permitted, or would they go through BNSF or Union Pacific. Ms. Seil stated PSAP would handle it because they own the line.

Mayor Dawes reported, when he first heard about the Port's TIGER grant application, he had concerns that some of the funding might be used by the Port to try to purchase the same portion of rail line that Chehalis and Lewis County are looking to purchase from the City of Tacoma. Mr. Seil stated the entire amount of the TIGER funds is to support the capacity of the PSAP railroad.

Mayor Dawes asked Mr. Seil if PSAP owned the section of rail line running from Blakeslee Junction to the Port of Centralia (that crosses Harrison Avenue). Mr. Seil noted that particular line is owned by Union Pacific, but PSAP leases it so they can service their customers at the Port.

Councilor Harris stated he was still at a loss in determining whether or not we'll be able to run passengers on the Tacoma rail line. Mr. Seil stated they would have to do some research on the agreements to find the answer to that question.

Mr. Seil reported PSAP has a matching fund of 30 percent on \$12.9 million project. He stated they hope to hear back in September on whether the grant application was successful.

5. Consent Calendar. Councilor Taylor moved to approve the consent calendar comprised of the following:

- a. Minutes of the regular meeting of June 9, 2014;
- b. Claim Vouchers No. 109481-109636 and Electronic Funds Transfer No. 52014 in the amount of \$640,306.85 dated June 13, 2014;
- c. Ordinance No. 931-B, first reading – amending the Chehalis Municipal Code pertaining to firearms and panhandling;

and

June 23, 2014

d. Approve collective bargaining agreement between the City and the International Association of Fire Fighters Local 2510.

Councilor Harris seconded the motion.

Police Chief Glenn Schaffer reported the ordinances on the books pertaining to firearms in public and in parks and panhandling have been around for a number of years and don't pertain any longer. He noted they've either been preceded by RCW or by case law and need to be removed from our current ordinances.

The motion carried unanimously.

6. Administration Reports.

a. **May Financial Report.** Finance Manager Judy Pectol reported some of the general fund revenues were still lagging. She noted the electricity tax was down because the revenue normally received in May was not received until June. Ms. Pectol reported the revenue for licenses and permits was also lagging. She noted those activities were starting to increase and the numbers would look a lot better in June.

Ms. Pectol stated she still had to do a budget amendment for the airport budget. She reported on the interest revenue, noting the money being held by Lewis County for the future debt payment was in an investment that only pays interest twice a year and the first payment should be received in September.

b. **Alternative Local Funding Options for City Street and Road Improvements.** City Manager MacReynold reported the repair and maintenance of our local city streets and roads has been an on-going discussion. He noted, over the last several years, there's also been a decline in state and federal funding for smaller jurisdictions.

City Manager MacReynold stated he and staff had been meeting over the last few months to talk about what could be done with regard to funding and came up with two possible funding sources.

1. Dedicate four percent of the city's annual sales and use tax towards local streets and road repair and maintenance
2. Create a Transportation Benefit District (TBD) and establish a \$20 vehicle license fee per qualifying vehicle

City Manager MacReynold believed these were viable funding sources and suggested the two revenues combined would bring in roughly \$230,000 to \$250,000 annually.

City Manager MacReynold provided the following proposed options for the council's consideration:

Option 1: An ordinance dedicating four (4) percent of the City's sales tax for street and road maintenance and improvements; (approximately \$130,000 annually)

Option 2: An ordinance establishing a TBD; and a resolution establishing a \$20 vehicle license fee to fund street and road maintenance and improvements; (approximately \$102,000 annually)

Option 3: An ordinance dedicating four (4) percent of the City's sales tax; an ordinance establishing a TBD; and a resolution establishing a \$20 vehicle license fee to fund street and road maintenance and improvements; (approximately \$232,000 annually)

Option 4: An ordinance establishing a TBD for street and road maintenance; and

Option 5: Take no action at this time.

Councilor Taylor thought there was a city in Whatcom County that did a special one cent gas tax per gallon and wanted to know if that option was available and how much it would bring in. City Manager MacReynold stated he would look into it.

June 23, 2014

Mayor Dawes asked if money was available, would we have the staff to get more projects done. Mr. Sahlin stated it was kind of late in the year to start changing plans for what they already have scheduled. He noted they already have about \$60,000 in projects that were not budgeted for this year.

City Manager MacReynold suggested they could build it into next year's budget, which will give them an opportunity to plan on how to implement it. He noted Councilor Lund was very kind in his proposal to give the street department more money this year; however, they already have a pretty aggressive program with some additional costs for the other unbudgeted projects.

Councilor Spahr asked if the proposed four percent would be over and above what we're currently spending. Mr. Sahlin stated it would be an additional four percent that would come from the general fund.

Councilor Spahr asked what qualified as a "qualifying vehicle" with regard to the proposed \$20 vehicle license fee. Mr. Sahlin noted the list comes from the Department of Licensing and includes vehicles such as cars and trucks, and they have to be owned by a resident of the city. Vehicles such as campers and trailers do not qualify. Councilor Spahr stated the current \$30 vehicle license fee was very popular and suggested if they start pushing that rate up it was going to be very unpopular.

Councilor Spahr inquired about the gas tax revenue received from the state. Mr. Sahlin reported it was budgeted in the arterial street fund, adding it was slowly declining each year because more people are driving hybrid vehicles and using less gas. He noted the nickel package added by the state a few years ago basically goes to the Washington State Department of Transportation for their projects and doesn't benefit the cities at all.

Councilor Spahr stated he would like to know how much gas tax we're collecting. Mr. Sahlin reported the beginning balance in the arterial street fund in 2014 was approximately \$120,000.

Mr. Sahlin noted if they decide to do a TBD it would be six months before we would see any revenue from the Department of Licensing.

Mayor Dawes stated they could also consider reducing the proposed vehicle license fee to \$10, but that would decrease the potential revenue by half. He agreed that the city streets are in serious need of repair and they need to do something. Mayor Dawes stated if the council decides to move forward he would like to build in some safeguards to make sure the money can only be used for street and road maintenance and repairs.

Councilor Taylor stated he would like to see what a one cent tax per gallon would look like. City Manager MacReynold stated he would see what they could come up with.

Councilor Harris stated he didn't like the idea of taking more money out of his pocket any more than anyone else does, but they can't continue to put it off. He suggested they consider Option 3.

Councilor Lund suggestion Option 5 since staff already said they couldn't do any more projects because they don't have the time or money. He stated he was also against imposing a \$20 vehicle license fee.

Mayor Dawes stated he would like to get a consensus from the council so he can give direction to City Manager MacReynold on which way to go. He stated he didn't like raising fees any more than anyone else either, but sometimes there comes a point when you have to do something.

Councilor Spahr stated he didn't have any problem dedicating four percent of the sales and use tax, but he would have to think hard about adding a \$20 vehicle license fee.

City Manager MacReynold reported the council has authority under state statute to charge up to \$20 per vehicle for the TBD, and beyond that a vote of the public would be required. He noted the council also has the option of having the public vote on any amount of money the TBD hopes to collect.

June 23, 2014

City Attorney Hillier stated it was important to note that they cannot put a vehicle license fee up for a vote unless they have a TBD in place. He noted they could also put a TBD in place without having any money come out of it. City Attorney Hillier reported the TBD would not garner any income until the council passes a resolution creating income, or puts a vote to the public.

Councilor Spahr stated he didn't know how many times the council raised the property tax in the last 20 years, but they might not be here talking about this if they would have taken small increments over the years. He suggested they need to take the one percent increase into consideration on an annual basis and ask themselves, "Can we really afford not to take it."

Councilor Harris suggested they put both options out there for them to vote on; noting that would give them some options to choose from and time to research the one cent per gallon fuel tax. He stated he also wouldn't mind finding out what the one percent property tax would bring in from year to year.

Councilor Harris stated the council is supposed to be the leaders in the community and they need to be able to make decisions that help the people; sometimes whether they like it, or not.

City Manager MacReynold suggested the administration could bring back a series of things for the council to consider. He noted they will obviously want to hold a public hearing to get some feedback from the public. City Manager MacReynold stated there were some sample ordinances included in the agenda packet, which could be finalized and brought back to the council for their consideration. He suggested they could also do a work session to discuss the options and ask further questions.

Mayor Dawes reported they could also have a public advisory vote and they wouldn't have to pass any ordinances. He noted the cost to do that would be about \$10,000, depending on when it goes on the ballot.

City Manager MacReynold stated the real question is the funding, which would require public input and consideration.

Mayor Dawes stated, at the very least, they could start out with a work session and a public hearing to outline the situation and provide alternatives.

Councilor Taylor suggested looking at what type of industry produces the most sales tax and go out and recruit something like it to open up shop in Chehalis.

Mayor Dawes stated its incumbent upon the city to do something, adding they can't wait for the state or feds because they're not there anymore.

Councilor Spahr asked if they could get a 10-year history on where the gas tax money has been going, so the people see that the money is disappearing slowly but surely.

7. Council Reports.

a. **Update From Councilor Taylor.** Councilor Taylor reported he attended a Twin Transit meeting last week where they held a public meeting to talk about service reductions to help bring their budget back in line. He noted there were several members of the public in attendance. Councilor Taylor reported he made a motion to reduce or cut service to Olympia and to restrict transit service on Sundays. He noted General Manager Rob LaFontaine would be bringing back his formal recommendation to the Transit Board on July 1.

b. **Update from Councilor Lund.** Councilor Lund wondered if the council would let staff look into talking to Weyerhaeuser Company about their property off of Riverside Drive, to see if they would be willing to donate it to the city. He noted it might be an opportunity for them to expand the area around the Chehalis-Centralia Railroad and Museum and the Veterans Memorial Museum or possibly use it for a transloading site. The consensus of the council was to have the administration contact Weyerhaeuser to see if they would be interested in donating the property to the city.

June 23, 2014

c. **Update From Councilor Harris.** Councilor Harris reported he attended the Chehalis Community Renaissance Team meeting, noting there were a lot of remembrances about Gail Shaw. He stated Mr. Shaw would never be forgotten, or duplicated.

d. **Update From Mayor Dawes.** Mayor Dawes reported he attended the ribbon cutting for the Community Farmers Market; a public meeting on the Chehalis Avenue Project; and the annual AWC Conference in Spokane, Washington. He noted marijuana was one of the top subjects of discussion at the conference this year. Mayor Dawes reported he also attended the "Chef's Night Out" event which raised a lot of money that would benefit United Way of Lewis County.

8. **Request to Name Little League Press Box at Stan Hedwall Park the "Virgil Bluhm Press Box and Storage Facility."** Community Development Director Dennis Osborn reported the city received a request from Rich Bunker to name the press box at Stan Hedwall Park, at the field known as Andy Sennes Field, the "Virgil Bluhm Press Box and Storage Facility." He noted the administration has no objection to the request.

Mr. Bunker reported Mr. Bluhm has been involved with Little League for nearly 50 years. He noted Mr. Bluhm wasn't in the best of health and felt it would be appropriate to recognize him for his contributions. Mr. Bunker reported there would be no cost to the city for this name change, adding all cost associated with a sign would be donated by the Bunker family.

Councilor Spahr agreed with Mr. Bunker, noting Mr. Bluhm was one of those guys who never asked for anything, he just gave. He stated it was the least they could do, adding he only wished they could do more.

Mayor Dawes stated he's known Mr. Bluhm for a number of years and thought the request was very appropriate.

Councilor Spahr moved that the Council name the press box at Andy Sennes Field the "Virgil Bluhm Press Box and Storage Facility."

The motion was seconded by Councilor Taylor and carried unanimously.

There being no further business to come before the council, the meeting adjourned 6:24 p.m.

Mayor

Attest:

City Clerk

SUGGESTED MOTION

I move that the council approve the minutes of the regular city council meeting of June 23, 2014.

CITY OF CHEHALIS
AGENDA REPORT

DATE: June 30, 2014
TO: The Honorable Mayor and City Council
FROM: Judy Pectol, Finance Manager *JP*
PREPARED BY: Michelle White, Accounting Tech II *MW*
SUBJECT: Vouchers and Transfers

ISSUE

Council approval is requested of the following financial transactions:

Claim Vouchers No. 109637 through 109752 in the amount of \$85,669.61 dated June 30, 2014 and the transfer of \$54,575.79 from the General Fund, \$604.00 from the Federal & State Grants Fund, \$169.29 from the Automotive Equipment Reserve Fund, \$21,999.96 from the Wastewater Fund, \$4,741.51 from the Water Fund, \$657.24 from the Storm & Surface Water Utility Fund, \$2,153.87 from the Airport Fund and \$767.95 from the Firemen's Pension Fund.

RECOMMENDATION/COUNCIL ACTION DESIRED



The administration recommends that the council approve the June 30, 2014 Claim Vouchers No. 109637 through 109752 in the amount of \$85,669.61.

SUGGESTED MOTION

I move to approve the June 30, 2014 Claim Vouchers No. 109637 through 109752 in the amount of \$85,669.61.

Reviewed by: *Michelle White*, City Manager

CITY OF CHEHALIS
AGENDA REPORT

DATE: June 30, 2014
TO: The Honorable Mayor and City Council
FROM: Judy Pectol, Finance Manager 
PREPARED BY: Michelle White, Accounting Tech II 
SUBJECT: Payroll Vouchers and Transfers

ISSUE

Council approval is requested of the following financial transactions:

Payroll Vouchers No. 37413 through 37487, Direct Deposit Payroll Vouchers No. 5090 through 5173 and Electronic Federal Tax Payment No. 137 dated June 30, 2014 in the amount of \$731,964.18 and the transfer of \$484,867.36 from the General Fund, \$8,563.63 from the Arterial Street Fund, \$87,413.23 from the Wastewater Fund, \$98,098.23 from the Water Fund, \$20,348.53 from the Storm & Surface Water Utility Fund, \$29,560.50 from the Airport Fund and \$3,112.70 from the Firemen's Pension Fund.

RECOMMENDATION/COUNCIL ACTION DESIRED

The administration recommends that the council approve the June 30, 2014 Payroll Vouchers No. 37413 through 37487, Direct Deposit Payroll Vouchers No. 5090 through 5173, and Electronic Federal Tax Payment No. 137 in the amount of \$731,964.18.

SUGGESTED MOTION

I move to approve the June 30, 2014, Payroll Vouchers No. 37413 through 37487, Direct Deposit Payroll Vouchers No. 5090 through 5173, and Electronic Federal Tax Payment No. 137 in the amount of \$731,964.18.

Reviewed by: , City Manager

CITY OF CHEHALIS

AGENDA REPORT

DATE: July 2, 2014
TO: The Honorable Mayor and City Council
FROM: Glenn Schaffer, Police Chief
SUBJECT: Ordinance No. 931-B Amending the Municipal Code Pertaining to Firearms and Panhandling

ISSUE

The City Attorney has determined that CMC 7.04.320(F)(1)(h) prohibiting weapons in city parks, and CMC 7.04.320(F)(1)(j) prohibiting soliciting of money or money or gifts are contrary to currently state law and should be respectively amended and repealed.

DISCUSSION

A recent call for service to a city park revealed that the Chehalis Municipal Code still contained a seldom used ordinance prohibiting the possession of a firearm in a city park. RCW 9.41.290 preempts our municipal ordinance pertaining to firearms, and states in part "Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality." Ordinance 931-B amends the Chehalis Municipal Code 7.04.320(F)(1)(h) to remove "firearms" from the list of prohibited items in city parks.

The Chehalis Municipal Code also contains an ordinance prohibiting a person from soliciting or asking for the payment of gifts or money in public parks or places, and this ordinance is contrary to state law. Ordinance 931-B repeals this ordinance, 7.04.320(F)(1)(j).

The council passed this ordinance on first reading on June 23, 2014.

RECOMMENDATION/COUNCIL ACTION DESIRED

The Administration recommends that the council pass Ordinance No. 931-B on second and final reading.

SUGGESTED MOTION

I move that the council pass Ordinance No. 931-B on second and final reading.

Reviewed by  City Manager

ORDINANCE NO. 931-B

**AN ORDINANCE OF THE CITY OF CHEHALIS,
WASHINGTON, AMENDING CHEHALIS MUNICIPAL
CODE 7.04.320(F)(1)(h) PERTAINING TO THE
POSSESSION, USE, OR DISCHARGE OF FIREARMS IN
PUBLIC PARKS AND REPEALING CHEHALIS
MUNICIPAL CODE 7.04.320(F)(1)(j) IN ITS ENTIRTY.**

WHEREAS, the City Council passed Ordinance No. 850-B, Section 1, in 2009, which prohibited a person from possession, use or discharge of a firearm in any public parks or public places located within the city limits of Chehalis at CMC 7.04.320(F)(1)(j); and

WHEREAS, the City Attorney has determined that CMC 7.04.320(F)(1)(h) – which the prohibited possession, use or discharge of a firearm in a city park – is preempted by RCW 9.41.290; and

WHEREAS, Ordinance No. 850-B, Section 1, in 2009, also prohibited any person from soliciting or asking for the payment or gift of any money in a public park or public place without the prior written permission of the city manager at CMC 7.04.320(F)(1)(j); and

WHEREAS, the City Attorney has determined that CMC 7.04.320(F)(1)(j) – which prohibited any person from soliciting or asking for the payment of gifts or money in public parks or public places – is contrary to current state law as drafted; and

WHEREAS, it is in the best interest of the city that Chehalis Municipal Code 7.04.320(F)(1)(h) be amended, and

WHEREAS, it is in the best interest of the city that Chehalis Municipal Code 7.04.320(F)(1)(j) be repealed;

**THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON, DO
ORDAIN AS FOLLOWS:**

Section 1. Section 7.04.320(F)(1)(h) is hereafter amended to read as follows:

No person shall possess, use, or discharge any air gun, BB gun, slingshot, or any bow and arrow in any public park, or use or discharge any such weapon in any public place, unless otherwise authorized as a part of any organized recreation program of the community services department or other public agency.

Section 2. Section 7.04.320(F)(1)(j) is hereafter repealed.

PASSED by the City Council of the city of Chehalis, Washington, and **APPROVED** by its Mayor at a regularly scheduled open public meeting thereof this 14th day of July, 2014.

Mayor

Attest:

City Clerk

Approved as to form and content:

City Attorney

**CITY OF CHEHALIS
AGENDA REPORT**

DATE: June 4, 2014

TO: The Honorable Mayor and City Council

FROM: William Hillier, City Attorney

SUBJECT: Ordinance No. 930-B - Adopting Cable Television System Franchise Agreement between the City and Comcast Cable Communications Management, LLC

ISSUE

The Cable Television System Franchise Agreement between the City and Comcast Cable Communications Management, LLC (formerly known as TCI Cablevision of Washington, Inc./Comcast of Twin Cities, Inc.) has expired. The city has negotiated a new agreement granting a nonexclusive franchise to Comcast to construct, operate, maintain, reconstruct, rebuild and upgrade a cable communications system within the corporate limits of the City.

DISCUSSION

Over the years, the City has had to a positive working relationship with Comcast. The administration has been working with Hans Hechtman, Director of Franchising and Government Affairs, to negotiate a new Franchise Agreement. Mr. Hechtman provided the administration with information on the updates made to the proposed draft agreement. He noted it's very similar to the previous agreement, and included the following edits:

- Section 2.6 – Grant of Other Franchises – Language updated.
- Section 9 - Education and Governmental Access – Reflects the current status and provides for change over time.
- Section 9 - No provisions for return lines, as that was something the City has not paid for to date and the upgrade has long since been finished. The same goes for the I-NET noted in the previous Franchise Agreement in Sections 9 and 10.

Mr. Hechtman noted other changes made to the proposed agreement were minor and few.

The term on the proposed Franchise Agreement shall be five (5) years from the effective date of the Franchise, and may be extended by mutual agreement of the parties for five (5) additional years.

As compensation for the use of the city's rights-of-way, or roads, Comcast shall pay as a Franchise Fee to the city, throughout the duration of this Franchise, an amount equal to

five (5%) percent of Comcast's gross revenues associated with the operation of their system.

This franchise agreement has been reviewed by the City Attorney's Office and the public works department and there are no objections to the content of the agreement.

RECOMMENDATION/COUNCIL ACTION DESIRED

The administration recommends the council pass Ordinance No. 930-B on first reading.

SUGGESTED MOTION

I move that the city council pass Ordinance No. 930-B on first reading.

Reviewed by:  _____, City Manager

ORDINANCE NO. 930-B

AN ORDINANCE OF THE CITY OF CHEHALIS, WASHINGTON, APPROVING AND ADOPTING THAT CERTAIN CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT BETWEEN THE CITY OF CHEHALIS, WASHINGTON, AND COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC; AND REPEALING ORDINANCE NO. 728-B, PASSED THE 28TH DAY OF OCTOBER, 2002.

WHEREAS, the current cable television franchise agreement between the City of Chehalis, Washington, (the "City"), and Comcast Cable Communications Management, LLC. (Comcast), formerly TCI Cablevision of Washington, Inc./Comcast of Twin Cities, Inc., has expired; and

WHEREAS, the City has negotiated a new agreement with Comcast, granting a nonexclusive franchise to Comcast to construct, operate, maintain, reconstruct, rebuild and upgrade a cable communications system within the corporate limits of the City; now, therefore,

THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The cable television franchise agreement between the City and Comcast, attached hereto and incorporated herein by this reference, shall be, and the same hereby is, approved and adopted.

PASSED by the City Council of the city of Chehalis, Washington, and **APPROVED** by its Mayor, at a regularly scheduled open public meeting thereof this _____ day of July, 2014.

Mayor

Attest:

City Clerk

Approved as to form and content:

City Attorney

(DRAFT)

**CABLE TELEVISION SYSTEM
FRANCHISE AGREEMENT**

Between

CHEHALIS, WASHINGTON

And

**COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC**

CABLE TV FRANCHISE AGREEMENT

Between City of Chehalis & Comcast Cable Communications Management, LLC

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

SECTION 1. DEFINITIONS.....6
"Access"6
"Access Center"6
"Access Channel"6
"Access Fees"6
"Activation" or "Activated"6
"Affiliated Entity" or "Affiliate"6
"Bad Debt"6
"Basic Service"7
"Broadcast Signal"7
"Cable Acts"7
"Cable Operator"7
"Cable Service"7
"Channel"7
"Connection"7
"Designated Access Provider"7
"Designated Distributor"7
"Downstream Channel"7
"Dwelling Unit"8
"Expanded Basic Service"8
"FCC"8
"Fiber Optic"8
"Franchise"8
"Franchise Area"8
"Franchise Fee"8
"Grantee"8
"Grantor"8
"Gross Revenues"8
"Headend" or "Hub"9
"Leased Access Channel"9
"Noncommercial"9
"Normal Business Hours"9
"Normal Operating Conditions"9
"Pay Service" or "Premium Service"10
"Person"10
"Rights-of-Way"10
"Road"10
"School"10

1	"Service Interruption"	10
2	"State"	10
3	"Subscriber"	10
4	"System" or "Cable System"	10
5	"Tier"	11
6	"Upstream Channel"	11
7	"Video Programming"	11
8		
9	SECTION 2. GRANT OF FRANCHISE.....	11
10	2.1 Grant	11
11	2.2 Use of Rights-of-Way	12
12	2.3 Duration	12
13	2.4 Effective Date	12
14	2.5 Franchise Nonexclusive	13
15	2.6 Grant of Other Franchises	13
16	2.7 Familiarity with Franchise	13
17	2.8 Effect of Acceptance	14
18	2.9 Police Powers	14
19	2.10 Franchise Area	14
20		
21		
22	SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS	15
23	3.1 Franchise Fee	15
24	3.2 Payments	15
25	3.3 Acceptance of Payment	15
26	3.4 Quarterly Franchise Fee Reports	15
27	3.5 Audits	15
28	3.6 Financial Records	15
29	3.7 Interest on Late Payments	16
30	3.8 Maximum Franchise Fee	16
31	3.9 Additional Commitments Not Franchise Fees	16
32	3.10 Payment on Termination	16
33		
34	SECTION 4. ADMINISTRATION AND REGULATION.....	16
35	4.1 General Provision	16
36	4.2 Rates and Charges	17
37	4.3 Rate Discrimination	17
38	4.4 Filing of Rates and Charges	17
39	4.5 Late Fees	18
40	4.6 Time Limits Strictly Construed	18
41	4.7 Performance Evaluation	18
42		
43	SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS.....	18
44	5.1 Indemnification	18
45	5.2 Insurance Requirements	20
46	5.3 Security	20
47		
48	SECTION 6. CUSTOMER SERVICE	21

1	6.1	Customer Service Standards.....	21
2	6.2	Subscriber Contracts.....	21
3	6.3	Subscriber Privacy.....	21
4	6.4	Customer Service Agreement and Manual.....	21
5			
6		SECTION 7. REPORTS AND RECORDS.....	22
7	7.1	Open Records.....	22
8	7.2	Confidentiality.....	22
9	7.3	Records Required.....	22
10	7.4	Copies of Federal and State Reports.....	23
11	7.5	Complaint File and Reports.....	23
12	7.6	Inspection of Facilities.....	23
13	7.7	False Statements.....	23
14			
15		SECTION 8. PROGRAMMING AND CHANNEL CAPACITY.....	24
16	8.1	Grantee Compliance.....	24
17	8.2	Broad Programming Categories.....	24
18	8.3	Obscenity.....	24
19	8.4	Parental Control Device.....	24
20	8.5	Complimentary Cable Service.....	24
21	8.6	New Developments.....	25
22			
23		SECTION 9. EDUCATIONAL AND GOVERNMENTAL ACCESS.....	25
24	9.1	Capital Fee.....	25
25	9.2	Access Reporting.....	25
26	9.3	Management and Control of Access Channel.....	25
27	9.4	Access Channel.....	25
28	9.5	Change in Technology.....	26
29	9.6	Access Channel on Lowest Level of Service.....	26
30			
31			
32		SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION.....	27
33	10.1	Construction.....	27
34	10.2	Relocation.....	28
35	10.3	Location of Facilities.....	28
36	10.4	Restoration of Rights-of-Way/Grantor Owned Property.....	28
37	10.5	Maintenance and Workmanship.....	29
38	10.6	Acquisition of Facilities.....	29
39	10.7	Discontinuing Use of Facilities.....	29
40	10.8	Undergrounding of Cable.....	30
41	10.9	Construction Codes.....	31
42	10.10	Construction and Use of Poles.....	31
43	10.11	Tree Trimming.....	31
44	10.12	Standards.....	31
45	10.13	Stop Work.....	32
46	10.14	Work of Contractors and Subcontractors.....	32
47			
48		SECTION 11. CABLE SYSTEM DESIGN AND CAPACITY.....	32

1	11.1	Equal and Uniform Service.....	32
2	11.2	Cable System Upgrade.....	33
3	11.3	Technical Performance	33
4	11.4	Cable System Performance Testing.....	33
5	11.5	Additional Tests.....	34
6			
7		SECTION 12. SERVICE EXTENSION.....	34
8	12.1	Service Availability	34
9			
10		SECTION 13. STANDBY POWER AND EAS.....	34
11	13.1	Standby Power	34
12	13.2	Emergency Alert Capability	35
13			
14		SECTION 14. FRANCHISE BREACHES; TERMINATION OF FRANCHISE	35
15	14.1	Informal Dispute Resolution.....	35
16	14.2	Procedure for Remedying Franchise Violations.....	35
17	14.3	Alternative Remedies.....	36
18	14.4	Assessment of Monetary Damages.....	37
19	14.5	Revocation.....	37
20	14.6	Removal.....	38
21			
22		SECTION 15. ABANDONMENT.....	39
23	15.1	Effect of Abandonment.....	39
24			
25		SECTION 16. FRANCHISE TRANSFER.....	39
26	16.1	Transfer of Ownership or Control.....	39
27			
28		SECTION 17. MISCELLANEOUS PROVISIONS.....	40
29	17.1	Preferential or Discriminatory Practices Prohibited.....	40
30	17.2	Notices	41
31	17.3	Costs to Be Borne by Grantee.....	41
32	17.4	Binding Effect.....	41
33	17.5	Authority to Amend.....	41
34	17.6	Venue.....	42
35	17.7	Governing Law	42
36	17.8	Captions	42
37	17.9	Construction of Franchise.....	42
38	17.10	No Joint Venture.....	42
39	17.11	Waiver.....	42
40	17.12	Severability	42
41	17.13	Entire Agreement.....	42
42	17.14	Compliance with Federal, State, and Local Laws.....	42
43	17.15	Customer Service Standards	43
44	17.16	Force Majeure	43
45			
46			
47			

1 CABLE TV FRANCHISE AGREEMENT
2

3 **SECTION 1. DEFINITIONS**

4 For the purposes of this Franchise and all exhibits attached hereto the following terms, phrases,
5 words and their derivations shall have the meanings given herein. When not inconsistent with
6 the context, words used in the present tense include the future, words in the plural include the
7 singular, and words in the singular include the plural. Words not defined shall be given their
8 common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

9 **"Access"**

10 means the availability for Noncommercial use by various governmental and educational
11 agencies, including Grantor and its designees, of particular channels on the System to receive
12 and distribute Video Programming to Subscribers, as permitted under applicable law, including,
13 but not limited to:

14 (A) "Educational Access" means Access where Schools are the primary users having
15 editorial control over programming and services.

16 (B) "Governmental Access" means Access where governmental institutions or their
17 designees are the primary users having editorial control over programming and services; and

18 (C) "Access" means Educational Access and Governmental Access, collectively.

19 **"Access Center"**

20 means a facility or facilities where signals are managed and delivered to the Grantee for
21 Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

22 **"Access Channel"**

23 means any Channel, or portion thereof, designated for Noncommercial Access purposes or
24 otherwise made available to facilitate or transmit Access programming.

25 **"Access Fees"**

26 means the Capital Fee paid to the Grantor by the Grantee in accordance with section 9.1 below.

27 **"Activation" or "Activated"**

28 means the status of any capacity on or part of the System wherein the use of that capacity or part
29 thereof may be made available without further installation of system equipment other than
30 Subscriber premise equipment, whether hardware or software.

31 **"Affiliated Entity" or "Affiliate"**

32 means when used in connection with Grantee any corporation, Person who owns or controls, is
33 owned or controlled by, or is under common ownership or control with, Grantee and its
34 successor corporations. Affiliated Entity or Affiliate also means any Person with whom Grantee
35 contracts to provide Cable Services on the Cable System.

36 **"Bad Debt"**

37 means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee,
38 but not collected after reasonable efforts by Grantee.

1 **"Basic Service"**
2 means any Cable Service tier which includes, at a minimum, the retransmission of local
3 television Broadcast Signals.

4 **"Broadcast Signal"**
5 means a television signal transmitted over the air to a wide geographic audience, and received by
6 a System off-the-air by antenna, microwave, satellite dishes or any other means.

7 **"Cable Acts"**
8 means the Cable Communications Policy Act of 1984, and the Cable Television Consumer
9 Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996
10 and any amendments thereto.

11 **"Cable Operator"**
12 means any Person or groups of Persons, including Grantee, who provides Cable Service over a
13 System and directly or through one or more Affiliates owns a significant interest in such System
14 or who otherwise control(s) or is(are) responsible for, through any arrangement, the management
15 and operation of such a System.

16 **"Cable Service"**
17 means the one-way transmission to Subscribers of Video Programming, or other programming
18 service and Subscriber interaction, if any, which is required for the selection or use of such
19 Video Programming or other programming service.

20 **"Channel"**
21 means a portion of the frequency band capable of carrying a Video Programming Service or
22 combination of Video Programming Services, whether by analog or digital signal, on a twenty-
23 four (24) hour per day basis or a portion thereof.

24 **"Connection"**
25 with regard to connections to public buildings, means installation of fiber optic or coaxial cable
26 or other System related facilities through the outer wall of the building.

27 **"Designated Access Provider"**
28 means the entity or entities designated by the Grantor to manage or co-manage Educational or
29 Governmental Access Channels and facilities. The Grantor may be a Designated Access
30 Provider.

31
32 **"Designated Distributor"**
33 means any entity authorized by Grantor to distribute Access Programming.

34 **"Downstream Channel"**
35 means a Channel capable of carrying a transmission from the Headend to remote points on the
36 System.

37 **"Dwelling Unit"**
38 means any residential building, or each portion thereof.

1 **"Expanded Basic Service"**

2 means cable programming services not included in the Basic Service and excluding premium or
3 pay-per-view services.

4 **"FCC"**

5 means the Federal Communications Commission or its lawful successor.

6 **"Fiber Optic"**

7 means a transmission medium of optical fiber cable, along with all associated electronics and
8 equipment capable of carrying Cable Service by means of electric lightwave pulses.

9 **"Franchise"**

10 means the document in which this definition appears, which is executed between Grantor and
11 Grantee, containing the specific provisions of the authorization granted and the contractual and
12 regulatory agreement created hereby.

13 **"Franchise Area"**

14 means the area within the jurisdictional boundaries of the Grantor.

15 **"Franchise Fee"**

16 includes any tax, fee or assessment of any kind imposed by the Grantor on the Grantee or
17 Subscribers, or both solely because of their status as such. The term Franchise Fee does not
18 include:

19 (A) Any tax, fee or assessment of general applicability, for example a utility tax.

20 (B) Capital costs which are required by the Franchise to be incurred by the Grantee
21 for educational or governmental access facilities, including the support required in Section 9.1;

22 (C) Requirements or charges incidental to the awarding or enforcing of the franchise,
23 including but not limited to, payments for bonds, letters of credit, insurance, indemnification,
24 penalties or liquidated damages; or

25 (D) Any fee imposed under Title 17, United States Code.

26
27 **"Grantee"**

28 Means Comcast Cable Communications Management, LLC or its lawful successor, transferee or
29 assignee.

30
31 **"Grantor"**

32 Means City of Chehalis.

33 **"Gross Revenues"**

34 means any and all revenue derived directly or indirectly by the Grantee, or by any other entity
35 that is a Cable Operator of the Cable System including Grantee's Affiliates, from the operation
36 of Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues
37 include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable
38 Services including Basic Service, any expanded tiers of Cable Service, optional Premium
39 Services; installation, disconnection, reconnection and change-in-service fees, Leased Access
40 Channel fees, all Cable Service lease payments from the Cable System, late fees and
41 administrative fees, revenues from rentals or sales of converters or other Cable System

1 equipment; advertising sales revenues (including local, regional and a pro rata share of national
2 advertising carried on the Cable System in the Franchise Area) net of commissions due to
3 advertising agencies that arrange for the advertising buy; the fair market value of consideration
4 received by the Grantee for use of the Cable System to provide Cable Service and accounted for
5 as revenue under GAAP; revenues from program guides, additional outlet fees, Franchise Fees,
6 revenue from interactive services to the extent they are considered Cable Services under federal
7 law, revenue from the sale or carriage of other Cable Services, and revenues from home
8 shopping, and other revenue-sharing arrangements. Gross Revenues shall include revenue
9 received by any entity other than the Grantee where necessary to prevent evasion or avoidance of
10 the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include
11 (i) to the extent consistent with GAAP, Bad Debt, provided, however, that all or part of any such
12 Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in
13 the period collected; (ii) the Capital Fee specified in subsection 9.1; (iii) any taxes on services
14 furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City
15 or other governmental unit and which are collected by the Grantee on behalf of said
16 governmental unit. The Franchise Fee is not such a tax.

17
18 The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent
19 with existing applicable law. If there is a change in federal law subsequent to the effective date
20 of this Franchise, such change shall not impact this Gross Revenues definition unless the change
21 specifically preempts the affected portion of the definition above.

22 **"Headend" or "Hub"**

23 means any Facility for signal reception and dissemination on a System, including cable,
24 antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast
25 Signals or other signals, equipment for the interconnection of the System with adjacent Systems
26 and interconnection of any networks which are part of the System, and all other related
27 equipment and Facilities.

28 **"Leased Access Channel"**

29 means any Channel or portion of a Channel commercially available for programming in
30 accordance with Section 612 of the Cable Act.

31 **"Noncommercial"**

32 means, in the context of Access Channels, that particular products and services are not promoted
33 or sold. This term shall not be interpreted to prohibit an Access Channel operator or programmer
34 from soliciting and receiving financial support to produce and transmit video programming on an
35 Access Channel, or from acknowledging a contribution, in the manner of the Corporation for
36 Public Broadcasting.

37 **"Normal Business Hours"**

38 means those hours during which most similar businesses in the community are open to serve
39 customers.

40 **"Normal Operating Conditions"**

41 means those service conditions which are within the control of the Grantee. Those conditions
42 which are not within the control of the Grantee include, but are not limited to, natural disasters,
43 civil disturbances, power outages, telephone network outages, and severe or unusual weather

1 conditions. Those conditions which are ordinarily within the control of the Grantee include, but
2 are not limited to, special promotions, rate increases, and maintenance or upgrade of the System.

3 **"Pay Service" or "Premium Service"**

4 means Video Programming or other programming service choices (such as movie channels or
5 pay-per-view programs) offered to Subscribers on a per-channel, per-program or per-event basis.

6 **"Person"**

7 means any natural person, sole proprietorship, partnership, joint venture, association, or limited
8 liability entity or corporation, or any other form of entity or organization.
9

10 **"Rights-of-Way"**

11 means land acquired or dedicated for public streets or roads, highways, avenues, lanes, alleys,
12 bridges, sidewalks, easements and similar public property located within the Franchise area.

13 **"Roads"**

14 means Rights-of-Way.

15 **"School"**

16 means any accredited educational institution including, for example, primary and secondary
17 schools (K-12), colleges and universities and excluding home schools and residential facilities.

18 **"Service Interruption"**

19 means the loss of picture or sound on one or more cable channels.

20 **"State"**

21 means the State of Washington.

22 **"Subscriber"**

23 means any Person who lawfully receives Cable Services provided by Grantee by means of the
24 System with Grantee's express permission.

25 **"System" or "Cable System"**

26 means a facility, consisting of a set of closed transmission paths and associated signal generation,
27 reception and control equipment that is designed to provide Cable Service which includes video
28 programming and which is provided to multiple Subscribers within a community, but such term
29 does not include (1) a facility that serves only to retransmit the television signals of one or more
30 television broadcast stations; (2) a facility that serves Subscribers without using any public right-
31 of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions
32 of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility
33 shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. §
34 541(c)) to the extent such facility is used in the transmission of video programming directly to
35 Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4)
36 an open video system that complies with federal statutes; or (5) any facilities of any electric
37 utility used solely for operating its electric utility systems. When used herein, the term "Cable
38 System" or "System" shall mean Grantee's Cable System in the Franchise Area.

1 **"Tier"**

2 means a category of Cable Services provided by the Grantee for which a separate rate is charged.

3 **"Upstream Channel"**

4 means a Channel capable of carrying a transmission to the Headend from remote points on the
5 System.

6 **"Video Programming"**

7 means programming provided by, or generally considered comparable to programming provided
8 by, a television broadcast station.

9
10 **SECTION 2. GRANT OF FRANCHISE**

11 **2.1 Grant**

12 (A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to
13 make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct,
14 operate, maintain, reconstruct, and upgrade a System for the purpose of providing Cable
15 Services, subject to the terms and conditions set forth in this Franchise. This Franchise shall
16 constitute both a right and an obligation to provide the Cable Services required by, and to fulfill
17 the obligations set forth in, the provisions of this Franchise.

18 (B) The Grantee, through this Franchise, is granted the right to operate its System
19 using the Grantor's Rights-of-Way within the Franchise Area in compliance with all lawfully
20 enacted applicable Grantor construction codes and regulations. Nothing in this Franchise shall be
21 deemed to waive the requirements of the other codes and ordinances of general applicability
22 lawfully enacted, or hereafter lawfully enacted, by the Grantor to the extent that the provisions of
23 the codes and ordinances do not have the effect of materially limiting the benefits or materially
24 expanding the obligations of the Grantee that are granted by this Franchise. The Grantee
25 specifically agrees to comply with the provisions of Grantor ordinances provided that in the
26 event of a conflict between the provisions of ordinances and the Franchise, the express
27 provisions of the Franchise shall govern. Grantee reserves the right to challenge provisions of
28 any ordinance, rule, regulation, resolution or other enactment of the Grantor that conflicts with
29 its contractual right granted herein.

30 (C) This Franchise shall not be interpreted to prevent the Grantor from imposing
31 additional conditions, including additional compensation conditions for use of the Rights-of-
32 Way, should Grantee provide service other than Cable Service, to the extent permitted by law.

33 (D) Grantee promises and guarantees, as a condition of exercising the privileges
34 granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of
35 Cable Service in the Franchise Area, or directly involved in the management or operation of the
36 System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

37 (E) No rights shall pass to Grantee by implication.

38 (F) This Franchise is intended to convey limited rights and interests only as to those
39 Rights-of-Ways in which the Grantor has an actual interest. It is not a warranty of title or
40 interest in any Rights-of-Way; it does not provide the Grantee with any interest in any particular

1 location within the Rights-of-Way; and it does not confer rights other than as expressly provided
2 in the grant hereof.

3 **2.2 Use of Rights-of-Way**

4 (A) Subject to Grantor's supervision and control, Grantee may erect, install, construct,
5 repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-
6 Way within the Franchise Area, such wires, cables (both coaxial and fiber optic), conductors,
7 ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other
8 property and equipment as are necessary and appurtenant to the operation of a System for the
9 provision of Cable Services within the Franchise Area. Grantee shall comply with all applicable
10 construction codes, laws, ordinances, and regulations, now in effect or enacted hereafter. This
11 grant does not include the installation, maintenance or construction, repair or replacement of any
12 wireless telecommunications facilities or equipment within Rights-of-Way or otherwise on
13 Grantor owned property or on property held in trust or used by the Grantor.

14 (B) Grantee must follow Grantor-established written requirements including all
15 Grantor codes, ordinances and other regulations regarding placement of System facilities in
16 Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any
17 event install System facilities in a manner that minimizes interference with the use of the Rights-
18 of-Way by others, including others that may be installing communications facilities. The
19 Grantor may require that System facilities be installed at a particular time, at a specific place or
20 in a particular manner as a condition of access to a particular Right-of-way; may deny access if
21 Grantee is not willing to comply with Grantor's requirements; and may remove, or require
22 removal of, any facility that is not installed in compliance with the requirements established by
23 Grantor, or which is installed without prior Grantor approval of the time, place or manner of
24 installation and charge Grantee for all the costs associated with removal; and may require
25 Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through
26 joint trenching and other arrangements. Grantee shall assume all Grantee's costs associated with
27 any requirement of Grantor in the exercise of its police powers or in furtherance of any public
28 improvement to move its System located in the Right-of-way.

30 **2.3 Duration**

31 The term of this Franchise and all rights, privileges, obligations and restrictions pertaining
32 thereto shall be five (5) years from the effective date of this Franchise, unless terminated sooner
33 as hereinafter provided. This Franchise may be extended by mutual agreement of the parties for
34 five (5) additional years.

35 **2.4 Effective Date**

36 The provisions of this Franchise shall be effective upon the written acceptance of this Franchise
37 by the Grantee, signed by its proper officers, filed with the Clerk of the Grantor within sixty days
38 from _____, 2014.

39 **2.5 Franchise Nonexclusive**

40 This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or
41 licenses granted by Grantor or its predecessors to any Person to use any property, Rights-of-
42 Way, easement, right, interest or license for any purpose whatsoever, including the right of

1 Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed
2 Grantee hereunder. Grantor may at any time grant authorization to use the Rights-of-Way for
3 any purpose not incompatible with Grantee's authority under this Franchise and for such
4 additional Franchises for Systems as Grantor deems appropriate.

5 **2.6 Grant of Other Franchises**

6 (A) The Grantee acknowledges and agrees that the Grantor reserves the right to grant
7 one or more additional franchises to provide Cable Service within the Franchise Area; provided,
8 the Grantor agrees that it shall amend this Franchise to include any material terms or conditions
9 that it makes available to the new entrant within ninety (90) days of the Grantee's request, so as
10 to ensure that the regulatory and financial burdens on each entity are materially equivalent.
11 "Material terms and conditions" include but are not limited to: franchise fees; insurance; system
12 build-out requirements; security instruments; public, education and government Access Channels
13 and support; customer service standards; required reports and related record keeping; and notice
14 and opportunity to cure breaches. If any such additional or competitive franchise is granted by
15 the Grantor which, in the reasonable opinion of the Grantee, contains more favorable or less
16 burdensome terms or conditions than this Franchise, the Grantor agrees that it shall amend this
17 Franchise to include any more favorable or less burdensome terms or conditions in a manner
18 mutually agreed upon by Grantor and Grantee.

19
20 (B) In the event an application for a new cable television franchise is filed with the
21 Grantor proposing to serve the Franchise Area, in whole or in part, the Grantor shall provide
22 notice of such application.

23
24 (C) In the event that a wireline multichannel video programming distributor provides
25 video service to the residents of the Grantor under the authority granted by federal or State
26 legislation or other regulatory entity, the Grantee shall have a right to request Franchise
27 amendments that relieve the Grantee of regulatory burdens that create a competitive
28 disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking
29 to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline
30 competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise
31 place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be
32 amended or repealed in order to eliminate the competitive disadvantage. The Grantor shall not
33 unreasonably withhold consent to the Grantee's petition.

34 35 **2.7 Familiarity with Franchise**

36 The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreement
37 granted herein, that it has carefully read and fully comprehends the terms and conditions of this
38 Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions,
39 terms and conditions herein. The Grantee further acknowledges and states that it has fully
40 studied and considered the requirements and provisions of this Franchise, and finds that the same
41 are commercially practicable at this time and consistent with all local, state and federal laws and
42 regulations currently in effect, including the Cable Act.

1 **2.8 Effect of Acceptance**

2 By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right
3 to issue and enforce the Franchise; (2) agrees that it will not oppose the Grantor's intervening in
4 any legal or regulatory proceeding affecting the System; (3) accepts and agrees to comply with
5 each and every provision of this Franchise; and (4) agrees that the Franchise was granted
6 pursuant to processes and procedures consistent with applicable law, and that it will not raise any
7 claim to the contrary.

8 **2.9 Police Powers**

9 Grantee's rights hereunder are subject to the police powers of Grantor to adopt and enforce
10 ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to
11 comply with all applicable laws, ordinances and regulations enacted pursuant to the police
12 powers of Grantor, or hereafter enacted in accordance therewith, by Grantor or any other legally-
13 constituted governmental unit having lawful jurisdiction over the subject matter hereof. Any
14 conflict between the provisions of this Franchise and any other present or future lawful exercise
15 of Grantor's police powers shall be resolved in favor of the latter.

16
17 **2.10 Franchise Area**

18 Grantee shall provide Cable Service, as authorized under this Franchise, within the Franchise
19 Area.
20

21 **SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS**

22 **3.1 Franchise Fee**

23 As compensation for the use of Grantor's Rights-of-Way or Roads, Grantee shall pay as a
24 Franchise Fee to Grantor, throughout the duration of this Franchise, an amount equal to five
25 (5%) percent of Grantee's Gross Revenues associated with Grantee's operation of its System in
26 the Franchise Area. Accrual of such Franchise Fee shall commence as of the effective date of
27 this Franchise.

28 **3.2 Payments**

29 Grantee's Franchise Fee payments to Grantor shall be computed quarterly for the preceding
30 calendar quarter ending September 30, December 31, March 31 and June 30. Each quarterly
31 payment shall be due and payable no later than forty-five (45) days after said dates.

32 **3.3 Acceptance of Payment**

33 No acceptance of any payment shall be construed as an accord by Grantor that the amount paid
34 is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of
35 any claim Grantor may have for further or additional sums payable or for the performance of any
36 other obligation of Grantee.

37 **3.4 Quarterly Franchise Fee Reports**

38 Each payment shall be accompanied by a written report to Grantor, verified by an officer of
39 Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's
40 Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross

1 Revenues of the System and shall be drafted in accordance with generally accepted accounting
2 principles.

3 **3.5 Audits**

4 On an annual basis, upon thirty (30) days' prior written notice, Grantor shall have the right to
5 conduct an independent audit of Grantee's records related to this Franchise and to re-compute
6 any amounts determined to be payable under this Franchise. Provided Grantee cooperates in
7 making all relevant records available upon request, Grantor will in good faith attempt to
8 complete each audit within six (6) months, and the audit period shall not be any greater than the
9 previous three (3) years, unless Grantor has information relating to previous years beyond the
10 three (3) which raises doubt as to the accuracy of payments made under this or previous
11 Franchises. Any additional amounts due to the Grantor as a result of the audit shall be paid
12 within sixty (60) days following written notice to the Grantee by the Grantor, which notice shall
13 include a copy of the audit findings. If the audit shows that Franchise Fees have been underpaid,
14 by three percent (3%) in a calendar year or more, Grantee shall pay the total cost of the audit.

15 **3.6 Financial Records**

16 Grantee agrees to meet with a representative of the Grantor upon written request to review
17 Grantee's method of record-keeping, financial reporting, the computing of Franchise Fee
18 obligations and other procedures, the understanding of which the Grantor deems necessary for
19 reviewing reports and records that are relevant to the enforcement of this Franchise.

20 **3.7 Interest on Late Payments**

21 In the event any payment is not received within forty-five (45) days from the end of the calendar
22 quarter, Grantee shall pay, in addition to the payment or sum due, interest from the due date at an
23 interest rate of 1%, beginning on the forty-sixth (46th) day after the end of the calendar quarter
24 and continuing every day thereafter until the seventy-fifth (75th) day after the end of the calendar
25 quarter, or until payment is made, whichever is earlier. If any payment is not received within
26 seventy-five (75) days after the end of the calendar quarter, Grantee shall be assessed a late fee in
27 the additional amount of two hundred dollars (\$200.00) per day, beginning on the seventy-sixth
28 (76th) day after the end of the calendar quarter and continuing every day thereafter until paid.

29 **3.8 Maximum Franchise Fee**

30 The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a
31 Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the
32 duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent
33 (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide
34 that such excess amount shall be added to the Franchise Fee to be paid by Grantee to Grantor
35 hereunder, provided that all providers of Cable Service in the Franchise Area over which the
36 Grantor has jurisdiction are treated in an equivalent manner, and Grantee has received sixty (60)
37 days prior written notice from Grantor of such amendment.

38 **3.9 Additional Commitments Not Franchise Fees**

39 No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to
40 pay Franchise Fees. Although the total sum of Franchise Fee payments and additional
41 commitments set forth elsewhere in this Franchise may total more than five percent (5%) of
42 Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional

1 commitments herein are not Franchise Fees, nor are they to be offset or credited against any
2 Franchise Fee payments due to Grantor, nor do they represent an increase in Franchise Fees to be
3 passed through to Subscribers pursuant to any federal law. Access Fees are not to be offset
4 against and are not Franchise Fees.

5 **3.10 Payment on Termination**

6 If this Franchise terminates for any reason, the Grantee shall file with the Grantor within ninety
7 (90) calendar days of the date of the termination, a financial statement, certified by an
8 independent certified public accountant, showing the Gross Revenues received by the Grantee
9 since the end of the previous fiscal year. Within sixty (60) days of the filing of the certified
10 statement with the Grantor, Grantee shall pay any unpaid amounts as indicated. If the Grantee
11 fails to satisfy its remaining financial obligations as required in this Franchise, the Grantor may
12 do so by utilizing the funds available in a Letter of Credit or other security provided by the
13 Grantee.

14 **SECTION 4. ADMINISTRATION AND REGULATION**

15 **4.1 General Provisions**

16 (A) Grantor shall be vested with the power and right to administer and enforce the
17 requirements of this Franchise and the regulations and requirements of applicable law, including
18 the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted
19 under State and local law.

20 (B) Grantee shall comply with all applicable federal and state laws and regulations,
21 including regulations of any administrative agency thereof, as well as all Grantor ordinances,
22 resolutions, rules and regulations heretofore or hereafter adopted or established during the term
23 of the Franchise. Nothing in this Franchise shall limit or expand the Grantor's right of eminent
24 domain under State law.

25 (C) The Grantee and Grantor shall be entitled to all rights and be bound by all
26 changes in local, State and federal law that occur subsequent to the effective date of this
27 Franchise. The Grantee and the Grantor acknowledge that their rights and obligations under this
28 Franchise are explicitly subject to all such changes. However, should such changes in law
29 substantially reduce Grantee's obligation to pay or provide Franchise Fees, or any other support
30 required in this Franchise, the Grantor and Grantee agree to enter into good faith negotiations for
31 a six (6) month period, at the request of either party, to resolve the issues. If resolution is not
32 reached within the six (6) month period, and the period has not been extended by mutual
33 agreement, the term of this Franchise shall be reduced to three (3) years, and the parties shall
34 commence the renewal process in accordance with the Cable Act.

35 **4.2 Rates and Charges**

36 All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation
37 by Grantor to the full extent authorized by applicable federal, State and local laws.

38 **4.3 Rate Discrimination**

39 All Grantee rates and charges shall be published (in the form of a publicly-available rate card),
40 made available to the public, and shall be non-discriminatory as to all Persons of similar classes,
41 under similar circumstances and conditions. Grantee shall apply its rates in accordance with

1 governing law. Grantee shall permit Subscribers to make any in-residence connections the
2 Subscriber chooses without additional charge and without penalizing the Subscriber therefore.
3 However, if any in-home connection requires service from Grantee due to signal quality, signal
4 leakage or other factors, caused by improper installation of such in-home wiring or faulty
5 materials of such in-home wiring, the Subscriber may be charged appropriate service charges by
6 Grantee. Nothing herein shall be construed to prohibit:

7
8 (A) The temporary reduction or waiving of rates or charges in conjunction with valid
9 promotional campaigns;

10 (B) The offering of reasonable discounts to similarly situated Persons.

11 (C) The offering of rate discounts for either Cable Service generally, or data
12 transmission to governmental agencies or educational institutions; or

13 (D) The offering of bulk discounts for Multiple Dwelling Units.

14 **4.4 Filing of Rates and Charges**

15 (A) Throughout the term of this Franchise, Grantee shall maintain on file with Grantor
16 a complete schedule of applicable rates and charges for Cable Services provided under this
17 Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and
18 charges under temporary reductions or waivers of rates and charges in conjunction with
19 promotional campaigns. As used in this subsection, no rate or charge shall be considered
20 temporary if Subscribers have the ability over a period greater than twelve (12) consecutive
21 months (or such other period as may be approved by Grantor) to purchase Cable Services at such
22 rate or charge.

23 (B) On an annual basis, Grantee shall provide a complete schedule of current rates
24 and charges for any and all Leased Access Channels, or portions of such Channels, provided by
25 Grantee.

26 **4.5 Late Fees**

27 If the Grantee assesses any kind of penalty fee for late payment, such fee shall comply with
28 applicable law.

29 **4.6 Time Limits Strictly Construed**

30 Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall
31 be deemed to be of the essence, and any failure of Grantee to perform within the allotted time
32 may be considered a material breach of this Franchise. However, in the event that Grantee is
33 prevented or delayed in the performance of any of its obligations under this Franchise by reason
34 beyond the reasonable control of Grantee, Grantee shall have a reasonable time, under the
35 circumstances, to perform the affected obligation under this Franchise or to procure a substitute
36 for such obligation which is satisfactory to Grantor.

37 **4.7 Performance Evaluation**

38 (A) Special evaluation sessions may be held at any time upon request by Grantor
39 during the term of this Franchise.

1 (B) All evaluation sessions shall be open to the public and announced at least one
2 week in advance in a newspaper of general circulation in the Franchise Area. Grantor may
3 notify its Subscribers of evaluation sessions by announcement on its Access Channel.

4 (C) Topics which may be discussed at any evaluation session may include, but are not
5 limited to, Cable Service rate structures; Franchise Fees; liquidated damages; free or discounted
6 Cable Services; application of new technologies; system performance; Cable Services provided;
7 programming offered; customer complaints; privacy; amendments to this Franchise; judicial and
8 FCC rulings; line extension policies; and Grantor's or Grantee's rules; provided that nothing in
9 this subsection shall be construed as requiring the renegotiation of this Franchise.

10 (D) During evaluations under this Section, Grantee shall fully cooperate with Grantor
11 and shall provide such information and documents as Grantor may require to perform the
12 evaluation.
13

14 SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

15 5.1 Indemnification

16 (A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its
17 officers, officials, boards, commissions, authorized agents and employees, harmless from any
18 action or claim for injury including death, damage, loss, liability, cost or expense, including
19 court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to
20 Person or property, including, without limitation, copyright infringement, defamation, and all
21 other damages in any way arising out of, or by reason of, any construction, excavation,
22 operation, maintenance, reconstruction, or any other act done under this Franchise, by or for
23 Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee its
24 agents or its employees. Grantee shall consult and cooperate with the Grantor while conducting
25 its defense of the Grantor.
26

27 (B) Indemnification for Relocation. Grantee shall indemnify Grantor for any
28 damages, claims, additional costs or expenses assessed against, or payable by, Grantor related to,
29 arising out of, or resulting, directly or indirectly, from Grantee's failure to remove, adjust or
30 relocate any of its facilities in the Streets in a timely manner in accordance with any relocation
31 required by Grantor.
32

33 (C) Additional Circumstances. Grantee shall also indemnify, defend and hold Grantor
34 harmless for any claim for injury, damage, loss, liability, cost or expense, including court and
35 appeal costs and attorneys' fees or expenses in any way arising out of:
36

37 (1) The grant of this Franchise;

38
39 (2) Any failure by Grantee to secure consents from the owners, authorized
40 distributors or licensees/licensors of programs to be delivered by the System.
41

42 (D) Procedures and Defense. If a claim or action arises, Grantor or any other
43 indemnified party shall tender the defense of the claim to Grantee, which defense shall be at
44 Grantee's expense. Grantor may participate in the defense of a claim and, in any event, Grantee
45 may not agree to any settlement of claims affecting Grantor without Grantor's written approval.

1
2 (E) Non-waiver. The fact that Grantee carries out any activities under this Franchise
3 through independent contractors shall not constitute an avoidance of or defense to Grantee's duty
4 of defense and indemnification under this Section.

5
6 (F) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee
7 timely written notice of any claim or of the commencement of any action, suit or other
8 proceeding covered by the indemnity in this Section. In the event any such claim arises, the
9 Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the
10 Grantee shall have the obligation and duty to defend any claims arising thereunder, and the
11 Grantor shall cooperate fully therein.

12
13 (G) If separate representation to fully protect the interests of both parties is necessary,
14 such as a conflict of interest between the Grantor and the counsel selected by Grantee to
15 represent, the Grantor, Grantee shall pay expenses incurred by the Grantor in defending itself
16 with regard to any action, suit or proceeding indemnified by Grantee. The Grantor's expenses
17 shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the
18 reasonable value of any services rendered by the Grantor attorney or his/her assistants or any
19 employees of the Grantor or its agents but shall not include outside attorneys' fees for services
20 that are unnecessarily duplicative of services provided the Grantor by Grantee.

21
22 **5.2 Insurance Requirements**

23 (A) General Requirement. Grantee must have adequate insurance during the entire
24 term of this Franchise to protect the Grantor against claims for injuries to Persons or damages to
25 property which in any way relate to, arise from or are connected with this Franchise, or involve
26 Grantee, its agents, representatives, contractors, subcontractors and their employees.

27 (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance
28 with the minimum insurance limits herein set forth by the Grantor from time to time. The
29 Grantee shall obtain policies for the following initial minimum insurance limits:

- 30 (1) Commercial General Liability: Two million dollars (\$2,000,000)
31 aggregate limit per occurrence for bodily injury, personal injury and property damage;
32 (2) Automobile Liability: Two million dollars (\$2,000,000) combined single
33 limit per accident for bodily injury and property damage; and
34 (3) Employer's Liability: One million dollars (\$1,000,000).

35 (C) Endorsements.

- 36 (1) All policies shall contain, or shall be endorsed so that:
37 (a) The Grantor shall be designated as additional insured.
38 (b) The Grantee's insurance coverage shall be primary insurance with
39 respect to the Grantor, its officers, officials, boards, commissions, employees and
40 duly authorized agents. Any insurance or self-insurance maintained by the
41 Grantor, its officers, officials, boards, commissions, employees and agents shall
42 be in excess of the Grantee's insurance and shall not contribute to it; and

1 (c) Grantee's insurance shall apply separately to each insured against
2 whom a claim is made or lawsuit is brought, except with respect to the limits of
3 the insurer's liability.

4 (2) The insurance shall provide that the insurance shall not be cancelled or
5 materially altered so as to be out of compliance with the requirements of this Section
6 without thirty (30) days' written notice first being given to Grantor. If the insurance is
7 cancelled or materially altered so as to be out of compliance with the requirements of this
8 Section within the term of this Franchise, Grantee shall provide a replacement policy.
9 Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts
10 required, for the duration of this Franchise.

11 (D) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with
12 insurers with a Best's rating of no less than "A."

13 (E) Verification of Coverage. The Grantee shall furnish the Grantor with certificates
14 of insurance or a copy of the page of the policy reflecting blanket additional insured status. The
15 certificates for each insurance policy are to be signed by a Person authorized by that insurer to
16 bind coverage on its behalf. The certificates for each insurance policy are to be on standard
17 forms or such forms as are consistent with standard industry practices, and are to be received and
18 approved by the Grantor prior to the commencement of activities associated with this Franchise.
19 The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

20 **5.3 Security**

21 Upon the effective date of this Franchise, Grantee shall provide a performance bond in the
22 amount of \$25,000.00 to ensure the faithful performance of its responsibilities under this
23 Franchise and applicable law, including, by way of example and not limitation, its obligations to
24 relocate and remove its facilities and to restore Grantor Rights-of-Way and other property.
25

26 **SECTION 6. CUSTOMER SERVICE**

27 **6.1 Customer Service Standards**

28 Grantee shall, throughout the Franchise term, comply with FCC Customer Service Standards as
29 set forth in 47 C.F.R. §76.309(c) as currently enacted or hereinafter amended.

30 **6.2 Subscriber Contracts**

31 Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with
32 the terms of this Franchise.

33 **6.3 Subscriber Privacy**

34 Grantee will comply with privacy rights of Subscribers in accordance with applicable federal,
35 State and local laws.

36 **6.4 Customer Service Agreement and Manual**

37 (A) Grantee shall provide to Subscribers an accurate, comprehensive service
38 agreement and customer installation packet for use in establishing Subscriber service. This
39 material shall, at a minimum, contain the following:

- 1 (1) Grantee's procedure for investigation and resolution of Subscriber service
- 2 complaints.
- 3 (2) Services to be provided and rates for such services.
- 4 (3) Billing procedures.
- 5 (4) Service termination procedure.
- 6 (5) A description of the manner that will be used to provide notice of changes
- 7 in rates, service or service terms and conditions.
- 8 (6) A complete statement of the Subscriber's right to privacy.
- 9 (7) Converter and cable modem equipment policy.
- 10 (8) The name, address and phone number of the Person identified by the
- 11 Grantor as responsible for handling cable questions and complaints for the Grantor. This
- 12 information shall be prominently displayed in the installation packet.

13 (B) A copy of the installation packet shall be provided to each Subscriber at the time
14 of initial installation and any reconnection (excluding reconnections to the same Subscriber
15 within twelve (12) months), and at any time the packet is requested by the Subscriber. Grantee
16 shall make reasonable efforts to advise customers of any material changes in cable operation
17 policies.
18

19 **SECTION 7. REPORTS AND RECORDS**

20 **7.1 Open Records**

21 Grantor shall have access to, and the right to inspect, any books and records of Grantee, its
22 parent corporations and Affiliated entities, necessary for the enforcement of the terms of this
23 Franchise. Grantee shall not deny Grantor access to any of Grantee's records on the basis that
24 Grantee's records are under the control of any parent corporation, Affiliated entity or a third
25 party. Grantor may, in writing, request copies of any such records or books, and Grantee shall
26 provide such copies within thirty (30) days of the transmittal of such request. One copy of all
27 reports and records required under this or any other Section shall be furnished to Grantor at the
28 sole expense of Grantee. If the requested books and records are too voluminous, or for security
29 reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days,
30 that Grantor inspect them at Grantee's local offices. If any books or records of Grantee are not
31 kept in a local office and not made available in copies to Grantor upon written request as set
32 forth above, and if Grantor determines that an examination of such records is necessary for the
33 enforcement of this Franchise, then all reasonable travel and maintenance expenses incurred in
34 making such examination shall be paid by Grantee.

35 **7.2 Confidentiality**

36 Grantor agrees to keep confidential any proprietary or confidential books or records to the extent
37 permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the
38 work confidential or proprietary, and shall provide a brief written explanation as to why such
39 information is confidential and how it may be treated as such under State or federal law. If
40 Grantor receives a demand from any Person for disclosure of any information designated by
41 Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee
42 and provide Grantee with a copy of any written request by the party demanding access to such

1 information within a reasonable time. If Grantee believes that the disclosure of such documents
2 by Grantor would interfere with Grantee's rights under federal or state law, Grantee shall
3 institute an action in the Lewis County Superior Court to prevent the disclosure by Grantor of
4 such documents. Grantee shall join the Person requesting the documents to such an action.
5 Grantee shall defend, indemnify and hold Grantor harmless from any claim or judgment
6 including, but not limited to, any penalties or costs under RCW 42.56.

7 **7.3 Records Required**

8 Grantee shall at all times maintain:

9 (A) A full and complete set of plans, records and "as built" maps showing the
10 exact location of all System equipment installed or in use in the Franchise Area, which is
11 generated in Grantee's normal course of business;

12 (B) A copy of all FCC filings on behalf of Grantee, its parent corporations or
13 Affiliates which relate to the operation of the System in the Franchise Area;

14 (C) A list of Grantee's Cable Services, rates and Channel-line-ups;

15 (D) A statistical compilation of Subscriber complaints, actions taken and
16 resolution, and a log of service calls.

17 **7.4 Copies of Federal and State Reports**

18 Upon written request, Grantee shall submit to Grantor copies of any pleading, applications,
19 notifications, communications and documents of any kind, submitted by Grantee or its Affiliates
20 to any federal, State or local courts, regulatory agencies and other government bodies if such
21 documents directly relate to the operations of Grantee's System within the Franchise Area.
22 Grantee shall submit such documents to Grantor no later than thirty (30) days after receipt of
23 Grantor's request. Grantee shall not claim confidential, privileged or proprietary rights to such
24 documents unless under federal, State, or local law such documents have been determined to be
25 confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all
26 other reports, documents and notifications provided to any federal, State or local regulatory
27 agency as a routine matter in the due course of operating Grantee's System within the Franchise
28 Area, Grantee shall make such documents available to Grantor upon Grantor's written request.

29 **7.5 Complaint File and Reports**

30 Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the
31 System, and Grantee's actions in response to those complaints, in a manner consistent with the
32 privacy rights of Subscribers. Those files shall remain open to Grantor during normal business
33 hours and shall be retained for a period of one year. Upon request, Grantee shall provide a report
34 to the Grantor which can, at Grantor's option, include the following information:

35 (A) Nature and type of customer complaints;

36 (B) Number, duration, general location and customer impact of unplanned service
37 interruptions;

38 (C) Any significant construction activities which affect the quality or otherwise
39 enhance the service of the System;

40 (D) Average response time for service calls;

- 1 (E) New areas constructed and available for Cable Service;
- 2 (F) Video programming changes (additions/deletions); and
- 3 (G) Such other information as reasonably requested by Grantor.

4 **7.6 Inspection of Facilities**

5 Grantor may inspect any of Grantee's cable system facilities and equipment in the Rights-of-Way
6 at any reasonable time during business hours upon at least forty-eight (48) hours notice, or, in
7 case of emergency, upon demand without prior notice.

8 **7.7 False Statements**

9 Any intentional false or misleading statement or representation in any report required by this
10 Franchise shall be a material breach of this Franchise and may subject Grantee to all remedies,
11 legal or equitable, which are available to Grantor under this Franchise or otherwise.
12

13 **SECTION 8. PROGRAMMING AND CHANNEL CAPACITY**

14 **8.1 Grantee Compliance**

15 Grantee will provide the broad categories of programming and Channel capacity required in this
16 Franchise, and in all applicable federal, State or local laws, statutes, regulations or standards.

17 **8.2 Broad Programming Categories**

18 Grantee shall provide or enable the provision of at least the following initial broad categories of
19 programming to the extent such categories are reasonably available:

- 20 (A) Educational programming;
- 21 (B) Sports programming;
- 22 (C) General entertainment programming;
- 23 (D) Children's programming;
- 24 (E) Information/news programming;
- 25 (F) National and local government programming.

26 **8.3 Obscenity**

27 Grantee or Grantor shall not transmit, or permit to be transmitted, over any Channel subject to its
28 editorial control any programming which is obscene.

29 **8.4 Parental Control Device**

30 Upon request by any Subscriber, Grantee shall make available a parental control or lockout
31 device traps or filters to enable a Subscriber to control access to both the audio and video
32 portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the
33 lockout device at the time of their initial subscription and periodically thereafter.

34 **8.5 Complimentary Cable Service**

35 Grantee, upon written request, shall provide without charge, a Standard Installation and one

1 outlet of Basic and Expanded Basic Service to those administrative buildings owned and
2 occupied or leased and occupied by the Grantor, fire station(s), police station(s), libraries and K-
3 12 public school(s) that are within 125 feet aerial of its Cable System. In the case of leased
4 facilities, recipient of service is responsible for securing approval for appropriate right of entry
5 suitable to the Grantee at its sole discretion. The Cable Service provided shall not be distributed
6 beyond the originally installed outlet without authorization from Grantee. The Cable Service
7 provided shall not be used for commercial purposes, and such outlets shall not be located in areas
8 open to the public. The Grantor shall take reasonable precautions to prevent any use of the
9 Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or
10 damage to the Cable System. The Grantor shall hold the Grantee harmless from any and all
11 liability or claims arising out of the provision and use of Cable Service required by this Section.
12 The Grantee shall not be required to provide an outlet to such buildings where a non-Standard
13 Installation is required, unless the Grantor or building owner/occupant agrees to pay the
14 incremental cost of any necessary Cable System extension and/or non-Standard Installation. If
15 additional outlets of Cable Service are provided to such buildings, the building owner/occupant
16 shall pay the usual installation and service fees associated therewith.

17 **8.6 New Developments**

18 If there is a new technology which in Grantor's opinion would enhance substantially the quality
19 or quantity of programming available to Subscribers on the System, Grantee shall, at the request
20 of the Grantor, investigate the feasibility of implementing said technology and report to Grantor
21 the results of such investigation.
22

23 **SECTION 9. EDUCATIONAL AND GOVERNMENTAL ACCESS**

24 **9.1 Capital Fee**

25 Within ninety (90) days after written request from Grantor to Grantee and continuing during the
26 term of this Franchise, Grantee shall collect a Capital Fee for educational and government access
27 capital expenditures in the amount up to twenty-five cents (\$.25) per Subscriber per month.
28 Grantee shall make such payments quarterly, no later than thirty (30) days following the end of
29 the quarter. The Grantor agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the
30 Capital Fee to the price of Cable Services and to collect the Capital Fee from Subscribers. In
31 addition, as permitted in 47 C.F.R. §76.985, all amounts paid as the Capital Fee may be
32 separately stated on Subscriber's bills as a government access capital equipment fee.

33 **9.2 Access Reporting**

34 Upon Grantee's written request the Grantor shall submit a report annually on the use of Access
35 Channels and Capital Fee. The Grantor shall submit a report to Grantee within one hundred
36 twenty (120) days of a written request. Grantee may review the records of the Grantor regarding
37 the use of the Capital Fee.

38 **9.3 Management and Control of Access Channel**

39 (A) Grantor may authorize Designated Access Providers to control, operate, and
40 manage the use of any and all Access facilities provided by Grantee under this Franchise,
41 including, without limitation, the operation of the Access Channel. The Grantor or its designee
42 may formulate rules for the operation of the Access Channel, consistent with this Franchise.

1 Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access
2 Provider.

3 (B) Grantee shall cooperate with Grantor and Designated Access Providers in the use
4 of the System and Access facilities for the provision of the Access Channel.

5 **9.4 Access Channel**

6 (A) Within one hundred-eighty (180) of written request, Grantee shall provide at no
7 charge, one (1) Channel for use by Grantor (said Channel to be capable of cable-casting both live
8 and recorded programming).

9 (B) The assigned Access Channel can be used to transmit programming in any format
10 which is technically compatible with the Cable System, including, by way of example and not
11 limitation, video, audio only, secondary audio and/or text (character generated) messages. Such
12 uses must be in furtherance of Access purposes. The above Channel may be digitized by the
13 Grantee and must be capable of transmitting one standard analog or one standard digital video
14 signal. Any Access Channel provided via digital or compressed video technology shall have at
15 least the same transmission quality as is used to carry the commercial Channels that deliver
16 programming on the System and shall be full motion video. The provision of Access Channel
17 via digital or compressed video technology will not reduce the total Access Channel requirement
18 herein.

19 **9.5 Change in Technology**

20 In the event Grantee makes any change in the System and related equipment and facilities or in
21 Grantee's signal delivery technology, which directly or indirectly affects the signal quality or
22 transmission of Access programming, Grantee shall at its own expense take necessary technical
23 steps or provide necessary technical assistance, including the acquisition of all necessary
24 equipment, and full training of Access personnel to ensure that the capabilities of the Access
25 Channel are not diminished or adversely affected by such change. For example, this provision
26 shall apply if Basic Service on the Cable System is converted from an analog to a digital format,
27 such that the Access Channels must also be converted to digital in order to be received by
28 Subscribers.

29 **9.6 Access Channel on Lowest Level of Service**

30 The Access Channel provided to Subscribers under this Franchise shall be included by Grantee,
31 without limitation, as a part of the lowest level of service, subject to applicable law.
32
33

34 **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

35 **10.1 Construction**

36 (A) Subject to applicable laws, regulations and ordinances of Grantor and the
37 provisions of this Franchise, Grantee may perform all construction necessary for the operation of
38 its System. All construction and maintenance of any and all Grantee's facilities within Rights-
39 of-Way shall, regardless of who performs the construction, be and remain Grantee's
40 responsibility.

1 (B) Prior to beginning any construction, Grantee shall provide Grantor with a
2 construction schedule for work in the Rights-of-Ways.

3 (C) Grantee may make excavations in Rights-of-Way for any facility needed for the
4 maintenance or extension of Grantee's System. Prior to doing such work, Grantee shall apply
5 for, and obtain, appropriate permits from Grantor, and give appropriate notices to Grantor. As a
6 condition of any permits so issued, Grantor officials may impose such conditions and regulations
7 as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper
8 restoration of such Rights-of-Way and structures, protection of the public and the continuity of
9 pedestrian or vehicular traffic. When obtaining a permit, Grantee shall inquire in writing about
10 other construction currently in progress, planned or proposed, in order to investigate thoroughly
11 all opportunities for joint trenching or boring. Whenever it is possible and reasonably
12 practicable to joint trench or share bores or cuts, Grantee shall work with other providers,
13 licensees, permittees and franchisees so as to reduce so far as possible the number of Rights-of-
14 Way cuts within the Franchise Area.

15 (D) In the event that emergency repairs are necessary, Grantee shall immediately
16 notify Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and
17 shall apply for appropriate permits within forty-eight (48) hours after discovery of the
18 emergency.

19 (E) Repair and Restoration of Property.

20 (1) The Grantee shall protect public and private property within the Rights-of-
21 Way from damage.

22 (2) If public property is disturbed or damaged, the Grantee shall restore the
23 property to its former condition. Public right-of-way or other Grantor property shall be
24 restored in a manner and within a timeframe approved by the Grantor's Director of Public
25 Works. If restoration of public right-of-way or other property of the Grantor is not
26 satisfactorily performed within a reasonable time, the Director of Public Works may,
27 after prior notice to the Grantee, or without notice where the disturbance or damage may
28 create a risk to public health or safety, or cause delay or added expense to a public project
29 or activity, cause the repairs to be made at the Grantee's expense and recover the cost of
30 those repairs from the Grantee. Within forty-five (45) days of receipt of an itemized list
31 of those costs, including the costs of labor, materials and equipment, the Grantee shall
32 pay the Grantor. If suit is brought by Grantor upon Grantee's failure to pay for repair or
33 restoration, the reasonable costs and expenses of the prevailing party will be paid by the
34 non-prevailing party.

35 (F) Movement for Other Permittees.

36
37 At the request of any Person holding a valid permit and upon reasonable advance notice,
38 Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a
39 building, vehicle, equipment or other item. The expense of such temporary changes must be paid
40 by the permit holder, and Grantee may require the estimated payment in advance.

41 **10.2 Relocation**

42 (A) Facilities Relocation – Upon the receipt of a demand by the Grantor, within thirty
43 days, or in the event of an emergency, upon such shorter notice period as the Grantor deems
44 reasonable under the circumstances, Grantee, at its sole cost and expense, shall remove or

1 relocate any Facilities, if and when the removal or relocation of such Facilities is made necessary
2 by the Grantor acting pursuant to any lawful governmental or proprietary purpose, including,
3 without limitation, engaging in any lawful change of grade, alignment or width of any Rights-of-
4 Way in the Franchise Area pursuant to any concern regarding health, safety and welfare, or in the
5 installation or replacement of any street light pole. Whenever Grantee is required to remove
6 Facilities or if Grantee desires to relocate Facilities, then the Grantor shall use its best efforts to
7 accommodate Grantee by making another functionally equivalent property available for use in
8 accordance with and subject to the terms and conditions of this Franchise. However, nothing in
9 this Agreement shall be construed as creating an obligation of the Grantor to provide Grantee
10 with such property.

11 (B) Relocation Costs – Whenever the removal or relocation of Facilities is required
12 under this Franchise or otherwise by order of Grantor, and such removal or relocation shall cause
13 the Rights-of-Way to be damaged, Grantee, at its sole cost and expense, shall promptly repair
14 and return the Rights-of-Way, in which the Facilities are located, to the same condition as
15 existed prior to such work in the sole determination of Grantor. If Grantee does not return the
16 affected site to a safe and satisfactory condition, then Grantor shall have the option to perform or
17 cause to be performed such reasonable and necessary work and charge Grantee for the proposed
18 costs to be incurred or the actual cost incurred by Grantor. Upon the receipt of a demand for
19 payment by the Grantor, Grantee shall reimburse Grantor for such costs within thirty days.

20 **10.3 Location of Facilities**

21 Within five (5) business days, unless otherwise specified in Grantee's regulations, after the
22 Grantor or any franchisee, licensee or permittee of the Grantor notifies Grantee of a proposed
23 Right-of-Way excavation, Grantee shall, at Grantee's expense:

24 (A) Mark on the surface all of its located underground facilities within the area of the
25 proposed excavation;

26 (B) Notify the excavator of any unlocated underground facilities in the area of the
27 proposed excavation; or

28 (C) Notify the excavator that Grantee does not have any underground facilities in the
29 vicinity of the proposed excavation.

30 **10.4 Restoration of Rights-of-Way / Grantor Owned Property**

31 (A) Whenever Grantee disturbs the surface of any Rights-of-Way or Grantor owned
32 property for any purpose, Grantee shall promptly restore the Rights-of-Way or Grantor owned
33 property to a condition as good as its prior condition. When any opening is made by Grantee in a
34 hard surface pavement in any Rights-of-Way or Grantor owned property, Grantee shall promptly
35 refill the opening and restore the surface to a condition satisfactory to Grantor.

36 (B) If Grantee excavates the surface of any Rights-of-Way or Grantor owned
37 property, Grantee shall be responsible for restoration in accordance with applicable regulations
38 of the Rights-of-Way and its surface within the area affected by the excavation. Grantor may,
39 after providing notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-
40 Way or on Grantor owned property, and the expense thereof shall be paid by Grantee. Grantor
41 may, after providing notice to Grantee, remove and repair any work done by Grantee which, in
42 the determination of Grantor, does not conform to applicable code. The cost thereof, including
43 the costs of inspection and supervision shall be paid by Grantee. All excavations made by

1 Grantee in Rights-of-Way or on Grantor owned property shall be properly safeguarded for the
2 prevention of accidents. All of Grantee's work under this Franchise, and this Section in
3 particular, shall be done in strict compliance with all rules, regulations and ordinances of
4 Grantor.

5 **10.5 Maintenance and Workmanship**

6 (A) Grantee's System shall be constructed and maintained in such manner as not to
7 interfere with sewers, water pipes or any other property of Grantor, or with any other pipes,
8 wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way
9 by, or under, Grantor's authority.

10 (B) Grantee shall provide and use any equipment and appliances necessary to control
11 and carry Grantee's signals so as to prevent injury to Grantor's property or property belonging to
12 any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to
13 keep them in good repair and safe and presentable condition.

14 (C) The Grantee's transmission and distribution system, wires and appurtenances shall
15 be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or
16 to unnecessarily hinder or obstruct the free use of Rights-of-Way, alleys, bridges or other public
17 property.

18 **10.6 Acquisition of Facilities**

19 Upon Grantee's acquisition of facilities in any Grantor Rights-of-Way, or upon the addition or
20 annexation to the Grantor of any area in which Grantee owns or operates any facility, Grantee
21 shall, at Grantor's request, submit to Grantor a statement describing all facilities involved,
22 whether authorized by franchise, permit, license or other prior right, and specifying the location
23 of all such facilities to the extent Grantee has possession of such information. Such facilities
24 shall immediately be subject to the terms of this Franchise.
25

26 **10.7 Discontinuing Use of Facilities**

27 Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee
28 shall submit for Grantor's approval a complete description of the facility and the date on which
29 Grantee intends to discontinue using the facility. Grantee may remove the facility or request that
30 Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility
31 remain in place, Grantor may require Grantee to remove the facility from the Rights of Way or
32 modify the facility to protect the public health, welfare, safety and convenience, or otherwise
33 serve the public interest. Grantor may require Grantee to perform a combination of modification
34 and removal of the facility. Grantee shall complete such removal or modification in accordance
35 with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as
36 directed by Grantor, or until the rights to and responsibility for the facility are accepted by
37 another Person having authority to construct and maintain such facility, Grantee shall be
38 responsible for all necessary repairs and relocations of the facility, as well as maintenance of the
39 Rights-of-Way, in the same manner and degree as if the facility were in active use, and Grantee
40 shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to
41 use such facilities for any purpose whatsoever including, but not limited to, Access Channel
42 purposes.
43

1 **10.8 Undergrounding of Cable**

2 (A) Where electric and telephone utility wiring is installed underground at the time of
3 System construction, or when such wiring is subsequently placed underground, all System lines,
4 wiring and equipment shall also be placed underground with other wire line service at no
5 expense to the Grantor. Related System equipment, such as pedestals, must be placed in
6 accordance with applicable code requirements and rules as interpreted by the Grantor's Director
7 of Public Works. In areas where either electric and telephone utility wiring are aerial, the
8 Grantee may install aerial cable, except when a property owner or resident requests underground
9 installation and agrees to bear the additional cost in excess of aerial installation.

10 (B) The Grantee shall utilize existing poles wherever possible.

11 (C) This Franchise does not grant, give or convey to the Grantee the right or privilege
12 to install its facilities in any manner on specific utility poles or equipment of the Grantor or any
13 other Person.

14 (D) The Grantee and the Grantor recognize that situations may occur in the future
15 where the Grantor may desire to place its own cable or conduit for fiber optic cable in trenches or
16 bores opened by the Grantee. If the Grantee upgrades in the future, the Grantee shall submit
17 these plans to the Grantor in accordance with the Grantor's permitting process so that such
18 opportunities may be explored. However, nothing set forth herein shall obligate the Grantee to
19 slow the progress of the upgrade of the System to accommodate the Grantor. In addition, the
20 Grantee agrees to cooperate with the Grantor in any other construction by the Grantee that
21 involves trenching or boring. If sufficient space is reasonably available, the Grantee shall allow
22 the Grantor to lay its cable, conduit and fiber optic cable in the Grantee's trenches and bores,
23 provided the Grantor shares in the cost of the trenching and boring on the same terms and
24 conditions as the Grantee at that time shares the total cost of trenches and bores. The Grantor
25 shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried in
26 the Grantee's trenches and bores under this paragraph.

27 (E) The Grantor shall not be required to obtain easements for the Grantee.

28 (F) The Grantee shall participate with other providers in joint trench projects to
29 relocate its overhead facilities underground and remove its overhead facilities in areas where all
30 utilities are being converted to underground facilities.

31 **10.9 Construction Codes**

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

38 **10.10 Construction and Use of Poles**

39 Whenever feasible, Grantee shall use existing poles when the installation of facilities above-
40 ground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities
41 pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for
42 Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying,
43 maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any

1 other facility needed for the maintenance or extension of Grantee's System. All poles of Grantee
2 shall be erected between the curb and the sidewalk unless otherwise designated by the proper
3 authorities of Grantor, and each pole shall be set whenever practicable at an extension lot line.
4 Grantor shall have the right to require Grantee to change the location of any pole, conduit,
5 structure or other facility within Rights-of-Way when, in the opinion of Grantor, the public
6 convenience requires such change, and the expense thereof shall be paid by Grantee.

7 **10.11 Tree Trimming**

8 Upon obtaining a written permit from Grantor, if such a permit is required, Grantee may prune or
9 cause to be pruned, using proper pruning practices in accordance with such permit, any tree in
10 the Rights-of-Way which interferes with the System.
11

12 **10.12 Standards**

13 (A) All work authorized and required hereunder shall be done in a safe, thorough and
14 worker-like manner. The Grantee must comply with all federal, State and Grantor safety
15 requirements, rules, regulations, laws and practices, and employ all necessary devices as required
16 by applicable law during construction, operation and repair of its System. By way of illustration
17 and not limitation, the Grantee must comply with the National Electric Code, National Electrical
18 Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

19 (B) Grantee shall ensure that all cable drops are properly bonded to the electrical
20 power ground at the home, consistent with applicable code requirements. All non-conforming or
21 non-performing cable drops shall be replaced by Grantee as necessary.

22 (C) All installations of equipment shall be permanent in nature, durable and installed
23 in accordance with good engineering practices and of sufficient height to comply with all
24 existing Grantor regulations, ordinances and State laws so as not to interfere in any manner with
25 the right of the public or individual property owner, and shall not interfere with the travel and use
26 of public places by the public during the construction, repair, operation or removal thereof, and
27 shall not obstruct or impede traffic.

28 (D) In the maintenance and operation of its System in Rights-of-Way, alleys and other
29 public places, and in the course of any new construction or addition to its facilities, the Grantee
30 shall proceed so as to cause the least possible inconvenience to the general public; any opening
31 or obstruction in the Rights-of-Way or other public places made by the Grantee in the course of
32 its operations shall be guarded and protected at all times by the placement of adequate barriers,
33 fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly
34 designated by warning lights.

35 (E) In the event the Grantor shall relocate a Rights-of-Way, raise or lower a bridge, or
36 make any other changes requiring the removal of utility installations, the Grantee shall remove or
37 relocate its installations at said locations at no cost to the Grantor.

38 **10.13 Stop Work**

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

- 1 (A) Be in writing;
- 2 (B) Be given to the individual doing the work, or posted on the work site;
- 3 (C) Be sent to Grantee by mail at the address given herein;
- 4 (D) Indicate the nature of the alleged violation or unsafe condition; and
- 5 (E) Establish conditions under which work may be resumed.

6 **10.14 Work of Contractors and Subcontractors**

7 Grantee's contractors and subcontractors shall be licensed and bonded in accordance with
8 Grantor's ordinances, regulations and requirements. Work by contractors and subcontractors is
9 subject to the same restrictions, limitations and conditions as if the work were performed by
10 Grantee. Grantee shall be responsible for all work performed by its contractors and
11 subcontractors and others performing work on its behalf as if the work were performed by it, and
12 shall ensure that all such work is performed in compliance with this Franchise and other
13 applicable law, and shall be jointly and severally liable for all damages and correcting all damage
14 caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other
15 persons performing work on Grantee's behalf are familiar with the requirements of this Franchise
16 and other applicable laws governing the work performed by them.

18 **SECTION 11. CABLE SYSTEM DESIGN AND CAPACITY**

19 **11.1 Equal and Uniform Service**

20 The Grantee shall provide access to equal and uniform Cable Service offerings throughout the
21 Franchise Area along public rights-of-way, provided that nothing shall prohibit the Grantee from
22 activating additional Cable Services to Subscribers on a node by node basis during an upgrade of
23 its Cable System.

24 **11.2 Cable System Upgrade**

25 Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its
26 Cable System to a fiber-to-the-node system architecture, with fiber-optic cable deployed from
27 the Headend to the node and tying into a hybrid fiber-coaxial system already serving
28 Subscribers. Active and passive devices are capable of passing a minimum of 750 MHz, and the
29 Cable System is capable of delivering high quality signals that meet, or exceed, FCC technical
30 quality standards regardless of a particular manner in which signal is transmitted. During the
31 term of this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent
32 with, or in excess of these specifications.

34 **11.3 Technical Performance**

35 The technical performance of the Cable System shall meet or exceed all applicable federal
36 (including, but not limited to, the FCC), State and local technical standards, as they may be
37 amended from time to time, regardless of the transmission technology utilized. Grantor shall
38 have the full authority permitted by applicable law to enforce compliance with these technical
39 standards.

1 **11.4 Cable System Performance Testing**

2 (A) Grantee shall, at Grantee's expense, perform the following tests on its Cable
3 System:

4 (1) All tests required by the FCC;

5 (2) All other tests reasonably necessary to determine compliance with
6 technical standards adopted by the FCC at any time during the term of this Franchise; and

7 (3) All other tests as otherwise specified in this Franchise.

8 (B) At a minimum, Grantee's tests shall include:

9 (1) Cumulative leakage index testing of any new construction;

10 (2) Semi-annual compliance and proof of performance tests in conformance
11 with generally accepted industry guidelines;

12 (3) Tests in response to Subscriber complaints;

13
14 (4) Cumulative leakage index tests, at least annually, designed to ensure that
15 one hundred percent (100%) of Grantee's Cable System has been ground or air tested for
16 signal leakage in accordance with FCC standards.

17 (C) Grantee shall maintain written records of all results of its Cable System tests,
18 performed by or for Grantee. Copies of such test results will be provided to Grantor upon
19 request.

20 (D) The FCC semi-annual testing is conducted in January/February and July/August
21 of each year. If Grantor contacts Grantee prior to the next test period (*i.e.*, before December 15
22 and June 15 respectively of each year), Grantee shall provide Grantor with no less than seven (7)
23 days prior written notice of the actual date(s) for FCC compliance testing. If Grantor notifies
24 Grantee by the December 15th and June 15th dates that it wishes to have a representative present
25 during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative
26 can be present. Notwithstanding the above, all technical performance tests may be witnessed by
27 representatives of the Grantor.

28 (E) Grantee shall be required to promptly take such corrective measures as are
29 necessary to correct any performance deficiencies fully and to prevent their recurrence as far as
30 possible. Grantee's failure to correct deficiencies identified through this testing process shall be
31 a material violation of this Franchise. Sites shall be re-tested following correction.

32 **11.5 Additional Tests**

33 Where there exists other evidence that in the judgment of Grantor casts doubt upon the reliability
34 or technical quality of Cable Service, the Grantor shall have the right and authority to require
35 Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully
36 cooperate with the Grantor in performing such testing and shall prepare the results and a report,
37 if requested, within thirty (30) days after testing. Such report shall include the following
38 information:

39 (A) the nature of the complaint or problem which precipitated the special tests;

40 (B) the Cable System component tested;

41 (C) the equipment used and procedures employed in testing;

- 1 (D) the method, if any, in which such complaint or problem was resolved; and
2 (E) any other information pertinent to said tests and analysis which may be required.
3

4 SECTION 12. SERVICE AVAILABILITY

5 12.1 Service Availability

6 (A) In general, Grantee shall provide Service within seven (7) days of a request by
7 any Person within its service area. For purposes of this Section, a request shall be deemed made
8 on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written
9 request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such
10 service:

11 (1) At a non-discriminatory installation charge for a standard installation,
12 consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall,
13 with additional charges for non-standard installations computed according to a non-
14 discriminatory method for such installations, adopted by Grantee and provided in writing
15 to Grantor.

16 (2) At non-discriminatory monthly rates for all Subscribers, excepting
17 commercial customers, MDU Bulk customers and other lawful exceptions to uniform
18 pricing.
19

20 SECTION 13. STANDBY POWER AND EAS

21 13.1 Standby Power

22 Grantee shall provide standby power generating capacity at the System Headend capable of
23 providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby
24 power system supplies, rated for at least two (2) hours duration, throughout the trunk and
25 distribution networks. In addition, throughout the term of this Franchise Grantee shall have a
26 plan in place, along with all resources necessary for implementing such plan, for dealing with
27 outages of more than two (2) hours.

28 13.2 Emergency Alert Capability

29 (A) In accordance with, and at the time required by, the provisions of FCC
30 Regulations, as such provisions may from time to time be amended, EAS activation will be
31 accomplished in compliance with the FCC approved Washington State EAS plan and the Local
32 Area EAS plan that applies to City of Chehalis, which has already been submitted for approval to
33 the Washington State Emergency Communications Committee (WSECC).

34 (B) Grantee shall ensure that the EAS system is functioning properly at all times. It
35 will test the EAS system periodically, in accordance with FCC regulations.
36

1 **SECTION 14. FRANCHISE BREACHES; TERMINATION OF**
2 **FRANCHISE**

3 **14.1 Informal Dispute Resolution**

4 Prior to proceeding with the formal Procedure for Remedying of Franchise Violations process as
5 set forth below (in subsection 14.2), Grantor agrees to provide Grantee informal verbal or
6 electronic mail notice of any alleged material violation of this Franchise and allow Grantee a
7 reasonable opportunity to cure the violation. If the alleged violation is investigated by Grantee
8 and determined to be valid, Grantee agrees to exert good faith efforts to immediately resolve the
9 matter. However, if the alleged violation is determined by Grantee to be invalid, or outside of
10 Grantee's legal responsibilities, the Grantee promptly shall so advise Grantor. Grantee agrees to
11 exert good faith efforts to expedite its investigation, determination and communications to
12 Grantor so that the informal resolution process proceeds on an expedited basis. If Grantor
13 believes that Grantee is unreasonably delaying the informal resolution process, it may commence
14 the formal dispute resolution process.

15 **14.2 Procedure for Remedying Franchise Violations**

16 (A) If Grantor believes that Grantee has failed to perform any material obligation
17 under this Franchise, or has failed to perform in a timely manner, Grantor shall notify Grantee in
18 writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have
19 thirty (30) days from the receipt of such notice to

20 (1) Respond to Grantor, contesting Grantor's assertion that a default has
21 occurred, and requesting a hearing in accordance with subsection (B), below;

22 (2) Cure the default; or

23 (3) Notify Grantor that Grantee cannot cure the default within the thirty (30)
24 days, because of the nature of the default. In the event the default cannot be cured within
25 thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and
26 notify Grantor in writing and in detail as to the exact steps that will be taken and the
27 projected completion date. In such case, Grantor may set a hearing in accordance with
28 subsection (B) below to determine whether additional time beyond the thirty (30) days
29 specified above is indeed needed, and whether Grantee's proposed completion schedule
30 and steps are reasonable. Upon five (5) business days' prior written notice, either Grantor
31 or Grantee may call an informal meeting to discuss the alleged default.

32 (B) If Grantee does not cure the alleged default within the cure period stated above, or
33 by the projected completion date under subsection (A) (3), or denies the default and requests a
34 hearing in accordance with subsection (A) (1), or Grantor orders a hearing in accordance with
35 subsection (A) (3), Grantor shall set a public hearing to investigate said issues or the existence of
36 the alleged default. Grantor shall notify Grantee of the hearing in writing and such hearing shall
37 take place no less than seven (7) days after Grantee's receipt of notice of the hearing. At the
38 hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses,
39 and to present evidence in its defense. At any such hearing, Grantor shall not unreasonably limit
40 Grantee's opportunity to make a record which may be reviewed should any final decision of
41 Grantor be appealed to a court of competent jurisdiction. The determination as to whether a
42 default or a material breach of this Franchise has occurred shall be within Grantor's sole
43 discretion, but any such determination shall be subject to appeal to a court of competent
44 jurisdiction.

1 (C) If, after the public hearing, Grantor determines that a default still exists; Grantor
2 shall order Grantee to correct or remedy the default or breach within fourteen (14) days or within
3 such other reasonable time frame as Grantor shall determine. In the event Grantee does not cure
4 within such time to Grantor's reasonable satisfaction, Grantor may:

- 5 (1) Assess and collect monetary damages in accordance with this Franchise;
6 (2) Commence procedures to terminate this Franchise; or,
7 (3) Pursue any other legal or equitable remedy available under this Franchise
8 or applicable law.

9 (D) The determination as to whether a violation of this Franchise has occurred
10 pursuant to this Section herein shall be within the sole discretion of the Grantor or its designee.
11 Any such determination by Grantor shall be accompanied by a record, to which Grantee's
12 contribution shall not be unreasonably limited by Grantor. Any such final determination shall be
13 subject to appeal to a court of competent jurisdiction.

14 **14.3 Alternative Remedies**

15 (A) No provision of this Franchise shall be deemed to bar the right of either party to
16 seek or obtain judicial relief from a violation of any provision of the Franchise or any rule,
17 regulation, requirement or directive promulgated hereunder. Neither the existence of other
18 remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise
19 limit the right of either party to recover monetary damages, as allowed under applicable law, or
20 to seek and obtain judicial enforcement of obligations by means of specific performance,
21 injunctive relief or mandate, or any other remedy at law or in equity.

22 (B) The Grantor specifically does not, by any provision of this Franchise, waive any
23 right, immunity, limitation or protection (including complete damage immunity) otherwise
24 available to the Grantor, its officers, officials, Councils, boards, commissions, authorized agents,
25 or employees under federal, state, or local law including by example Section 635A of the Cable
26 Act. The Grantee shall not have any monetary recourse against the Grantor, or its officers,
27 officials, Council, Boards, commissions, agents or employees for any loss, costs, expenses or
28 damages arising out of any provision, requirement of this Franchise or the enforcement thereof.

29 **14.4 Assessment of Monetary Damages**

30 (A) Upon completion of the procedures set forth above, and from the date of said
31 violation pursuant to the procedures specified in this Franchise, Grantor may assess against and
32 collect from Grantee monetary damages in amounts of up to five hundred dollars (\$500.00) per
33 day or the Grantor's actual damages, whichever is greater, for general construction delays, and
34 up to one hundred dollars (\$100.00) per day for any other material breaches. Grantor may
35 collect the assessment as specified in this Franchise.

36 (B) Any assessment hereunder shall not constitute a waiver by Grantor of any other
37 right or remedy it may have under this Franchise or applicable law, including its right to recover
38 from Grantee any additional rights or claims Grantor might have to damages, losses, costs and
39 expenses, after the period for collecting liquidated damages referenced in subsection (C) below
40 has expired.

41 (C) The Grantor and the Grantee recognize the delays, expense and unique difficulties
42 involved in proving in a legal proceeding the actual loss suffered by the Grantor as a result of the
43 Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, the Grantor and

1 the Grantee agree that the Grantee shall pay to the Grantor the sums set forth above for each day
2 that the Grantee shall be in breach of the specific provisions of this Franchise, for a maximum of
3 ninety (90) days. Such amounts are agreed by both parties to be a reasonable estimate of the
4 actual damages the Grantor would suffer in the event of the Grantee's breach of such provisions
5 of this Franchise, and are not intended as a penalty.

6 (D) The Grantee's maintenance of the Security required herein or by applicable code
7 shall not be construed to excuse unfaithful performance by the Grantee of this Franchise; to limit
8 the liability of the Grantee to the amount of the Security; or to otherwise limit the Grantor's
9 recourse to any other remedy available at law or equity.

10 **14.5 Revocation**

11 (A) This Franchise may be revoked and all rights and privileges rescinded if a
12 material breach of the Franchise is not cured pursuant to Section 14.2, or in the event that:

- 13 (1) Grantee fails to perform any material obligation under this Franchise;
- 14 (2) Grantee attempts to evade any material provision of this Franchise or to
15 practice any fraud or deceit upon the Grantor or Subscribers;
- 16 (3) Grantee makes a material misrepresentation of fact in the negotiation of
17 this Franchise;
- 18 (4) Grantee or an Affiliate challenges the legality or enforceability of this
19 Franchise in a judicial or administrative (for example, FCC) proceeding;
- 20 (5) Grantee fails to maintain required business offices as provided above;
- 21 (6) Grantee abandons the System, or terminates the System's operations;
- 22 (7) Grantee fails to restore service to the System after three consecutive days
23 of an outage or interruption in service; except when approval of such outage or
24 interruption is obtained from the Grantor, it being the intent that there shall be continuous
25 operation of the System; or
- 26 (8) Grantee becomes insolvent, unable or unwilling to pay its debts, or is
27 adjudged bankrupt, there is an assignment for the benefit of Grantee's creditors, or all or
28 part of the Grantee's System is sold under an instrument to secure a debt and is not
29 redeemed by Grantee within thirty (30) days from said sale.

30 (B) Additionally, this Franchise may be revoked one hundred twenty (120) days after
31 the appointment of a receiver or trustee to take over and conduct the business of the Grantee (at
32 the option of the Grantor and subject to applicable law) whether in a receivership, reorganization,
33 bankruptcy or other action or proceeding, unless:

- 34 (1) The receivership or trusteeship is vacated within one hundred twenty (120)
35 days of appointment; or
- 36 (2) The receivers or trustees have, within one hundred twenty (120) days after
37 their election or appointment, fully complied with all the material terms and provisions of
38 this Franchise, and has remedied all material defaults under the Franchise. Additionally,
39 the receivers or trustees shall have executed an agreement duly approved by the court
40 having jurisdiction, by which the receivers or trustees assume and agree to be bound by
41 each and every term and provision of this Franchise.

42 (C) If there is a foreclosure or other involuntary sale of the whole or any part of the
43 plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee

1 and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise
2 shall be revoked thirty (30) days after service of such notice, unless:

3 (1) Grantor has approved the transfer of the Franchise, in accordance with the
4 procedures set forth in this Franchise and as provided by law; and

5 (2) The purchaser has covenanted and agreed with Grantor to assume and be
6 bound by all of the terms and provisions of this Franchise.

7 (D) Grantor shall provide Grantee written notice of its intent to consider revocation
8 and hold a hearing in accordance with the provisions of this Franchise. Grantee shall submit any
9 objection to revocation in writing to Grantor, stating with specificity its objections. Grantor shall
10 hear any Persons interested in the revocation, and shall allow Grantee an opportunity to be heard,
11 to cross-examine witnesses, to present evidence, and to make all reasonable additions to the
12 hearing record.

13 (E) Grantor shall determine whether the Franchise shall be revoked. The Grantee
14 may appeal such determination to a court of competent jurisdiction. Such appeal to the
15 appropriate court shall be taken within thirty (30) days of the issuance of the determination of the
16 Grantor. Grantor shall receive notice of any appeal concurrent with any filing to a court of
17 competent jurisdiction.

18 **14.6 Removal**

19 (A) In the event of termination, expiration or revocation of this Franchise, and after all
20 appeals from any judicial determination are exhausted and final, Grantor may order the removal
21 of the System facilities from the Franchise Area at Grantee's sole expense within a reasonable
22 period of time as determined by Grantor. In removing its plant, structures and equipment,
23 Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all
24 Rights-of-Way, public places and private property in as good a condition as that prevailing prior
25 to Grantee's removal of its equipment.

26 (B) If Grantee fails to complete any required removal to the satisfaction of Grantor,
27 Grantor may cause the work to be done, and Grantee shall reimburse Grantor for the reasonable
28 costs incurred within thirty (30) days after receipt of an itemized list of Grantor's expenses and
29 costs, or Grantor may recover its expenses and costs from the Security, or pursue any other
30 judicial remedies for the collection thereof. Any expenses incurred in the collection by Grantor
31 of such obligation shall be included in the monies due Grantor from Grantee, including
32 reasonable attorney fees, court expenses and attributed expenses for work conducted by
33 Grantor's staff or agents.

35 **SECTION 15. ABANDONMENT**

36 **15.1 Effect of Abandonment**

37 If the Grantee abandons its System during the Franchise term, or fails to operate its System in
38 accordance with its duty to provide continuous service, the Grantor, at its option, may operate the
39 System or; designate another entity to operate the System temporarily until the Grantee restores
40 service under conditions acceptable to the Grantor, or until the Franchise is revoked and a new
41 franchisee is selected by the Grantor. If the Grantor designates another entity to operate the
42 System, the Grantee shall reimburse the Grantor for all reasonable costs, expenses and damages

1 incurred, including reasonable attorney fees, court expenses and attributed expenses for work
2 conducted by Grantor's staff or agents.

3 SECTION 16. FRANCHISE TRANSFER

4 16.1 Transfer of Ownership or Control

5 (A) The Cable System and this Franchise shall not be sold, assigned, transferred,
6 leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale,
7 merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or
8 property therein pass to or vest in any Person or entity without the prior written consent of the
9 Grantor, which consent shall be by the Grantor's Council, acting by ordinance or resolution.

10 (B) The Grantee shall promptly notify the Grantor of any actual or proposed change
11 in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control"
12 as used herein is not limited to majority stockholders but includes actual working control in
13 whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall
14 make this Franchise subject to cancellation unless and until the Grantor shall have consented in
15 writing thereto.

16 (C) The parties to the sale or transfer shall make a written request to the Grantor for
17 its approval of a sale or transfer and furnish all information required by law and the Grantor.

18 (D) In seeking the Grantor's consent to any change in ownership or control, the
19 proposed transferee shall indicate whether it:

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

23 (2) Has ever had a judgment in an action for fraud, deceit, or
24 misrepresentation entered against the proposed transferee by any court of competent
25 jurisdiction;

26 (3) Has pending any material legal claim, lawsuit, or administrative
27 proceeding arising out of or involving a cable system;

28 (4) Is financially solvent, by submitting financial data including financial
29 statements that are audited by a certified public accountant who may also be an officer of
30 the transferee, along with any other data that the Grantor may reasonably require; and

31 (5) Has the financial, legal and technical capability to enable it to maintain
32 and operate the Cable System for the remaining term of the Franchise.

33 (E) The Grantor shall act by ordinance or resolution on the request within one
34 hundred twenty (120) days of the request, provided it has received all requested information.
35 Subject to the foregoing, if the Grantor fails to render a final decision on the request within one
36 hundred twenty (120) days, such request shall be deemed granted unless the requesting party and
37 the Grantor agree to an extension of time.

38 (F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by
39 the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other
40 written instrument evidencing such sale or transfer of ownership or control, certified and sworn
41 to as correct by Grantee and the transferee, and the transferee shall file its written acceptance
42 agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the
43 event of a change in control, in which the Grantee is not replaced by another entity, the Grantee

1 will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and
2 will not be required to file an additional written acceptance. By agreeing to any transfer of
3 ownership, Grantor does not waive any rights in this Franchise.

4 (G) In reviewing a request for sale or transfer, the Grantor may inquire into the legal,
5 technical and financial qualifications of the prospective controlling party or transferee, and
6 Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer
7 upon such terms and conditions as it deems reasonably appropriate, provided, however, any such
8 terms and conditions so attached shall be related to the legal, technical and financial
9 qualifications of the prospective controlling party or transferee and to the resolution of
10 outstanding and unresolved issues of noncompliance with the terms and conditions of this
11 Franchise by Grantee.

12 (H) Notwithstanding anything to the contrary in this subsection, the prior approval of
13 the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable
14 System to an entity controlling, controlled by or under the same common control as Grantee,
15 provided that the proposed assignee or transferee must show financial responsibility as may be
16 determined necessary by the Grantor and must agree in writing to comply with all of the
17 provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the
18 purpose of financing without the consent of the Grantor; provided that such pledge of assets shall
19 not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations
20 under the provisions of this Franchise.
21

22 SECTION 17. MISCELLANEOUS PROVISIONS

23 17.1 Preferential or Discriminatory Practices Prohibited

24 Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color,
25 ethnic or national origin, religion, age, sex, sexual orientation, or physical or mental disability.
26 Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or
27 non-discrimination provisions and requirements of federal, State and local laws, and rules and
28 regulations relating thereto.

29 17.2 Notices

30 Throughout the term of this Franchise, each party shall maintain and file with the other a local
31 address for the service of notices by mail. All notices shall be sent to such respective address,
32 and such notices shall be effective upon the date of mailing. At the effective date of this
33 Franchise:

34
35 Grantee's address shall be:

36 Comcast Cable
37 410 Valley Ave. NW, Suite 9
38 Puyallup, WA 98371
39 Attention: General Manager
40

41
42 With a copy to:

43 Comcast Cable

1 15815 25th Avenue West
2 Lynnwood, WA 98087
3 Attention: Franchise Department
4

5 Grantor's address shall be:

6 City of Chehalis
7 350 N Market Blvd., Room 101
8 Chehalis, WA 98532
9
10

11 **17.3 Costs to be Borne by Grantee**

12 Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to
13 not more than two (2) public meetings provided for pursuant to this Franchise.

14 **17.4 Binding Effect**

15 This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16 **17.5 Authority to Amend**

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

21 **17.6 Venue**

22 The Venue for any dispute related to this Franchise shall be with the United States District Court
23 for the Western District of Washington or the Lewis County Superior Court, Tacoma,
24 Washington.

25 **17.7 Governing Law**

26 This Franchise shall be governed in all respects by the laws of the State of Washington.

27 **17.8 Captions**

28 The captions and headings of this Franchise are for convenience and reference purposes only and
29 shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

30 **17.9 Construction of Franchise**

31 The provisions of this Franchise shall be liberally construed to promote the public interest.

32 **17.10 No Joint Venture**

33 Nothing herein shall be deemed to create a joint venture or principal-agent relationship between
34 the parties and neither party is authorized to, nor shall either party act toward third persons or the
35 public in any manner that would indicate any such relationship with the other.

36 **17.11 Waiver**

37 The failure of either party at any time to require performance by the other of any provision
38 hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall

1 the waiver by either party of any breach of any provision hereof be taken or held to be a waiver
2 of any succeeding breach of such provision, or as a waiver of the provision itself or any other
3 provision.

4 **17.12 Severability**

5 If any Section, subsection, paragraph, term or provision of this Franchise is determined to be
6 illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such
7 determination shall have no effect on the validity of any other Section, subsection, paragraph, term
8 or provision of this Franchise, all of which will remain in full force and effect for the term of the
9 Franchise.

10 **17.13 Entire Agreement**

11 This Franchise and all Exhibits represent the entire understanding and agreement between the
12 parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations
13 and written agreements between the parties.

14 **17.14 Compliance with Federal, State, and Local Laws**

15 The Grantee shall comply with applicable federal, state and local laws, rules and regulations.

16 **17.15 Customer Service Standards**

17 The Grantee shall comply with any applicable customer service standards that are lawfully
18 adopted by Grantor and are consistent with applicable Federal law.

19 **17.16 Force Majeure**

20 The Grantee shall not be held in default under, or in noncompliance with, the provisions of this
21 Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where
22 such noncompliance or alleged defaults occurred or were caused by circumstances reasonably
23 beyond the ability of the Grantee to anticipate and control, including war or riots, civil
24 disturbances, floods or other natural catastrophes, labor stoppages, slowdowns, or power outages
25 exceeding back-up power supplies, work delays caused by waiting for utility providers to service
26 or monitor their utility poles to which the Grantee's Cable System is attached as well as
27 unavailability of materials irrespective of cost.

28
29

1 **IN WITNESS WHEREOF**, and pursuant to the vote of approval of the qualified
2 electors (if required) of the City of Chehalis, Washington this Franchise is signed in the name of
3 the City of Chehalis, Washington, this _____ day of _____, 2014.
4
5

6 **CITY OF CHEHALIS WASHINGTON**
7
8
9

10 By: City Manager, City of Chehalis
11
12
13

14 **ATTEST:**
15
16

17 _____
18
19
20 **ACCEPTED** this _____ day of _____, 2014, subject to applicable
21 federal, state and local law.
22

23 **Comcast Cable Communications Management, LLC,**
24
25

26 By: (Authorized Representative Signature)

DRAFT