

ORDINANCE NO. 34-16

AN ORDINANCE OF THE CITY OF RICHLAND granting a 10-year cable communications system franchise to Falcon Video Communications, L.P., locally known as Charter Communications.

WHEREAS, Falcon Video Communications, L.P., locally known as Charter Communications ("Franchisee") has requested a franchise from the City to provide Cable Services; and

WHEREAS, after extensive negotiation between the parties, the City of Richland and Franchisee have settled on the terms and conditions of a renewal franchise as provided below.

NOW THEREFORE, be it ordained by the City Council of the Richland, Washington, as follows:

**SECTION 1. GRANT OF FRANCHISE**

1.1 Grant. The City of Richland, Washington (hereinafter called the "City") enters into this Agreement with Falcon Video Communications, L.P., locally known as Charter Communications (hereinafter "Franchisee") for the provision of Cable Service within the Franchise Area for the benefit of the residents of the City and to ensure that Franchisee meets the cable-related needs and interests of the City in light of costs. The City hereby grants to Franchisee a non-exclusive Franchise to operate a Cable System to provide Cable Service in the City, and to use the Streets and Public Ways to install, construct, repair, reconstruct, maintain in, on, over, under, upon, across and along any street or highway, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to said Cable System for that purpose, subject to the terms and conditions of this Agreement, and applicable law. Nothing in this Franchise shall be construed to prohibit the Franchisee from offering any communications service over its Cable System so long as Franchisee complies with all applicable law in so doing.

1.2 Term. The Franchise granted hereby shall expire ten (10) years after its Effective Date unless lawfully terminated in accordance with its terms and other applicable law.

1.3 Effective Date. This Franchise shall become effective on the 31st day following execution of the Franchise by both parties, provided that prior to that date the Franchisee: (a) accepts in writing this Franchise Agreement; and (b) provides all warranties, proofs, and other documents required by the Franchise.

1.4 Franchise Area. The Franchise Area for which this Franchise is granted consists of all areas located within the Richland City limits as they exist on the Effective Date of the Franchise, as well as any areas which are annexed by the City during the term of this Agreement, subject to Section 7.10(C) herein.

1.5 Effect of Acceptance. By accepting the Franchise, the Franchisee and the City: (a) acknowledge and accept the City's legal right to issue and enforce the Franchise; (b) agree that Franchisee will not oppose intervention by the City in any proceeding affecting the enforcement of its rights under this Franchise; (c) accept and agree to each and every provision contained herein; and (d) agree that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and agrees that it will not raise any claim or defense to the contrary.

1.6 Rights Reserved. The rights granted in this Franchise are subject to the City's exercise of its police powers, and nothing in this Franchise shall be read to limit the exercise of those powers. The City does not waive requirements of various codes, ordinances, and resolutions, including zoning codes

and codes regarding building permits and fees, or time or manner of construction, as long as they shall apply under the City's police powers. Any such fees or charges paid, so long as they are consistent with applicable law, shall be paid in addition to the Franchise Fee required under this Franchise.

1.7 **Franchisee Compliance.** The Franchisee agrees to comply with and is subject to all the terms, conditions, and provisions of the Richland City Code Title 28 regarding Cable Systems and Open Video Systems, and all generally applicable ordinances and regulations of the City necessary to the safety, health, and welfare of the public which are lawfully adopted pursuant to the City's police power, including but not limited to generally applicable zoning ordinances and ordinances establishing construction standards or procedures for use of the Streets. This Franchise is a contract and except as to those changes that are the result of the City's lawful exercise of its police powers, the City may not take any unilateral action that materially changes the explicit terms and conditions of this Franchise, or that materially limits the benefits or materially expands the obligations of the Franchisee that are granted or imposed by this Franchise. In the event of a conflict between the terms and conditions of this Franchise and any City ordinance or regulation, this Franchise will prevail. Any changes to this Franchise must be made in writing signed by the Franchisee and the City.

1.8. **Affiliates.** Any Affiliate of the Franchisee involved with managing or operating the Cable system in the City, such that it constitutes a Cable Operator of the Cable System in the City, shall be subject to the limitations of, and shall comply with the terms and conditions of this Franchise. The Franchisee shall be fully liable for any act or omission of an Affiliate that controls the Franchisee or is responsible in any manner for the management of the Cable System that results in a breach of this Agreement or a violation of applicable law, as if the act or omission was the Franchisee's act or omission.

1.9 **Legal Qualifications.** The Franchisee affirms that it meets all the legal qualifications currently set forth in Section 28.12.230(h) of Richland City Code Title 28 Cable Systems and Open Video Systems and in the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, *et seq.*

## **SECTION 2. SHORT TITLE AND DEFINITIONS**

2.1 This Franchise Agreement shall be known and be cited as the "City of Richland and Falcon Video Communications. L.P., locally known as Charter Communications Franchise Agreement." The following terms, phrases, words and their derivations shall have the meaning ascribed to them herein.

**"Affiliate"** is defined as set forth in Section 522(2) of Title 47 of the United States Code.

**"Cable Act"** shall refer to the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 *et seq.*, as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and as it may be further amended during the term of the Franchise.

**"Cable Operator"** is defined as set forth in Section 522(5) of Title 47 of the United States Code.

**"Cable Service"** is defined as the one-way transmission to Subscribers of either Video Programming, or other programming service, and subscriber interaction, if any, which is required for the selection or use of Video Programming or other programming service, as set forth in Section 522(6) of Title 47 of the United States Code.

**"Cable System"** is defined as set forth in Section 522(7) of Title 47 of the United States Code.

**"Channel"** is defined as set forth in Section 522(4) of Title 47 of the United States Code.

**“City”**, when used to refer to a geographic area, means the City of Richland, a political subdivision of the State of Washington, in its present incorporated form or in any later recognized, consolidated, enlarged, or *reincorporated* form; when used to refer to an action taken by an entity, the term refers to the governing body of the City of Richland or any entity authorized to act on its behalf.

**“Enabling Ordinance”** means the Ordinance of the City Council of the City of Richland known as Richland City Code Title 28 Cable Systems and Open Video Systems (*insert City cite*).

**“FCC”** shall mean the Federal Communications Commission and any successor governmental entity thereto.

**“Franchise Agreement”** or **“Agreement”** shall refer to this contract between the City and the Franchisee entered into in accordance with applicable law.

**“Franchisee”** means Falcon Video Communications. L.P., locally known as Charter Communications, the entity to which this Cable Franchise is granted by the Richland City Council, and its lawful and permitted successors, assigns, and transferees.

**“Gross Revenues”** means all revenue actually received by the Franchisee, as determined in accordance with generally accepted accounting principles, that is derived from the operation of Franchisee’s network to provide Cable Service within the Franchise Area, including all of the following:

- a. All charges billed to Subscribers for any and all Cable Service provided by the Franchisee, including all revenue related to programming provided to the Subscriber, equipment rentals, late fees, and insufficient fund fees.
- b. Franchise Fees imposed on the Franchisee by this Franchise that are passed through to, and paid by, the Subscribers.
- c. Compensation received by the Franchisee that is derived from the operation of the Franchisee’s network to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Franchisee’s network such as a “home shopping” or similar Channel subject to paragraph 4 below.
- d. A pro rata portion of all revenue derived by the Franchisee or its Affiliates pursuant to compensation arrangements for advertising derived from the operation of the Franchisee’s network to provide Cable Service within the Franchise Area subject to paragraph 1 below. The allocation shall be based on the number of Subscribers in the local entity divided by the total number of Subscribers in relation to the relevant regional or national compensation arrangement.

For purposes of this Franchise, the term “gross revenues” set forth above does not include any of the following:

1. Amounts not actually received, even if billed, such as bad debt; refunds, rebates, or discounts to Subscribers or other third parties; or revenue imputed from the provision of Cable Services for free or at reduced rates to any person as required or allowed by law, including, but not limited to the provision of these services to public institutions, public schools, governmental agencies, or employees except that forgone revenue chosen not

to be received in exchange for trades, barter, services, or other items of value shall be included in gross revenue.

2. Revenues received by an Affiliate or any other person in exchange for supplying goods or services used by the Franchisee to provide Cable Services. However, revenue received by an Affiliate of the Franchisee from the Affiliate's provision of Cable Service shall be included in gross revenues as follows:
  - (i) To the extent that treating the revenue as revenue of the Affiliate, instead of revenue of the Franchisee, would have the effect of evading the payment of fees that would otherwise be paid to the City.
  - (ii) The revenue is not otherwise subject to fees to be paid to the City.
3. Revenue derived from services classified as noncable services under federal law, including, but not limited to, revenue derived from telecommunications services and information services, other than Cable Services, and any other revenues attributed by the Franchisee to noncable services in accordance with FCC rules, regulations, standards, or orders.
4. Revenue paid by Subscribers to "home shopping" or similar networks directly from the sale of merchandise through any home shopping Channel offered as part of the Cable Services. However, commissions or other compensation paid to the Franchisee by "home shopping" or similar networks for the promotion or exhibition products or services shall be included in gross revenue.
5. Revenue from the sale of Cable Services for resale in which the reseller is required to collect a fee similar to the Franchise Fee from the reseller's Subscribers.
6. Amounts billed to, and collected from, Subscribers to recover any tax, fee, or surcharge imposed by any governmental entity on the Franchisee, including, but not limited to, sales and use taxes, gross receipts taxes, excise taxes, utility users taxes, public service taxes, communication taxes, and any other fee not imposed by this section.
7. Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive Cable Services from the seller of those assets or surplus equipment.
8. Revenue from directory or Internet advertising revenue, including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing.
9. Revenue received as reimbursement by programmers of specific, identifiable marketing costs incurred by the Franchisee for the introduction of new programming.
10. Security deposits received from Subscribers, excluding security deposits applied to the outstanding balance of a Subscriber's account and thereby taken into revenue.

For purposes of this Franchise, in the case of a Cable Service that may be bundled or integrated functionally with other services, capabilities, or applications, the Franchise Fee shall be applied only to the gross revenue, as defined in subsections a-d above, attributable to Cable Service. Where the Franchisee or any Affiliate bundles, integrates, ties, or combines Cable Services with noncable services creating a bundled package, so that Subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, gross revenues shall be determined based on an equal allocation

of the package discount, that is, the total price of the individual classes of service at advertised rates compared to the package price, among all classes of service comprising the package. The Franchisee's offering a bundled package shall not be deemed a promotional activity. If the Franchisee does not offer any component of the bundled package separately, the Franchisee shall declare a stated retail value for each component based on reasonable comparable prices for the product or service for the purpose of determining Franchise Fees based on the package discount.

For the purposes of determining gross revenue, Franchisee shall use the same method of determining revenues under generally accepted accounting principles as that which Franchisee uses in determining revenues for the purpose of reporting to national and state regulatory agencies.

**“Normal Business Hours”** means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one (1) night per week and some weekend hours.

**“Other Programming Service”** means information that a Cable Operator makes available to all Subscribers generally, as set forth in Section 522(14) of Title 47 of the United States Code.

**“Signal”** means any analog or digital electrical or light impulses carried on the Cable System, whether one-way or bidirectional.

**“State”** shall mean the State of Washington.

**“Street”, “Public Way” or “Right of Way”** means land acquired or dedicated for roads and public streets and easements, including but not limited to Utility Easements, which, under the City Charter, the municipal code, city ordinances, and applicable laws, the City has authority to grant permits, licenses, or leases for use thereof, or has regulatory authority over. “Street”, “Public Way” or “Right of Way” does not include buildings, parks, poles, conduits or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the public way such as utility poles, light poles and bridges.

**“Subscriber” or “Customer”** shall mean any person lawfully receiving Cable Service from the Franchisee.

**“Tri-Cities Area”** shall include the Cities of Pasco, Richland, West Richland, Kennewick, Benton County and Franklin County.

**“Utility Easement”** means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities, excluding easements not specifically allowing license, franchise or lease holders.

**“Video Programming”** means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in Section 522(20) of Title 47 of the United States Code.

**“Video Service”** means Video Programming services, Cable Service, or Open Video System service provided through facilities located at least in part in public rights-of-way without regard to delivery technology, including Internet protocol or other technology. This definition does not include (1) any Video Programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code, or (2) Video Programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

2.2 All words appearing in this Agreement which are identical to the words defined in Section 2.1 shall have the meanings set forth in Section 2.1. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meanings set forth in the Cable Act, and, if not defined therein, shall be given their common and ordinary meaning.

### **SECTION 3. FRANCHISE – LIMITATIONS**

3.1 The Franchise does not confer rights other than as provided by this Franchise Agreement, or as provided by federal or State law.

3.2 No privilege or exemption is granted or conferred except those specifically prescribed herein, or provided for by State or federal law.

3.3 The City may delegate its authority except as prohibited by federal or State law.

3.4. The City reserves the right to assert all immunities and defenses that the City may have under applicable law.

3.5 The Franchisee shall at all times be subject to the lawful exercise of the police power of the City, and its other lawful authority, subject to Section 1.7 herein.

3.6 This Franchise is only for the provision of Cable Services. It shall not act as a bar or in any respect prevent imposition of additional or different conditions, including additional fees related to the provision of, or the use or occupancy of the Rights-of-Way to provide, noncable services, subject to applicable law. Nothing in this section is intended to expand or contract the City's rights to regulate noncable services nor Franchisee's right to provide lawful services over its Cable System.

3.7 Nothing in this Franchise Agreement shall be read to create an expectancy of renewal or to in any respect entitle the Franchisee to renewal or extension of this Franchise, except as may be expressly required by applicable law. The City and Franchisee agree that any proceedings undertaken by the City that relate to the renewal of the Franchisee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

3.8 Any privilege claimed under any Franchise by the Franchisee in any Street or other public property where there exists prior lawful occupancy of the Streets or other public property by another person shall be subject to Section 8.2.G. of this Franchise.

3.9 The Franchisee shall, by acceptance of the Franchise granted herein, defend the City, its officers, boards, commissions, agents, and employees for all claims for injury to any person or property caused by the negligence of the Franchisee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold the City, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property as a result of the negligence of the Franchisee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System. The City shall give the Franchisee written notice of its obligation to indemnify the City within fifteen (15) days of receipt of a lawsuit or similar action pursuant to this section. In the event any such lawsuit or similar action arises, the City shall tender the defense thereof to the Franchisee, and Franchisee shall have the right to defend, settle or compromise any claims arising hereunder. If the City determines in good faith that its interests cannot be represented by the Franchisee, the Franchisee shall

be excused from any obligation to represent the City. Notwithstanding the foregoing, the Franchisee shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City or for the City's use of the Cable System, including any Public, Education and Government ("PEG") Channels.

3.10 City and Franchisee shall have all rights afforded them pursuant to 47 U.S.C. § 555.

#### **SECTION 4. NON-EXCLUSIVE FRANCHISE AND COMPETITION ENCOURAGED**

4.1 This Franchise Agreement and the right it grants to use and occupy the public Right of Way is not exclusive and does not explicitly or implicitly preclude the issuance of other franchises to operate Cable Systems within the City, affect the City's right to authorize use of the public Right of Way by other persons to operate Cable Systems, or affect the City's right to itself construct, operate or maintain a Cable System, in which case the City's rights shall not differ from any other provider of Cable Service or Video Service subject to Section 19.8.

#### **SECTION 5. NO WAIVER**

5.1 The failure of the City or the Franchisee, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise Agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

5.2 Waiver of a breach of this Franchise Agreement or the Enabling Ordinance is not a waiver of any similar or different breach. Neither the grant of this Franchise nor any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including, without limitation, the power to exercise eminent domain, subject to Section 1.7 of this Franchise.

#### **SECTION 6. CUSTOMER PROTECTION**

6.1 Customer Protection. The Franchisee hereby represents and warrants that on the Effective Date of this Franchise it meets or exceeds the FCC Customer Service Standards (47 C.F.R. § 76.309(c), 47 C.F.R. § 76.1602-1604, and 47 C.F.R. § 76.1619 attached as Appendix A), and agrees to comply with FCC Customer Service Standards throughout the term of this Agreement as they may be amended or modified from time to time.

6.2 Privacy. The City and the Franchisee shall comply with the requirements of Cable Act Section 631 (47 U.S.C. § 551).

##### **6.3 Sale of Subscriber Lists and Personalized Data.**

A. The Franchisee shall be subject to the provisions of federal law regarding limitations on the Franchisee's collection and use of personally identifiable information, and the protection of Subscriber privacy.

B. Nothing in this Franchise shall be read to limit the City's right to adopt other laws pursuant to its general police powers, and to apply those laws to Franchisee, subject to Section 1.7 and applicable law.

##### **6.4 Maintenance and Complaints.**

A. The Franchisee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. The Franchisee shall, at all times, employ

ordinary care and shall use commonly accepted methods and devices to prevent failures and accidents which are likely to cause damage.

B. Complaints concerning billing, employee courtesy, programming, safety, or the Franchisee's operational policies, as well as all other complaints, including complaints about outages, Signal quality, and service disruptions, shall be recorded where practicable. The Franchisee will maintain records of complaints for three (3) years. Copies of the complaint records shall be provided to the City on request.

C. The Franchisee shall maintain a repair force of technicians sufficient to comply with this Franchise which includes the FCC Customer Service Standards under normal operating conditions and to respond to Subscriber complaints, loss of service, or requests for service. The Franchisee shall have in place at all times the equipment necessary to locate and correct Cable System malfunctions.

D. All Subscribers and members of the general public in the City may direct complaints and inquiries regarding the Franchisee's service or performance to the City. In addition to such other actions it may take to enforce this Franchise, upon the request of all parties involved in a dispute, the City may act as a board of review of a complaint or dispute, and recommend action for resolution.

#### 6.5 Non-discrimination and Equal Employment Opportunity.

A. Throughout the term of this Franchise, the Franchisee shall fully comply with the equal employment opportunity requirements of federal, State, and local law and, in particular, FCC rules and regulations relating thereto. Upon request by the City, the Franchisee shall furnish the City a copy of the Franchisee's annual statistical report filed with the FCC, along with proof of the Franchisee's annual certification of compliance. In the event the Franchisee is at any time determined by the FCC not to be in compliance with said FCC rules or regulations, the Franchisee shall notify the City within 15 days of its notice of such noncompliance from the FCC.

B. The Franchisee shall not deny, delay, or otherwise burden service or discriminate against Subscribers within its Franchise Area on the basis of age, race, creed, religion, color, sex, national origin, marital status, sexual orientation, physical or mental disability, or political affiliation.

C. The Franchisee shall not deny Cable Service to any group of potential Subscribers because of the income of the residents of the area in which the group resides.

D. The Franchisee shall ensure that its services are accessible, as far as reasonably practical, to people with disabilities. All programming received by the Franchisee with closed-captioning shall be retransmitted by the Cable System including the closed-caption Signal. The Franchisee shall comply with all applicable federal, State and local laws.

6.6 Parental Control Device. Upon request, the Franchisee shall provide parental control devices or technology to any Subscriber.

### **SECTION 7. SYSTEM FACILITIES, EQUIPMENT, AND SERVICES**

#### 7.1 Cable System Design and Functionality

A. As of the Effective Date of this Agreement, the Franchisee operates, maintains and makes available to all residents of the City its existing 860 MHz Hybrid Fiber-Coax Cable System. The Franchisee agrees that, throughout the term of this Agreement, subject to applicable law, it will operate, maintain and make available to all residents of the City a Cable System that has comparable or greater capacity than that which it provided on the Effective Date of this Agreement.



B. The Headend has 24-hour backup power supply. Each node power supply has a minimum four-hour backup and hub sites and optical transfer nodes have six-hour backup power supplies. Such equipment has been constructed and will be maintained so as to cut in automatically upon failure of the commercial utility power, and to revert automatically to a standby mode when alternating current power returns, and complies with all utility and other safety regulations to prevent the alternate power supply from powering a "dead" utility line in order to prevent injury to any person.

C. Franchisee shall install and maintain necessary equipment to ensure that all closed captioning programming received by the Cable System shall include the closed caption Signal so long as the closed caption Signal is provided consistent with FCC standards.

D. Franchisee agrees to maintain the Cable System in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

E. The Franchisee shall comply with all applicable federal and State laws, as they may from time to time be amended, concerning system compatibility with Subscribers' consumer electronics equipment.

F. Pre-existing PEG Access Transport. As of the Effective Date of this Agreement the Franchisee provides transport of PEG programming between the currently existing demarcation points at the addresses listed below and the Franchisee's headend. The Franchisee agrees to continue to provide and maintain this PEG transport at no cost to the City throughout the term of this Agreement.

1. Richland City Hall, 505 Swift Blvd., Richland, WA 99352, or, after Richland relocates City Hall to 625 Swift Blvd., Richland, WA 99352, between a mutually agreeable demarcation point at 625 Swift Blvd. and the Franchisee's headend.
2. Washington State University, 2710 Crimson Way, Richland, WA 99354.
3. Richland School District Special Projects Building, 615 Snow Ave., Richland, WA 99352.

G. During the term of this Franchise, the City shall deliver PEG video programming to the currently existing or mutually agreed upon demarcation points for the addresses listed in Section 7.1.F. above, using Franchisee-provided transport described in Section 7.1.F., in a format reasonably acceptable to Franchisee.

H. Additional or Replacement PEG Transport. During the term of this Franchise, the City may request replacement (of any of the locations listed in Section 7.1.F) or additional PEG transport within the Franchise Area. If the City chooses to move a location identified in Section 7.1.F to a new address, deliver PEG video programming from an address not identified in Section 7.1.F, or create a new access center, the City may elect to have the Franchisee provide and maintain an electronic connection between the moved or new location and the Cable System headend. At the City's request and at its expense, this connection shall be designed so that the City can: (a) send Signals to the headend on multiple channels simultaneously; (b) receive Signals from other locations on multiple channels simultaneously; (c) remotely route Signals originated at the access center or at other locations onto any PEG access or institutional use channels on the Cable System; and (d) otherwise control the Signals to allow for smooth breaks, transitions, and insertion of station IDs and other material. The City shall request and Franchisee shall provide a written estimate of the costs associated with such PEG construction, equipment, maintenance, and transport, and if approved by the City, Franchisee shall complete the moved or new PEG connection at the expense of the City. Franchisee shall construct such PEG connections to the extent feasible within one hundred and twenty (120) days of receiving written request from the City, or as otherwise agreed upon by the City and Franchisee.

## 7.2 Interconnection.

### A. Interconnection with Other Systems Serving the City.

1. At the City's request, the Franchisee shall interconnect its Cable System with other Cable Systems serving this Service Area or an area adjacent to the Service Area for the purpose of sharing PEG programming, provided the Franchisee is able to reach agreement with the other operator for the interconnection on reasonable terms and conditions, and the City obtains any necessary consent from the other Cable System's franchising authority. Nothing in this subsection shall be construed as requiring the Franchisee to increase the number of Channels for PEG programming beyond the maximum number agreed to herein.

2. The Franchisee and the City agree that on the Effective Date there are no Cable Systems or Open Video Systems, not owned by the Franchisee, operating within the City of Richland. However, if in the future a Cable System or Open Video System is constructed in the City, Franchisee will negotiate in good faith with the City to interconnect its Cable System with such other Cable System or Open Video System for the exchange of PEG access programming. The costs of such interconnection shall be fully borne by the Cable Operator or Open Video System operator seeking interconnection. There shall be no charge to the City or its Designated Access Provider for the use of the interconnection for delivery of PEG access programming from the Cable System to other Cable Systems or Open Video Systems.

B. Cooperation. The City understands that interconnection requires cooperation from other Cable System operators. The City shall make every reasonable effort to assist Franchisee in achieving the cooperation necessary to realize interconnection.

C. Franchisee Not a Common Carrier. Nothing in this Agreement shall be deemed to require the Franchisee to assume the status of a common carrier as defined under applicable law.

## 7.3 Cable System Rebuild.

A. During any future major rebuild of the Cable System and no later than one-hundred and twenty (120) days prior to the date construction on the rebuild of any portion of the system is scheduled to begin, the Franchisee shall provide a detailed Cable System design and construction plan and timeline, which shall include at least the following elements or their contemporary equivalent to the extent necessary:

1. Design type; fiber, HFC (hybrid fiber coax) cable, or other design; number and location of hubs or nodes.
2. Distribution system – cable, fiber, equipment to be used.
3. Headend design and reception facilities.
4. Plans for standby power at headend, hubs/nodes, and satellite terminals. The plan should state the make and model number of equipment to be used as well as standby time capacity.
5. Longest amplifier cascade in the Cable System (number of amplifiers, number of miles, type of cable/fiber).
6. Construction maps for the rebuild, subject to confidentiality to the extent authorized by law. If the City cannot guarantee the confidentiality of Franchisee's construction maps, Franchisee will make those maps available for inspection

during normal business hours. The rebuild will be shown on maps of industry standard scale using standard symbols, and shall depict all electronic and physical features of the cable plant.

B. The City shall have forty-five (45) days from the date the Franchisee provides the City the design and construction plans for review to submit comments on the plans. The Franchisee agrees to consider any comments which are timely submitted, and to submit a written response to the City's comments prior to commencing the rebuild.

#### 7.4 Performance Testing.

A. Franchisee shall perform the following tests on its Cable System:

1. All tests required by the FCC; and
2. All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise.

B. Franchisee shall maintain written records of all results of its Cable System tests as required by this Franchise, performed by or for the Franchisee, for a period of three (3) years. Such test results shall be available for inspection by the City upon reasonable request.

C. Tests may be witnessed by representatives of the City, provided the City provides advance written notice of its intent to witness such tests.

7.5 System Inspections. The City may inspect the Franchisee's Cable System and any construction or installation work performed under this Franchise in a manner that does not result in interruption of service to determine compliance with the Franchise Agreement, and applicable federal, State and local law, subject to Section 1.7.

#### 7.6 Other Construction Procedures. The Franchisee:

A. shall follow a Cable System design and construction plan consistent with its obligations under this Franchise, and use the equipment specified (or substitute equipment of equivalent or better quality) in such distribution system design plan and construction plan (except insofar as those plans, if carried out, would result in construction of a system which would not meet requirements of applicable law, subject to Section 1.7; and except for such minor modifications as are typical in the industry);

B. shall use equipment of good and durable quality;

C. shall notify City residents in any construction area at least one day in advance before first entering onto private property to perform any work which will involve excavation, replacement of poles, tree trimming, or other major work on that private property, subject to applicable law, except in case of emergencies;

D. shall ensure that any contractor or subcontractor used for work and construction, operation, or repair of Cable System equipment must be properly licensed under laws of the State and any generally applicable law, and each contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have under this Agreement and other applicable law if the work were performed by Franchisee;

E. shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Franchise Agreement and applicable law, shall be responsible for all acts

or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program (this section is not meant to alter tort liability of Franchisee to third parties);

F. shall provide as-built and design maps in electronic format for the City's review after the completion of system construction in the City; and

G. shall make available to the City upon request maps showing the actual location of additions or extensions to its lines within thirty (30) days of completion of Cable System construction in any geographic area.

#### 7.7 System Maintenance.

A. Interruptions to be minimized. Whenever possible, the Franchisee shall schedule maintenance so that activities likely to result in an interruption of service are performed during periods of minimum Subscriber use of the Cable System. The Franchisee shall make best efforts to minimize interruptions of service consistent with reasonable and customary construction practices.

B. Maintenance Practices. In addition to its other obligations, the Franchisee shall: (a) use replacement components of good and durable quality, with characteristics better or equal to replaced equipment; and (b) follow the more stringent of industry maintenance standards or corporate maintenance standards.

7.8 System Performance. The Cable System shall meet or exceed the standards set forth in 47 C.F.R. § 76 subpart K, as those standards may be in effect at all times. If the FCC standards are eliminated and not replaced, the City may continue to enforce the standards which existed prior to the date of elimination. If FCC standards are amended or replaced, the City may enforce such new FCC standards.

7.9 Future System Upgrades/Rebuilds. The Franchisee shall provide additional or new facilities and equipment, expand Channel capacity, and otherwise upgrade or rebuild its Cable System throughout the Franchise term as required to incorporate improvements in technology, as necessary and where financially and technically reasonable.

#### 7.10 Service Availability.

A. The Franchisee shall construct, operate, maintain and extend its Cable System so that it is able to provide service throughout the Franchise Area described in Section 1.4 pursuant to Section 7.10.B.1.

##### B. System Extension Requirements.

1. Franchise Area Boundaries. For areas within the Franchise Area that are unserved and for areas that may be annexed to the City during the Franchise term pursuant to Section 7.10.C, the Franchisee must extend service upon request to any prospective Subscriber at published service rates, without any additional charge for extending service, other than service drop installation, when there are at least thirty (30) homes per linear strand mile of cable as measured from the Franchisee's closest trunk, distribution, or feeder cable that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty-five (125) feet of the Franchisee's feeder cable, the Cable Service will be provided at the Franchisee's published rate for standard installations. Notwithstanding the foregoing, the Franchisee shall have the right, but not the obligation, to extend the Cable System into any portion of the Franchise Area where another operator is providing Cable Service.

2. Cost Sharing. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 7.10.B.1 above, the Franchisee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Franchisee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers who are in areas that do not meet the density requirements of Section 7.10.B.1 shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.

3. Subscriber Drops. The Franchisee shall not assess any additional cost for service drops of one hundred twenty-five (125) feet or less (a "Standard Installation") unless extraordinary circumstances justify a higher charge, subject to Section 7.10.B.4. Where a drop exceeds one hundred twenty-five (125) feet in length, the Franchisee may charge the Subscriber for the difference between the Franchisee's actual costs associated with a Standard Installation and the Franchisee's actual cost of installing the longer drop.

4. Undergrounding of Drops. In any area where the Franchisee would be entitled to install a drop above-ground, the Franchisee may provide the Subscriber the option to have the drop installed underground, but may charge the Subscriber the difference between the standard cost (or actual cost for a drop greater than one hundred twenty-five (125) feet) of the above-ground installation and the actual cost of the underground installation.

5. Time for Extension. The Franchisee shall extend service as described herein to any prospective Subscriber who requests it subject to other provisions of this Franchise. If the prospective Subscriber is located in the Franchise Area and service can be provided by a Standard Installation, service shall be provided within seven (7) business days of the request under normal operating conditions, subject to other provisions of this Franchise and Section 6.1.

C. Annexation.

1. City Notice of Annexation. In the event the City annexes any area which is being provided Cable Service by the Franchisee or otherwise modifies the Franchise Area, the City shall provide to Franchisee, within ten (10) working days of passage by City Council, a copy of the City ordinance, legal description, if not found in the ordinance, addresses and a map defining the annexed area or other changes within the Franchise Area. The Franchisee shall not be obligated to collect and remit Franchise Fees until such notice and information has been received by the Franchisee.

*Every written notice served upon Franchisee for this subsection shall be delivered or sent (with proof of delivery) to:*

Attn: Director, Government Relations  
Charter Communications  
222 NE Park Plaza Drive, #231  
Vancouver, WA 98684

*With a copy to:*

Attn: Vice President, Government Affairs  
Charter Communications  
12405 Powerscourt Drive  
St. Louis, MO 63131

Franchisee may indicate a different delivery address via written notice to the City, pursuant to subsection 19.7.

2. Franchisee Update of Subscriber Information. Following annexation or a modification to the Franchise Area, Franchisee shall provide written notice to the City, within ninety (90) days following an annexation or other modification to the Franchise Area, indicating that Subscriber addresses within the annexation area or modified Franchise Area have been updated to reflect the City as the new franchising authority. Franchisee shall pay the City Franchise Fees on revenue received from the operation of the Cable System to provide Cable Services in the annexation area or modified Franchise Area commencing ninety (90) days after the Franchisee's receipt of City's written notice.

3. Franchisee Service to Newly Annexed Areas. Upon the annexation of any additional area by the City, the following conditions apply:

- a. If the annexed area is unserved by a Cable Operator, Franchisee agrees to extend service pursuant to Section 7.10.B. of this Franchise Agreement.
- b. If the annexed area is served by another operator, Franchisee has the right, but not the obligation, to extend the Cable System into the annexed area.

#### 7.11 Public, Educational, and Government Use

##### A. Designated Access Providers.

1. The City shall designate PEG access providers ("Designated Access Providers"), including to itself, to control and manage the use of any or all of the PEG Access Channels and/or resources provided by the Franchisee under this Agreement. The City will not designate the Franchisee to serve as a Designated Access Provider.

2. The Cities of Richland and Pasco have agreed to collaborate with regard to the development of PEG access and the identification of Designated Access Providers. Based upon public input received, the Cities wish to encourage the development of a Tri-Cities approach to the provision of PEG access programming and the delivery of PEG access services. The Cities may designate an entity (ies) to operate a community media center ("CMC") and to operate PEG Access Channel(s). The Government Access channels shall continue to be operated by the local government staff unless the City chooses to designate an entity other than itself, and other than the Franchisee, to operate the Government Access channels.

B. PEG Access Channel Capacity. On the Effective Date of this Franchise, the Franchisee provides four (4) downstream Channels to cable Subscribers for PEG access in Richland. The Franchisee shall provide throughout the term of this Agreement four (4) PEG Access Channels, subject to the provisions of this Section ("PEG Access Channel").

1. The Franchisee may seek the return of up to one (1) PEG Access Channel if any PEG Access Channel is not programmed for at least thirty-six (36) hours per week with non-repetitive locally produced PEG video programming measured on a quarterly basis through the second anniversary of this Franchise, and at least forty-eight (48) hours per week measured on a quarterly basis thereafter.

- a. For the purposes of this section, "locally produced PEG video programming" means programming produced or provided by any City resident, the City, or any local public or private agency that provides services to residents of the City; or any transmission of a meeting or proceeding of any local governmental entity

within the City. A program will not be deemed to constitute "locally produced PEG video programming" if it duplicates programming otherwise carried by Franchisee on the Cable System.

Franchisee shall be required to carry three (3) PEG Access Channels pursuant to this Section so long as those Channels are utilized by the City for locally produced PEG video programming in any quantity. Time allocated to character-generated or similar programming shall be excluded from the determination of when such Channel is in use and programmed.

The City shall keep records of the amount of locally produced PEG video programming carried on the PEG Access Channels. Upon request by the Franchisee, not to exceed two (2) requests per calendar year, the City or its Designated Access Provider shall provide a report of the amount of locally produced PEG video programming carried on the PEG Access Channels.

- b. The Franchisee shall give the City four (4) months' notice of its intent to reclaim a PEG Access Channel. If during that four (4) month period the number of hours per week of locally produced PEG video programming meets or exceeds the programming levels set forth in this Section for four (4) consecutive weeks, the City shall retain the use of the Channel for PEG access purposes.
  - c. The City may gain the return of a PEG Access Channel by providing information to the Franchisee that demonstrates that the Channel can be programmed for thirty-six (36) hours per week with locally produced PEG video programming (as defined herein). At such time, the Franchisee shall have three (3) months to restore the PEG Access Channel for the use by the City or its Designated Access Provider for PEG access purposes.
  - d. The PEG Access Channels, facilities, and equipment shall not be used for the cablecast of a program whose primary purpose is commercial or for profit, such as leasing capacity. Sponsorship recognition is permitted in the following form only. A program sponsor or underwriter may be recognized by name and/or logo in the 15 second video and/or audio acknowledgement window at the beginning and end of a sponsored or underwritten program. By way of example, allowable sponsorship recognition could be: "Support for this program was underwritten by a donation from Sponsor ABC." Recognized sponsors may be individuals, private companies or organizations.
2. PEG Access Channel Quality and Capability.

- a. The Franchisee shall not be required to carry any PEG Access Channel in a higher quality format than that of the Channel Signal delivered to Franchisee. Franchisee shall distribute the PEG Access Channel Signal without material degradation, provided, however, this subsection shall not apply to the conversion of PEG Access Channel Signals to a different technical format, such as when the City delivers a PEG Signal in high-definition ("HD") format and Franchisee converts such Signal to standard definition format for cablecasting, unless Franchisee has agreed to carry the PEG Access Channel in HD pursuant to Section 7.11.B.4 herein. The PEG Signal must be viewable by all Subscribers without the need for any equipment other than the equipment, including converters, that a Subscriber requires to receive the lowest cost level of Cable Service. The PEG Access Channel, to the extent permitted by the Signal

provided to the Franchisee, shall function with the same picture and sound quality level as other like Channels.

- b. Upon request, throughout the term of the Franchise, Franchisee shall provide updated contact information for a local technical representative with local knowledge of the City's PEG operations, who shall be available to the City for consultation on technical matters as the need may arise. This technical representative shall be accessed through a direct telephone number available to the City (as opposed to a general public number). The Franchisee shall not impose any fees or charges to the City for this technical consultation. If such consultation is insufficient to diagnose the matter in question, within twenty-four (24) hours of a written request from City to the Franchisee identifying a technical problem with a PEG Access Channel Signal and requesting assistance, Franchisee will provide, free of charge to City, diagnostic services to determine whether or not a problem with a PEG Signal is the result of matters for which Franchisee is responsible and if so, Franchisee will take prompt corrective action, free of charge to City, subject to the limitations on Franchisee's responsibilities outlined in Section 7.11 herein. If the problem persists and there is a reasonable dispute about the cause, then the parties shall meet with engineering representation from Franchisee and the City in order to mutually determine the course of action to remedy the problem. Nothing herein shall be construed to obligate Franchisee to correct problems or take any other action caused by City's Signal, City's network or internal wiring, City's equipment, PEG access program content or other issues within City's reasonable control.

3. Indemnification and Restrictions. The Franchisee shall not be responsible for operating and managing the PEG Access Channel(s) including approving any PEG programming and/or for obtaining releases from programmers for any PEG programming. The City shall hold harmless the Franchisee from and against any and all liability resulting from the City's use of the aforementioned PEG Access Channel(s). The City shall require all local programmers or users of any of the PEG Access Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Franchise and to indemnify, defend, and hold harmless Franchisee and the City from and against any and all liability, claim, judgment, action, loss, cost, damage, or expense (including the cost of defending claims or litigation) arising out of or resulting from programming produced or provided by third parties which is cablecast on a PEG Access Channel.

4. High Definition PEG Access Channel. Following the third anniversary of this Franchise, Franchisee shall provide one (1) PEG Access Channel in HD format. The Franchisee shall carry the HD format Access Channel Signals provided by the City or its Designated Access Provider and the closed captioning, stereo audio, and secondary audio components associated with the programming. The City or its Designated Access Provider shall be responsible for providing the PEG Access Channel Signal in an HD format. The Franchisee shall transport and distribute the PEG Access Programming without material degradation. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Franchisee to receive and distribute the City's HD PEG Access Channel Signal, or for the cost of any resulting upgrades to the video return line. The HD PEG Access Channel provided under this section will replace one of the [three (3)] [four (4)] PEG Access Channels described in Section 7.11.B. and will not be an additional PEG Access Channel. If Franchisee no longer provides any Channels in the City in HD, then it will have no obligation to provide an HD PEG Access Channel under this paragraph but shall continue to have an obligation to provide PEG Access Channels consistent with this Franchise.



At such time that the Franchisee offers all Channels on its Cable System in HD format, the Franchisee shall carry all PEG Access Channels in HD format.

C. Requirements Regarding Rules and Procedures for use of PEG Access Channels.

1. The Franchisee may not exercise any editorial control over the content of programming on the designated PEG Access Channels (except for such programming the Franchisee may produce and cablecast on the same basis as other PEG Access Channel users).

2. Neither the City nor the Franchisee shall exercise editorial control over the content of programming on the designated PEG Access Channels (except for such programming that the City or Franchisee may produce and cablecast, respectively).

D. Support for Access. The City and the Franchisee agree that support of PEG Access is a partnership. It is the intent of the City to utilize Franchise Fees as necessary to defray the costs of PEG Access Channels and to support the development of a Community Media Center. The Franchisee agrees that it will commit funding in support of PEG Access as contained in Section 7.11.E. of this Agreement in accordance with applicable federal law. Franchisee may, pursuant to FCC rules, pass through to Subscribers the costs associated with meeting PEG Access obligations contained in this Franchise.

E. Financial Support for PEG Access. Franchisee shall provide to the City thirty-five (35) cents per month per Subscriber for PEG capital support (the "PEG Fee"). Each PEG Fee payment shall be due and payable no later than forty-five (45) days following the end of the quarter from when the PEG Fee takes effect. The new payment terms and conditions of this Franchise shall take effect sixty (60) days after the Effective Date of the Franchise. The Franchisee shall be obligated to provide the PEG Fee described in this Section so long as one or more PEG Access Channels are being programmed pursuant to Section 7.11.B.

The City agrees to use the PEG Fee in a manner consistent with 47 U.S.C. § 542(G)(2)(C) and any other applicable provisions of the Cable Act, applicable law, or regulations as currently written or amended in the future. The City and Franchisee agree that the PEG Fee is in addition to the Franchise Fee, and falls within the exception at 47 U.S.C. § 542(g)(2)(C). Franchisee shall be entitled to recover the PEG Fee from Subscribers, as allowed by law. The City shall permit a duly authorized representative of the Franchisee, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis, any and all records, equipment and facilities to ensure the City's compliance with this section.

F. Promotion. Franchisee shall, throughout the term of this Agreement, provide the following services to the City and its Designated Access Provider(s).

1. The parties acknowledge that Franchisee contracts with a third party or parties to provide on-screen and on-line program listings. Franchisee shall provide the City with information about and introduction to the service provider(s) so that detailed program information for each PEG Access Channel can be included in the program listings. It shall be the responsibility of the City, or its designee, to provide such detailed program information to the third-party entity or entities that produce such listings for Franchisee in accordance with each such entity's normal format and scheduling requirements and at the City's or Designated Access Provider's cost.

2. The Franchisee shall identify the Channel locations of PEG Access Channels in its print and website postings of Channel program listings for the City (i.e., annual notifications to Subscribers and printed Channel cards).

**G. PEG Access Channel Locations.**

1. The PEG Access Channels shall be located on Franchisee's lowest cost level of Cable Service, to the extent required by law.

2. Relocation of PEG Access Channels. Franchisee shall use reasonable efforts to minimize relocation of PEG Access Channels. Franchisee shall notify the City and/or its Designated Access Provider with a minimum of sixty (60) days written notice of any relocation of a PEG Access Channel. The Franchisee shall provide all Subscribers with as much prior written notice of any relocation of a PEG Access Channel as possible, but in no event less than thirty (30) days.

**H. Complimentary Cable Drops and Cable Service to Public Buildings.**

1. The Franchisee shall provide expanded basic Cable Service to a single drop, with one set-top box (if necessary), at each elementary and secondary public school building and public library building that currently receives service as of the Effective Date of this Franchise, on the school's or library's request, without charge, for as long as Charter participates in the industry supported Cable in the Classroom program.

2. Franchisee shall provide, without charge, one (1) activated outlet which includes the lowest tier of Cable Service which includes PEG Access Channels to Richland City Hall, Richland School District Special Projects Building, and Washington State University, at the addresses listed in Section 7.1.F., as well as one additional PEG access location to be identified by the City, subject to Section 7.10.B., so that City may view and monitor PEG Access Programming. The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The City shall take reasonable precautions to prevent any inappropriate use of or loss or damage to the Franchisee's Cable System. The City shall not install other outlets or make any other alterations to the Cable System installed by Franchisee.

3. On or before the date when PEG Access programming is delivered in HD format, the Franchisee shall provide HD service (including any necessary equipment [e.g., HD converter, etc.], installation of that drop, and subscription to the HD basic service tier or its equivalent) to the City to enable it to monitor the HD transmission and reception of PEG Access programming.

I. General. If Franchisee makes changes to its Cable System that necessitate modifications to PEG Access Signal transmission facilities and equipment, Franchisee shall provide thirty (30) days advance notice of such changes to the City, and shall take reasonable measures to ensure that PEG Signal transmission facilities and equipment may be used and operated as intended and without interruption, including, among other things, transmission of live and taped communications to Subscribers.

**7.12 No City Control.** During the term of this Franchise, the City may not prohibit the Franchisee from providing any program or class of programs, or otherwise censor communications over the Cable System, except that nothing in this section shall be read to authorize the Franchisee to engage in communications which are prohibited by law.

**7.13 Emergency Alert System.**

A. The Franchisee shall install and maintain an Emergency Alert System ("EAS"). Franchisee shall comply with the EAS requirements of the FCC and federal law, in order that required emergency messages may be distributed over the system.

B. To the extent the City is approved or authorized to operate the EAS, the City shall permit only appropriately trained and authorized persons to operate the EAS equipment, and shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold the Franchisee, its employees, officers and assigns harmless from any claims or costs arising out of the EAS or the emergency use of its facilities by the City.

## **SECTION 8. CONSTRUCTION STANDARDS**

8.1 Existing Poles to be Used. To the extent possible, Franchisee shall use and have the right to use existing poles, conduits, and other facilities whenever possible. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without obtaining all legally required permits of the City. This Franchise does not confer the right to place or maintain facilities in any particular location, or in any particular manner in the rights of way or any other property occupied pursuant to this Franchise.

8.2 Without limiting the provisions of Sections 2 and 3 herein:

A. Franchisee agrees that its occupation of the rights of way and such property is subject to the lawful supervision and control of the City.

B. In the event of emergency, the City may move, relocate or remove Franchisee's facilities without prior notice to Franchisee, provided that the City provide notice to Franchisee of such action as soon as practicable. Except as specifically stated, any action that the Franchisee may reasonably be required to take shall be at Franchisee's expense.

C. Undergrounding.

1. Whenever all existing utilities are located underground in an area of the Franchise Area, Franchisee must locate its cable communications system underground in the same area.

2. Whenever the owner of a pole on which Franchisee is attached locates or relocates underground within an area of the Franchise Area, Franchisee shall concurrently relocate its facilities underground in the same area. In the event that any telephone or electric utilities are reimbursed by the City for the placement of cable underground or the movement of cable, the Franchisee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

3. The City may, for good cause shown, exempt a particular system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical, where ordinary engineering practices make undergrounding impractical, or where the City and the Subscriber's interest can be protected in another manner. Nothing in this section prevents the City from ordering communications facilities to be located or relocated underground under generally applicable provisions of the City Code or its general police powers.

D. The construction, installation, operation, and maintenance of the Cable System and all parts thereof shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with the following safety, construction, and technical specifications, codes and standards, as they may now exist or be amended or adopted hereafter, to the extent applicable:

1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

2. National Electrical Code;
3. National Electrical Safety Code (NESC);
4. Obstruction Marking and Lighting, AC 70/7460, i.e., Federal Aviation Administration;
5. Construction, Marking and Lighting of Antenna Structures, FCC Rules 47 C.F.R. Part 17;
6. all federal, State and municipal construction requirements, as it pertains to the City's general police powers, including FCC Rules and Regulations and environmental regulations;
7. all building and zoning codes, and all land use restrictions and local safety codes;
8. the Enabling Ordinance, subject to Section 1.7; and
9. State or local standards for Vehicular Traffic Control.

In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as those standards, if followed, would result in a Cable System which could not meet requirements of federal, State, or local law; and except for such minor modifications as are typical in the industry). The City may adopt generally applicable and reasonable additional standards as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards which may occur during the Franchise term.

E. The Franchisee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to reasonable time, place and manner restrictions. If substantial alteration or removal of a tree or trees is required to safeguard Franchisee's infrastructure, Franchisee shall obtain permission from City prior to any action, and in the event of destruction or removal, compensate City for the lost value of the impacted tree(s).

F. Movement of Facilities for Government.

1. The Franchisee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Franchisee when lawfully required by the City pursuant to its general police powers, including by reason of traffic conditions; public safety; public rights-of-way construction and repair (including regrading, resurfacing or widening); public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the Cable System.

2. Except in the case of emergency, the City shall provide written notice describing where the public work is to be performed at least one week prior to the deadline by which Franchisee must protect, support, temporarily disconnect, relocate or remove its facilities. Franchisee shall be responsible for any costs associated with these obligations to the same extent all other users of the City rights-of-way are responsible for the costs related to the relocation of their facilities. Provided that, in an emergency, or where the Cable System creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all

parts of the Cable System without further notice, but only to the extent necessary to eliminate the imminent danger, and charge the Cable System operator for costs incurred.

**G. Movement for Others.**

1. To accommodate the construction, operation, or repair of the facilities of another person authorized to use the public rights-of-way or public property, Franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, temporarily relocate or remove its facilities, provided that the expense of such is paid by any such person benefitting from the relocation. Franchisee must be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time by which its work must be completed in the event of a temporary relocation, and no less than ninety (90) days for a permanent relocation. Upon request of all involved parties, the City may resolve disputes as to responsibility for costs associated with removal or relocation of facilities among entities authorized to install facilities in the Streets or on public property if such entities are unable to do so themselves.

2. Franchisee shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. Franchisee shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal, relaying, relocation, or raising or lowering of wires shall be paid by the person requesting the same.

H. If funds are available to any person using the Streets for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of the Franchisee.

**SECTION 9. RATE REGULATION**

9.1 For rates subject to rate regulation by the City under federal law, a written schedule of fees for all such regulated services shall be available upon request. The Franchisee agrees to provide each new Subscriber with prices and options for programming services and conditions of subscription to programming and other services.

9.2 The City may regulate Franchisee's rates and charges to the extent authorized by federal law. The Franchisee shall obtain prior approval before implementing or changing any regulated rate or charge, except to the extent that federal or State law preempts the City's authority to require prior approval. Where the regulation of a rate is governed or limited by federal or State law, nothing herein authorizes City to regulate the rate without complying with that law.

9.3 The Franchisee will notify Subscribers of any proposed increase at least thirty (30) days before said increase is to become effective. The Franchisee shall notify the City thirty (30) days prior to the effective date of said increase. The notice will list the FCC community identifier for the Cable System and the name, address, and phone number of a contact person or department at the City so that information regarding procedures for public participation is readily available to Subscribers.

9.4 The City reserves the right to prescribe reasonable rates and order refunds, to the extent permitted by applicable federal law, if it is determined that a rate proposed or charged is unreasonable.

## **SECTION 10. FRANCHISE FEES**

10.1 The Franchisee shall pay to the City an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Services in the City (the "Franchise Fee").

10.2 If Cable Services subject to the Franchise Fee required under this Section 10 are provided to Subscribers in conjunction with noncable services, Franchisee shall not allocate revenue for such bundled services between Cable Services and noncable services in any manner whose purpose is unlawfully to evade or substantially reduce Franchisee's Franchise Fee obligations to the City.

10.3 Franchise Fee payments due the City under this provision shall be calculated on an annual basis consistent with federal law. The Franchisee agrees to pay Franchise Fees to the City at the end of each calendar quarter, no later than forty-five (45) days after the end of the calendar quarter. Each payment shall be accompanied by or closely followed by a statement of Gross Revenue for the quarter in connection with the operation of the Franchisee's Cable System in the City and a report showing the basis for computation of fees. The reports shall list each source of revenue from the operation of the Franchisee's Cable System. The new payment terms and conditions of this Franchise shall take effect sixty (60) days after the Effective Date of the Franchise. The Franchisee shall continue to make Franchise Fee payments under the terms of the former Franchise during the interim period.

10.4 No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the Franchise by the Franchisee.

10.5 The Franchisee shall submit to the City a late fee on Franchise Fee payments which are submitted after the due dates as described in Section 10.3, except that the Franchisee shall be granted a five day "grace" period. Any Franchise Fee payment submitted after the five-day grace period shall be subject to a late fee. In the event that a Franchise Fee payment is not received by the City on or before the due date set forth in Section 10.3, or the fee owed is not fully paid, Franchisee will be charged interest from the due date at an interest rate equal to two percent (2%) above the rate for three-month Federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the Franchise Fee payment.

10.6 The Franchise Fee shall be paid in addition to fees, charges, or assessments required by the City under its general police powers, unless such fee, charge, or assessment falls within the definition of a Franchise Fee under the Cable Act.

10.7 Audits to verify Franchise Fee payments may be conducted by the City, no more than once every three (3) years. Franchisee will provide the records reasonably required by the City to conduct the audit to the City, at a location agreed upon by the City and Franchisee.

10.8 When the rights to operate pursuant to this Franchise terminates for any reason (other than through the issuance of a renewal or superseding Franchise), the Franchisee shall file with the City upon City's request and within ninety (90) calendar days of the request, a financial statement, certified by a certified public accountant or the Franchisee's chief financial officer, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. Adjustments will be made at that time for Franchise Fees due to the date that the Franchisee's operations under the terminated Franchise ceased.

**SECTION 11. PROTECTION OF CITY AND ENFORCEMENT – PERFORMANCE OR OTHER SIMILAR BOND**

11.1 In the event the Franchisee rebuilds the system during the term of this Franchise, the Franchisee shall establish in the City's favor a performance or other similar bond in an amount not more than five percent (5%) of the estimated cost of rebuilding each portion of the Cable System at the particular time that portion of the Cable System is being rebuilt. The performance or other similar bond shall be issued by a corporate surety authorized to transact a surety business in Washington, and shall be canceled when the rebuild is complete. Franchisee shall provide thirty (30) days' notice to City of surety cancellation after construction of that portion of the Cable System is complete. The performance or other similar bond shall not be canceled until the City authorizes the release of the bond subject to City verification that the rebuild has been completed, or within thirty (30) days of Franchisee's notice that construction is complete, whichever is later.

11.2 In the event the Franchisee fails to complete the Cable System rebuild in a safe, timely, and competent manner in accord with the provisions of this Franchise, applicable law, and permits, or otherwise fails to comply with its obligations under this Franchise, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, or the cost of completing or repairing the Cable System rebuild, or other work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

11.3 The performance or other similar bond shall contain the following endorsement or a similar endorsement acceptable to the City:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

11.4 The performance or other similar bond required by this Section is in addition to, and not in lieu of, any bonds required consistent with the City's normal practices for similar construction projects.

11.5 Security Fund. Franchisee shall establish and maintain a cash security fund or provide the City an irrevocable letter of credit in the amount of \$50,000 to secure the payment of fees owed, to secure performance promised in the Franchise, and to pay any taxes, fees, penalties or liens owed to the City. The letter of credit shall be in a form and with an institution acceptable to the City, which acceptance shall not be unreasonably withheld. The City may not draw upon the cash security fund or letter of credit without first exhausting all of the procedures specified in Section 13.1-13.3. The cash security fund or letter of credit must be obtained prior to the Effective Date of the Franchise.

11.6 Insurance.

A. Insurance Required. Franchisee shall obtain and maintain, for the entire period Franchisee has facilities in the public rights-of-way insuring the Franchisee and the City, and its elected officers, agents and employees as additional insureds, in amounts at least as provided below.

1. Commercial general liability insurance with limits not less than:
  - a. One million dollars (\$1,000,000) per occurrence limit.
  - b. Two million dollars (\$2,000,000) General Aggregate.

2. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 per occurrence.

3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.

4. Products-Completed/Operations Aggregate of not less than \$1,000,000.

5. Umbrella liability of \$5,000,000 per occurrence limit.

B. Upon policy expiration or change of insurance carrier, a new Certificate of Insurance will be provided within thirty (30) days after policy renewal or replacement. If Franchisee's insurance carrier provides Franchisee notice of cancellation of a policy providing the insurance coverages specified in this Section 11.6, and Franchisee is not able to renew or replace the policy or otherwise provide the coverage specified in Section 11.6 prior to the effective date of the policy cancellation, then Franchisee shall provide the City with written notice of the policy cancellation within 10 business days following the effective date of such cancellation. Franchisee may provide notice of cancellation by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email address provided by the City. It is the responsibility of the City to provide Franchisee with up-to-date contact names and email addresses.

## **SECTION 12. PROTECTION OF CITY AND ENFORCEMENT – APPROVAL OF SURETIES: RELATION TO OTHER REMEDIES**

12.1 The insurance, bonds, and security fund or letter of credit required by this Franchise shall be issued, respectively, by an admitted insurer in Washington, acceptable to the City, and by a financial institution acceptable to the City.

12.2 Recovery by the City of any amounts under this Franchise shall not in any respect limit the Franchisee's duty to indemnify the City as provided in Section 3.9 for any unrecoverable amounts due the City; nor shall recovery of any amounts in any respect prevent the City from imposing penalties under Washington law, or exercising any other right or remedy it may have under the Franchise or at law or equity.

## **SECTION 13. ENFORCEMENT**

13.1 Franchise Violation—Notice and Procedures. If the City believes that Franchisee has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Franchisee. Before revoking the Franchise or pursuing any other remedy or enforcement action, the City shall follow the procedures set forth below:

A. The City shall notify Franchisee in writing of any alleged violation ("Violation Notice") of the Franchise. The Violation Notice shall:

1. Identify the nature of the alleged noncompliance or violation;

2. Direct Franchisee to cure the alleged noncompliance or violation or show cause why the alleged noncompliance or violation cannot or should not be cured; and

3. State the time for Franchisee's response, which shall be at minimum thirty (30) days from the date of issuance of the Violation Notice, except for violations that present a danger to public health, safety or welfare, in which case the time for response may be shortened.



13.2 Franchisee's Right to Cure or Respond. Within the time period designated for response, Franchisee shall respond in writing to the City indicating that:

- A. Franchisee contests the Violation Notice and describing facts relevant to its claim; or
- B. Franchisee has completely cured the alleged noncompliance or violation, in which case Franchisee shall provide documentation demonstrating that the alleged noncompliance or violation has been completely cured; or
- C. Franchisee has begun to correct the alleged noncompliance or violation; however, the alleged noncompliance or violation cannot be corrected immediately despite Franchisee's continued due diligence, in which case Franchisee shall describe in detail the steps already taken and Franchisee's proposed plan and time schedule for completely curing the alleged noncompliance or violation.

13.3 Public Hearing. If Franchisee contests the Violation Notice or the City believes that the Franchisee has failed to completely cure the alleged noncompliance or violation, to submit a reasonable plan to cure the alleged noncompliance or violation, or to work diligently to cure the alleged noncompliance or violation, the City shall schedule a hearing before the City Council ("Violation Hearing"). The City shall provide Franchisee written notice of the Violation Hearing at least thirty (30) days prior to the hearing ("Hearing Notice").

- A. The Hearing Notice shall indicate:
  - 1. The time and place of the Violation Hearing;
  - 2. The nature of the alleged noncompliance or violation; and
  - 3. Franchisee's right to present oral and written testimony at an open and public meeting.
- B. At the Violation Hearing, the City Council shall hear and consider evidence from Franchisee, City staff and members of the public regarding the alleged noncompliance or violation. Franchisee shall be given an opportunity to present any and all evidence relating to the alleged noncompliance or violation.
- C. If, based upon the evidence presented at the Violation Hearing, the City Council finds that Franchisee has violated the Franchise, the City Council may issue written findings and an order invoking the appropriate remedy under this Franchise.

13.4 Enforcement. Subject to applicable federal and State law, in the event the City, after the Violation Hearing set forth in subsection 13.3 above, determines that the Franchisee is in default of any provision of the Franchise, the City may take any or all of the following actions:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.
- B. Commence an action at law for monetary damages or seek other equitable relief.
- C. Draw on the security fund specified in Section 11.5 without prejudice to either parties' rights with respect to such disputed amounts, provided the City provides the Franchisee thirty (30) days' advance notice specifying the amount and purpose of such withdrawal.

D. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 13.5 below.

13.5 Revocation. The City Council may revoke this Franchise or reduce the term of this Franchise if it finds, after complying with procedures set forth in Section 13.1-13.4 above, that Franchisee has substantially failed to comply or violated a material provision of this Franchise; has defrauded or attempted to defraud the City or Subscribers; has attempted to evade material requirements of this Franchise; or has abandoned its Franchise (the Franchisee shall be deemed to have abandoned its Franchise if it willfully refuses to operate the Cable System as required by its Franchise, when there is no event beyond the Franchisee's control that prevents the operation of the Cable System, and where operation would not endanger the health or safety of the public or property). Franchisee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

13.6 Upon revocation of the Franchise, or upon any other termination of the Franchise by passage of time or otherwise, the City shall have the right to require the Franchisee to remove, at the Franchisee's expense, its Cable System from Streets, public property, and any private property occupied pursuant to the revoked, canceled, or terminated Franchise. The City shall notify the Franchisee in writing that the Cable System should be removed, and identify any period during which the Franchisee will be required to continue to operate the Cable System as provided in Section 15. In removing its Cable System, the Franchisee shall refill and compact, at its expense, any excavation that shall be made and shall leave all Streets, public property, and private property in as good a condition as that prevailing prior to the Franchisee's removal of the Cable System. The provisions of Section 13.5 of this Franchise Agreement shall remain in full force and effect until the Cable System is removed.

13.7 Upon revocation or termination of the Franchise, Franchisee may, if the City declines to acquire ownership of the Cable System, sell or transfer the ownership of the Cable System, subject to Section 16 herein.

13.8 Notwithstanding the foregoing, neither the Franchisee nor the City waive any of their respective rights under federal law or regulation. Nothing herein shall be construed to waive or otherwise affect Franchisee's right to seek relief in a court of competition jurisdiction from any decision made or action taken by the City under this Franchise.

#### **SECTION 14. REMEDIES – CUMULATIVE**

14.1 All remedies provided under this Franchise Agreement shall be cumulative, unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall it relieve the Franchisee of its obligations to comply with the Franchise. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has under law or at equity.

#### **SECTION 15. REMEDIES – CONTINUITY OF SERVICE**

15.1 It is the right of all Subscribers in the Franchise Area to receive Cable Service from Franchisee as long as their financial and other obligations to Franchisee are satisfied, and subject to Franchisee's rights under the Franchise.

15.2 In the event of the termination or transfer of the Franchise, Franchisee shall make reasonable efforts to ensure that all Subscribers receive continuous, uninterrupted service in accordance with this Section 15. At the City's request, Franchisee shall cooperate with the City to operate its Cable System for a temporary period (the "Transition Period") following termination or transfer of the Franchise as necessary to maintain continuity of service to all Subscribers, and shall cooperate in the development of plans required to ensure an orderly transition from one operator to another. The Transition Period will be no longer than the reasonable period required to select another

franchisee and build a replacement Cable System. During such Transition Period, the Cable System shall be operated consistent with the terms and conditions of this Franchise Agreement and applicable law.

15.3 In the event Franchisee fails to operate the Cable System for ninety-six (96) hours during any seven (7) day period without prior approval of the City, or if the System is abandoned, as defined in Section 13.5, the City may, at its option, operate the Cable System or designate an operator until such time as Franchisee restores service under conditions acceptable to the City or until the Franchise is revoked and a permanent operator is selected. If the City is required to fulfill this obligation for Franchisee, Franchisee shall reimburse the City for all costs or damages resulting from Franchisee's failure to perform that are in excess of the revenues from the Cable System received by the City. Additionally, Franchisee will cooperate with the City to allow City employees and/or City agents free access to Franchisee's facilities and premises for purposes of continuing Cable System operation.

## **SECTION 16. FRANCHISE TRANSFER**

16.1 The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with Franchisee, without the prior consent of the City, and such consent shall not be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System to secure indebtedness.

16.2 In accordance with 47 U.S.C. § 537, the City shall have one hundred and twenty (120) days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by this Franchise, to act upon an application.

16.3 If the City questions the accuracy of the information provided under Section 16.2., the City must notify Franchisee within thirty (30) days of the filing of such information, or such information shall be deemed accepted, unless Franchisee has failed to provide any additional information reasonably requested by the City within ten (10) days of such request.

16.4 If the City fails to act upon such transfer request within one hundred and twenty (120) days, such request shall be deemed granted unless the City and Franchisee otherwise agree to an extension of time.

16.5 The City may request that the transferee provide guarantees and warranties from any entity that manages, owns, or controls it, to ensure compliance with this Franchise, but the transferee's refusal to provide such guarantees or warranties shall not be a basis for denial of the transfer.

## **SECTION 17. BOOKS AND RECORDS – INSPECTION**

17.1 Upon receipt of advance written notice, during normal business hours, the City may inspect and copy the books, records, maps, plans, and other documents, including financial documents, in the control or possession of Franchisee, Affiliates, any person that constitutes an operator of Franchisee's Cable System that are legally permissible for release and that are necessary: (1) to enforce the City's rights or assess compliance with the Franchise and applicable federal and State law; (2) in the exercise of any power the City may have under this Franchise or applicable federal or State law; or (3) as may be necessary in connection with any proceeding the City may or must conduct under applicable law with respect to Franchisee's Cable System. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Franchisee is responsible for collecting the information requested. The material shall be produced at the Office of the City Manager or his/her designee unless the City agrees to inspection and copying at another location. Material that the City requires Franchisee to produce under this section shall be produced upon reasonable notice,

no later than thirty (30) days after the request for production. Requests for extensions of time to respond shall not be unreasonably denied.

17.2 Access to Franchisee's records shall not be denied to the City on the basis that said records contain "proprietary" information. Franchisee and the City shall work in good faith to agree on alternative means of sharing such proprietary information, including but not limited to making it available for inspection but not copying, to preserve its confidentiality. The Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. To the degree permitted by State law, City will treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Franchisee makes the City aware of such confidentiality. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise the Franchisee in advance so that the Franchisee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of the Franchisee's books and records marked confidential, as set forth above, to any person.

## **SECTION 18. PERFORMANCE MONITORING**

18.1 Exercise of Authority. The City may exercise appropriate regulatory authority under the provisions of this Franchise and applicable federal and State law, as amended from time to time.

## **SECTION 19. MISCELLANEOUS**

19.1 Time of Essence; Maintenance of Records of Essence. In determining whether the Franchisee has substantially complied with the Franchise, the City and the Franchisee agree that time is of essence.

19.2 Effect of Preemption; Federal and State Law. The Franchisee and the City must comply with all applicable provisions of federal and State law. If the City's ability to enforce any Franchise provision is finally and conclusively preempted by federal or State law, then the provision shall be deemed preempted but only to the extent and for the period the preemption is required by law. If, as a result of a subsequent change in law or the interpretation of that law, the provision of this Franchise would again be enforceable, it shall be enforceable, and the Franchisee will comply with all obligations thereunder after receipt of notice from the City.

19.3 Force Majeure. The Franchisee shall not be deemed in default or non-compliance with provisions of its Franchise where performance was rendered impossible by war, riots, civil disturbance, floods, other natural catastrophes, or similar events beyond the Franchisee's control, and the Franchise shall not be revoked or the Franchisee penalized for such non-compliance, provided the Franchisee takes prompt and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Streets, public property, or private property. This provision includes work delays caused by partial or entire failure of utilities to service or monitor their utility poles to which Franchisee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform necessary work.

19.4 Severability. If any provision of this Franchise Agreement is held by a court or by any federal or State agency of competent jurisdiction to be invalid as conflicting with any federal or State law, rule, or regulation now or hereafter in effect, the validity of the remaining sections hereof shall not be affected.

19.5 Settlement and Release. As of the Effective Date of this Franchise Agreement, the prior franchise is superseded and is of no further force and effect, and the City hereby waives and forever

releases Franchisee from any claims the City had, has or may have against Franchisee under the prior franchise.

19.6 Administration of Franchise. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the City and the Franchisee.

19.7 Written Notice. Notices shall be given as follows:

To the City:

Richland City Manager  
P.O. Box 190  
975 George Washington Way  
Richland, WA 99352

To Franchisee:

Attn: Director, Government Relations  
Charter Communications  
222 NE Park Plaza Drive, #231  
Vancouver, WA 98684

With a copy to:

Attn: Vice President, Government Affairs  
Charter Communications  
12405 Powerscourt Drive  
St. Louis, MO 63131

Franchisee may indicate a different delivery address via written notice to the City.

Notice shall be deemed given three (3) business days after posting with pre-paid postage, first class mail, or immediately upon hand-delivery to the person identified above, at the address specified above.

19.8 Competitive Equity. Franchisee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to construct, operate, and maintain a Cable System within the City. If following the Effective Date of this Franchise, the City grants a franchise or authorization to another provider to provide Cable Services or Video Services (without regard to the technology used to deliver such services) using facilities located wholly or partly in the public rights-of-way of the City, and the Franchisee believes the City has done so on material terms (as defined in Section 19.8.A.2. below) that are more favorable to the competing provider than the terms of this Franchise, then the Franchisee shall have the right and may take any of the following actions:

A. Seek Modification of Agreed Material Terms.

1. Franchisee may seek modification of the Agreed Material Terms by submitting a written request to the City specifying its requested modifications to this Franchise. Within thirty (30) days after the Franchisee submits a written request to the City, the Franchisee and the City shall meet to discuss the franchise modifications that the Franchisee has requested. The City and the Franchisee shall have thirty (30) days (or any longer agreed upon period) after the parties' meeting to reach agreement on the requested modifications and enter into a modified Franchise containing such mutually agreed terms and conditions.

2. For purposes of this provision, the City and Franchisee mutually agree that the following terms are material: Section 7.10.A., Section 7.10.B.1., Section 7.11.B.1.a.-c., Section 7.11.B.2, Section 7.11.B.3, Section 7.11.B.4., Section 7.11.E., Section 7.11.G., Section 10, and Section 11.5 ("Agreed Material Terms"). The City and Franchisee agree that this provision shall not require a word for word identical franchise or authorization for competitive equity so long as the regulatory and financial burdens on competing providers are substantially equivalent.

3. If the parties fail to reach mutual agreement on a modified franchise, the Franchisee's Franchise shall be deemed modified with respect to the Agreed Material Term(s) in dispute as specified in Franchisee's written request and modified to match the competing provider's franchise. Nothing in this provision prohibits the Franchisee or the City from bringing an action in a court of competent jurisdiction for a determination as to whether the disputed Agreed Material Terms are different and as to what if any Franchise amendments would be necessary to remedy the disparity.

B. Choose to terminate this Franchise and take in its place for the remaining term of this Franchise the same franchise of a competing provider of Cable or Video Services authorized by the City.

C. Choose to have this Franchise with the City be deemed expired thirty (30) months after written notice to the City, provided that the City agrees that Franchisee's written notice shall be deemed timely to invoke the renewal procedures set forth in 47 U.S.C. § 546, and that Franchisee shall retain all rights under 47 U.S.C. § 546 and applicable law.


Nothing in this Franchise is intended or shall be construed, to alter the rights or obligations of either the City or the Franchisee under applicable law. Subject to applicable law, the City will not be required to refund the value of benefits received prior to the granting of a franchise to a competing provider of Cable or Video Services.

19.9 Entire Agreement. This Franchise sets forth the entire Agreement between the parties respecting the subject matter hereof and supersedes all prior agreements, proposals, covenants, representations, and warranties, express and implied, oral and written. This Franchise cannot be changed orally but only by an instrument in writing executed by the duly authorized representatives of the parties.

19.10 Washington Law Applies. Except as to matters which are governed by federal law, this Franchise will be governed by and construed in accordance with the laws of the State of Washington.

**SECTION 20.** This ordinance shall be published in the official newspaper of the City of Richland, and shall take effect on the 31<sup>st</sup> day following publication or execution by both parties, whichever is later.


PASSED by the City Council of the City of Richland at a regular meeting on the 5<sup>th</sup> day of July, 2016.

  
ROBERT J. THOMPSON  
Mayor

ATTEST:

APPROVED AS TO FORM:

  
MARCIA HOPKINS  
City Clerk


  
HEATHER KINTZLEY  
City Attorney

Date Published: July 10, 2016

**Grantee's Acceptance of Ordinance No. 34-16**

This is to advise the City of Richland that Falcon Video Communications, L.P. (the "Grantee"), hereby accepts Ordinance No. 34-16, passed by the City Council on July 5, 2016, regarding the renewed Cable Television Franchise Agreement between Grantee and the City.

FALCON VIDEO COMMUNICATIONS, L.P.  
("Grantee")

By: 

Name: MARK E. BROWN

Title: VP, GOVERNMENT AFFAIRS

Date: 7/18/16

## APPENDIX A

### FCC Customer Service Requirements

#### **47 C.F.R. § 76.309(c) Customer service obligations.**

- (c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:
- (1) Cable system office hours and telephone availability—
- (i) Franchisee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
    - (A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
    - (B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
  - (ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
  - (iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
  - (iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
  - (v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.
- (2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:
- (i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
  - (ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.



- (iii) The “appointment window” alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
  - (iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
  - (v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- (3) Communications between cable operators and cable subscribers—
- (i) Refunds—Refund checks will be issued promptly, but no later than either—
    - (A) The customer’s next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
    - (B) The return of the equipment supplied by the cable operator if service is terminated.
  - (ii) Credits—Credits for service will be issued no later than the customer’s next billing cycle following the determination that a credit is warranted.
- (4) Definitions—
- (i) **Normal business hours** - The term “normal business hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.
  - (ii) **Normal operating conditions** - The term “normal operating conditions” means those service conditions which are within the control of the cable operator. Those conditions which are *not* within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which *are* ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
  - (iii) **Service interruption** - The term “service interruption” means the loss of picture or sound on one or more cable channels.

**47 C.F.R. § 76.1602 Customer service—general information.**

- (a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.
- (b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
  - (1) Products and services offered;
  - (2) Prices and options for programming services and conditions of subscription to programming and other services;
  - (3) Installation and service maintenance policies;
  - (4) Instructions on how to use the cable service;
  - (5) Channel positions of programming carried on the system, and
  - (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
  - (7) Effective May 1, 2011, any assessed fees for rental of navigation devices and single and additional CableCARDS; and
  - (8) Effective May 1, 2011, if such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to:
    - i. The rental of single and additional CableCARDS; and
    - ii. The rental of operator-supplied navigation devices.
- (c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

**47 C.F.R. § 76.1603 Customer Service—rate and service changes.**

- (a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.
- (b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by [47 C.F.R.] § 76.1602.

- (c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.
- (d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.
- (e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.
- (f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

**47 C.F.R. § 76.1604 Charges for customer service changes.**

If a cable operator establishes a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, as provided in [47 C.F.R.] § 76.980(d), the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any 12 month period.

**47 C.F.R. § 76.1619 Information on subscriber bills.**

- (a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.
- (c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.