ORDINANCE O-11-448

AN ORDINANCE OF THE CITY OF MAPLEVALLEY, WASHINGTON GRANTING COMCAST OF CALIFORNIA/COLORADO/WASHINGTON I, INC., A CABLE TELEVISION FRANCHISE, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in July 2009, the City annexed an area known as Maple Ridge Highlands ("annexation area"), by adopting Ordinance O-09-388; and

WHEREAS, the annexation of the properties within the annexation area operated to legally cancel any franchise within the annexation area, but the City and Comcast of California/Colorado/Washington I Inc., ("Comcast") operated as if a franchise agreement was effective on a month to month basis and Comcast has been paying to the City its franchise fees collected from customers within the annexation area since the effective date of annexation; and

WHEREAS, the City owns right of way within its borders and is entitled to require a franchise agreement with users of its right of way for the privilege of placing structures within its right of way; and

WHEREAS, the City adopted Ordinance O-10-431, pertaining to cable franchising and cable consumer protection and said ordinance provides the regulatory authority for the City to grant a franchise to Comcast; and

WHEREAS, under a cable franchise agreement the City is authorized by federal law to impose a franchise fee on the gross receipts of the earnings of a cable provider, and to regulate certain aspects of the provision of cable services by a cable provider to its customers; and

WHEREAS, the City granted a cable franchise to Comcast of Washington IV, Inc., on December 13, 2010, in Ordinance O-10-432; and

WHEREAS, the City and Comcast mutually agree that the month to month franchise within the annexation area should be terminated and the parties should operate under a formal grant of franchise from the City and that the terms of the franchise should be similar in all material ways to the grant of franchise by the City to Comcast of Washington IV, Inc.; and

WHEREAS, the City held a public hearing on February 28, 2011 for purposes of accepting testimony on a proposed franchise agreement with Comcast; and

WHEREAS, the City Council desires to enter into a franchise agreement with Comcast;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLEVALLEY DO ORDAIN AS FOLLOWS:

Section 1. Authorization. The City Manager is authorized to execute the franchise agreement between the City of Maple Valley and Comcast of California/Colorado/Washington I,

Inc., attached hereto as Exhibit A, entitled "City of Maple Valley Cable Television Franchise – Maple Ridge Highlands," the terms of which are incorporated herein by reference as if fully set forth.

Section 2. Acceptance Required. This franchise agreement shall be accepted by Comcast of California/Colorado/Washington I, Inc. within sixty (60) days of receipt of the franchise agreement, after its execution by the City, by filing with the City Clerk an unconditional, written acceptance of all of the terms, provisions, and conditions of the franchise agreement. The failure of Grantee to file such an acceptance maybe deemed a rejection by Grantee, and this Franchise may then be voidable at the discretion of the City.

Section 3. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date. A summary of this ordinance shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force five (5) days after adoption and publication subject to the provisions of Section 2, herein.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THIS 28th DAY OF FEBRUARY, 2011.

_____
Noel T. Gerken, Mayor

Attest:

_____
Shaunna Lee-Rice, City Clerk

Approved as to Form:

_____
Christy A. Todd, City Attorney

Publication Date: March 8, 2011
Effective Date: March 13, 2011 (Only after franchise agreement acceptance by Comcast)

EXHIBIT A

CITY OF MAPLEVALLEY

CABLE TELEVISION FRANCHISE – MAPLE RIDGE HIGHLANDS

TABLE OF CONTENTS

Section 1.Definitions 5

Section 2.Grant of Franchise 8

Section 3.Franchise Fees and Financial Controls 11

Section 4.Administration and Regulation 14

Section 5.Indemnification and Insurance Requirements 15

Section 6.Customer Service 19

Section 7.Reports and Records 19

Section 8.Programming 21

Section 9.Access 22

Section 10.General Right-of-Way Use and Construction 27

Section 11.Technical Standards 29

Section 12.Service Extension and Service to Public Buildings 30

Section 13.Franchise Violations 32

Section 14.Franchise Renewal 37

Section 15.Franchise Transfer 37

Section 16.Miscellaneous Provisions 39

CABLE TELEVISION FRANCHISE

This grant of a Cable Television Franchise ("Franchise") is by the City of Maple Valley, Washington, a municipal corporation, (hereinafter "City") to Comcast of California/Colorado/Washington I, Inc. (hereinafter "Grantee"). The City and Grantee are sometimes referred to hereinafter collectively as the "parties."

WHEREAS, the City has reviewed Grantee's performance under the prior franchise and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Grantee, and has determined that Grantee's plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all concerned; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's proposal to provide cable television service within the City; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of Cable Service in the Franchise Area; and

WHEREAS, the Grantee's Cable System should offer a broad range of programming services; and

WHEREAS, flexibility to respond to changes in technology and subscriber interests within the Cable Service market should be an essential characteristic of this Franchise; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain a cable system or systems within the boundaries of the City.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

Section 1.
Definitions

For the purposes of this Franchise and the Exhibit attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein and as provided in the Maple Valley Municipal Code. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" means the availability for noncommercial use by various governmental and educational agencies, institutions, organizations, and other groups and individuals in the community, including the City and its designees, of particular Channels on the Cable System to distribute programming to subscribers, as permitted under applicable law.

(A) **"Public Access"** means Access where the public is the primary user.

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

(C) **"Government Access"** or **"Governmental Access"** means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

(D) **"PEG"** means Public, Educational and Governmental Access.

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

1.3 "Bad Debt" means amounts lawfully owed by a subscriber and accrued as revenues on the books of Grantee, but not collected after reasonable efforts by Grantee.

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

1.5 "Cable Service" means the one-way transmission to subscribers of Video Programming, or other programming service and subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

1.6 "Channel" means a portion of the frequency band capable of carrying a television Channel, whether delivered in an analog or digital format.

1.7 "City" means the City of Maple Valley, Washington, a municipal corporation.

1.8 "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage Access Channels and Access facilities. The City may be a Designated Access Provider.

1.9 "Dwelling Unit" means any residential building, or each portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping and that is designed for residential occupancy.

1.10 "FCC" means the Federal Communications Commission or its lawful successor.

1.11 "Franchise" means this document which is executed between the City and Grantee, containing the specific provisions of the authorization granted and the contractual agreement created thereby.

1.12 "Franchise Area" means the area within the jurisdictional boundaries of the area annexed by Ordinance O-09-388 ("aka Maple Ridge Highlands") within the City, including any areas annexed by the City during the term of this Franchise.

1.13 "Gross Revenues" means any and all revenue derived directly or indirectly by Grantee, or by Grantee's Affiliates, as defined in the federal Cable Act, from the operation of the Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly and other fees charged Subscribers for Cable Services including basic, premium, pay-per-view and other video fees, FCC regulatory fees, Cable Service installation, disconnection, reconnection and change-in-service fees, lockout device revenues, franchise fees, revenues from rentals or sales of converters or other Cable System equipment, Leased Access Channel fees, remote control rental fees or sales, late fees and administrative fees, consideration received by the Grantee from programmers for carriage of Cable Services on the Cable System, advertising sales revenues (including local, regional and a pro rata share of national advertising carried on the Cable System in the Franchise Area) net of commissions due to unaffiliated advertising agencies that arrange for the advertising buy, revenues from program guides, additional outlet fees, revenue from the sale or carriage of other Cable Services, and revenues from home shopping. Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Grantee that are imposed directly on any Subscriber or user by the State, Grantor or other governmental unit and that are collected by the Grantee on behalf of said governmental unit; or (iii) the PEG Capital Contributions as required by this Franchise. The Franchise Fees are not a tax and are therefore included in Gross Revenues. Comcast shall maintain its financial books and records, including those books and records pertaining to the City and the calculation of Gross Revenues, in accordance with Generally Accepted Accounting Principles (GAAP).

1.14 "Leased Access Channel" means any Channel or portion thereof that is commercially available for programming in accordance with Section 612 of the Cable Act.

1.15 "Person" means any individual, partnership, association, joint stock company, trust, corporation, or governmental entity, but shall not mean the City.

1.16 "Right-of-Way" means land acquired for "Right-of-way" means land acquired or dedicated for public roads and streets, but does not include:

(A) State highways;

(B) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;

(C) Structures, including poles and conduits, located within the Right-of-Way;

(D) Federally granted trust lands or forest board trust lands;

(E) Lands owned or managed by the State parks and recreation commission; or

(F) Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

1.17 "School" means any State accredited K-12 public educational institution.

1.18 "State" means the State of Washington.

1.19 "System" or **"Cable System"** means Grantee's facility located in the Franchise Area, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. § 573 and federal regulations; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

1.20 "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Section 2.
Grant of Franchise

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the rights-of-way and utility easements dedicated for compatible uses within the Franchise Area to construct, operate, maintain, upgrade and reconstruct a Cable System for the purpose of providing Cable Services, subject to the terms and conditions set forth in this Franchise and in the Maple Valley Municipal Code. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Grantee, through this Franchise, is granted the right to operate its System using the Rights-of-Way and utility easements dedicated for compatible uses within the Franchise Area. Such use must be in compliance with all lawfully enacted and applicable law. In the event of a conflict between the Municipal Code and this Franchise, this Franchise shall control. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to any ordinance, regulation,

resolution or other enactment of the City, except within the lawful exercise of the City's police power. The Grantee agrees to comply with all lawful and generally applicable City ordinances. Grantee has the right to challenge any City ordinance or regulation that conflicts with its rights under this Franchise. Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety and welfare of the public and Grantee agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power. Nothing in this Franchise shall be deemed to waive the requirements of ordinances of general applicability lawfully enacted, or hereafter lawfully enacted, by the City.

(C) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee offering Cable Service over the Cable System in the Franchise Area will also comply with the terms and conditions of this Franchise.

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

(1) Any other permit or authorization lawfully required for the purpose of conducting business within the City pursuant to the ordinances and laws of the City; or

(2) Any permit, agreement or authorization lawfully required by the City for rights-of-way users in connection with operations on or in rights-of-way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

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

(F) This Franchise expressly authorizes Grantee to provide Cable Services over its Cable System. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to non-Cable services. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide non-Cable services or relieve Grantee of its obligation to comply with any such authorization(s) that may be lawfully required.

2.2 Use of Rights-of-Way

(A) Subject to the City's regulatory authority, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the rights-of-way within the Franchise Area, such wires, cables (both coaxial and fiber optic), conductors, ducts, conduit, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Cable System for the provision of Cable Services within the Franchise Area.

(B) Grantee must comply with City regulations related to the placement of Cable System facilities in the rights-of-way, and must install Cable System facilities in a manner that minimizes interference with the use of the Right-of-Way by others, including others that may be installing communications facilities. If necessary to protect the public health, safety and welfare, the City may condition permits accordingly. Further, the City may require removal of any facility that is not installed in compliance with the regulations enacted by the City at the time of installation. If Grantee does not take corrective action after written notice and an opportunity to cure are provided, then the City may remove the facility and bill Grantee for those costs directly related to the removal of the cable facility.

2.3 Duration

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be co-terminous with the the grant of franchise to Comcast of Washington IV, Inc., pursuant to Ordinance O-10- 432, including any amendments thereto; and in the event Ordinance O-10-432 is repealed, shall be no longer than five (5) years from the effective date of this Franchise, unless terminated or shortened as hereinafter provided.

2.4 Effective Date

(A) This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall take effect and be in force from and after the effective date of this Franchise.

(B) The effective date of this Franchise shall be the latter of the dates on which it is accepted in writing by Grantee and the City.

2.5 Franchise Nonexclusive

This Franchise shall be nonexclusive. The City may at any time grant authorization to use the rights-of-way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for cable systems as the City deems appropriate.

2.6 Competitive Equity

(A) Any Cable Service Franchise granted by the City shall be nonexclusive and shall not preclude the City from granting other or further Cable Service franchises. The City reserves the right to grant one (1) or more additional Cable Service franchises. The City shall amend this Franchise, as requested by the Grantee, if it grants additional Cable Service franchises or similar authorizations that contain material terms or conditions which are substantially more favorable or less burdensome to the additional franchise holder than the material terms and conditions herein. A word for word identical franchise or authorization for a competitive entity is not required so long as the regulatory and financial burdens on each entity are generally equivalent.

(B) Notwithstanding any provision to the contrary, at any time prior to the commencement of the Grantee’s thirty-six (36) month renewal window under Section 626 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 546, that a non-wireless facilities based entity, legally authorized by State or federal law, makes available for purchase by Subscribers or customers, Cable Services within the City without a Cable Service franchise or other similar lawful authorization granted by the City, then the Grantee shall have a right to

request Franchise amendments that relieve it of regulatory burdens that create a substantial competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend this Franchise. Such petition shall: (a) indicate the presence of such wireline competitor and identify the competitor and the scope of its service area; (b) describe the Cable Services offered to Subscribers or customers by the competitor; (c) identify the Franchise terms and conditions for which Grantee is seeking amendments; (d) provide the text of all proposed Franchise amendments to the City, along with a written explanation and justification as to why the proposed amendments are necessary; and (e) identify all material terms or conditions in the applicable State or federal authorization which are substantially more favorable or less burdensome to the competitive entity. Provided the Grantee fully cooperates with the City and provides all requested data, the City shall act on the petition within 120 calendar days, unless the parties agree to an extension of time. The City may consider all relevant factors, evidence and circumstances in making its decision under this paragraph.

(C) In the event an application for an additional Cable Service franchise is filed with the City, the City shall notify the Grantee.

2.7 Familiarity with Franchise
Grantee acknowledges and warrants by acceptance of the rights, privileges and agreement granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time.

2.8 Effect of Acceptance
By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise, subject to applicable law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

Section 3.
Franchise Fees and Financial Controls

3.1 Franchise Fees
As compensation for the use of the City's rights-of-way, Grantee shall pay as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such franchise fees shall commence as of the effective date of this Franchise.

3.2 Payments
Grantee's franchise fee payments to the City shall be computed for the preceding quarter. Each payment shall be due and payable no later than thirty (30) days after the end of the preceding quarter. The quarters shall end respectively on the last day of March, June, September and December.

3.3 Acceptance of Payment
No acceptance of any payment shall be construed as an accord by the City that the amount paid is. in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee. However, the period for recovery of franchise fees payable hereunder is limited to the applicable statute of limitations.

3.4 Franchise Fee Reports
Each payment shall be accompanied by a written report to the City on a form approved by the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

3.5 Audits
On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records if necessary for the enforcement of this Franchise and to re-compute any amounts determined to be payable under this Franchise. If Grantee cooperates in making all relevant records available to the City, the City will attempt to complete each audit within six (6) months. Any undisputed amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to Grantee by the City, which notice shall include a copy of the audit findings. If the audit shows that Grantee has underpaid the City by five percent (5%) or more in any calendar year period under audit, the Grantee shall pay for the cost of the audit and shall pay the amounts due to the City as a result of the audit within sixty (60) days following written notice to Grantee by the City and shall pay interest on the unpaid amounts. Interest shall be paid at the rate of 12% per annum.

If Grantee disputes all or part of the audit findings, then that matter may be referred to non-binding arbitration by either of the parties. Each party shall bear one-half of the cost and expenses of the arbitration proceedings. The decision of the arbitrator(s) shall be subject to judicial review at the request of either party.

3.6 Financial Records
Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting and the computing of franchise fees as necessary for the enforcement of this Franchise.

3.7 Late Payments
In the event any payment due the City is not timely made, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law until the date the City receives the payment.

3.8 Underpayments
If franchise fee underpayments are discovered as a result of an audit, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law, calculated from the date the underpayment was originally due until the date the City receives the payment.

3.9 Maximum Franchise Fees
The parties acknowledge that, at present, applicable federal law limits the City to collection of a franchise fee of five percent (5%) of Gross Revenues in a l2-month period. In the event that at any time throughout the term of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Grantee's Gross Revenues and the City elects to do so, then this Franchise shall be amended by the parties consistent with such change provided however that all other Cable Operators within the Franchise Area are treated similarly. Conversely, in the event that at any time throughout the term of this Franchise, the City may only collect an amount which is less than five percent (5%) of Grantee's Gross Revenues for franchise fees due to a change in federal law, then this Franchise shall be amended by the parties consistent with such change to provide for such lesser percentage.

3.10 Additional Commitments Not Franchise Fees
No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any l2-month period, Grantee agrees that the additional commitments herein are not franchise fees, nor are they to be offset or credited against any franchise fee payments due to the City, nor do they represent an increase in franchise fees to be passed through to subscribers.

3.11 Alternative Compensation
In the event the obligation of Grantee to compensate the City through franchise fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City such other compensation as is required by federal law.

3.12 Payment on Termination
If this Franchise is terminated, the Grantee shall file with the City within one hundred twenty (120) days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. Within thirty (30) days of the filing of the certified statement with the City, Grantee shall fulfill any remaining Franchise required financial obligations. If the Grantee fails to pay its remaining financial obligations as required in this Franchise, the City may satisfy the same by accessing the funds available through any security provided by the Grantee.

3.13 Tax Liability
The franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use, utility and other taxes, business license fees or other payments. Payment of the franchise fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City.

3.14 Cable and Non-Cable Services
In the event that Grantee offers Cable Services and non-Cable Services to its subscribers in the City, and those services are included in one monthly bill to each subscriber, then Grantee shall

clearly itemize each of the respective services on the bill. The rates for Cable Service shall accurately reflect the rate card rates less discounts, if any exist.

3.15Discounts on bundled services
To the extent discounts reduce revenues includable for purposes of calculating franchise fees, the Franchisee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payment of franchise fees to the City.

Section 4.
Administration and Regulation

4.1 Authority

(A) The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted under law, to any agent in the sole discretion of the City.

(B) Nothing in this Franchise shall expand or limit the City's right of eminent domain under State law.

(C) The Grantee and the City shall be entitled to all rights and be bound by all changes in local, State and federal law that occur subsequent to the effective date of this Franchise. The Grantee and the City acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes.

4.2 Rate Regulation
All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

4.3 No Rate Discrimination
All of Grantee rates and charges shall be published (in the form of a publicly-available rate card), and shall be nondiscriminatory for all Persons of similar classes, under similar circumstances and conditions. Grantee's rates and charges shall not result in a disadvantage for any subscriber or class of subscribers, including those who only subscribe to Cable Services offered by the Grantee as compared with those subscribers who subscribe to Cable Services and one or more other types of services the Grantee might offer. Grantee shall permit subscribers to make any in-residence connections the subscriber chooses without additional charge and without penalizing the subscriber therefore. However, if any in-home connection requires service from Grantee due to poor signal quality, signal leakage or other factors caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the subscriber may be charged appropriate service charges by Grantee. Nothing herein shall be construed to prohibit:

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

(B) The offering of reasonable discounts to similarly situated Persons; or

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

The Grantee shall offer a discount to those individuals who are low income (according to City guidelines) and who are also either permanently disabled or 65 years of age or older and who are the legal owners or tenants of the Dwelling Unit. Such discounts will consist of thirty percent (30%) off of Basic or the Basic portion of any other Cable Service offering when not discounted by inclusion in other promotional or programming package rates at which time the promotional or programming package rate will apply. Grantee has voluntarily initiated this discount program and will make it available throughout the term of this Franchise.

4.4 Leased Access Channel Rates
Upon request, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels or portions of such Channels, provided by Grantee. The schedule shall include a description of the price by day-part.

4.5 Late Fees
(A) For purposes of this subsection any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable local, State and federal laws.

(B) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the subscribers.

4.6 Reserved Authority
The City reserves all of its rights and authority arising from the Cable Act and any other relevant provisions of federal, State or local laws.

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

Section 5.
Indemnification and Insurance Requirements

5.1 Indemnification
(A) General Indemnification. Grantee shall indemnity, defend and hold harmless the City, and its officers, officials, boards, commissions, agents and employees (while acting in an official capacity) from any action, claim, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from the death of, injury, casualty or accident to, as applicable, a Person, equipment or property arising out of, or by reason of, any construction, excavation, operation, maintenance, repair, reconstruction, upgrade, rebuild, upkeep or removal of the Cable System, by or for Grantee, its agents or employees, or by reason

of any neglect or omission of Grantee, its agents or employees, except for injuries and damages caused by the sole negligence of the City. Grantee shall consult and cooperate with the City while conducting its defense of the City.

(B) Procedures and Defense. The City shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim to Grantee within six (6) business days of receipt of such notice, which defense shall be at Grantee's expense. The City may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims financially affecting the City without the City's prior written approval, which approval shall not be unreasonably withheld.

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

(D) Indemnification of the Grantee. To the extent permitted by law, the City shall indemnity, defend and hold harmless the Grantee for claims arising out of the City's use of the Government Access Channels and Emergency Alert System usage by the City.

(E) The grant of this Franchise shall have no effect on the Grantee's duty under the prior franchise to indemnity or insure the City against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any effect upon Grantee's liability to pay all franchise fees which were due and owed under a prior franchise.

5.2 Insurance Requirements

(A) General Requirement. Grantee must have adequate insurance during the entire term of this Franchise (and for a period of twelve [12] months thereafter) to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this Franchise, or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.

(B) Minimum Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth:

(1) Commercial General Liability: Two million dollars ($2,000,000) per occurrence and two million dollars ($2,000,000) general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: Two million dollars ($2,000,000) combined single limit per accident for bodily injury and property damage.

(3) Workers Compensation Insurance: In accordance with State law requirements.

(4) Excess Liability or Umbrella Coverage: One million dollars ($1,000,000).

The amounts listed above are the minimum deemed necessary by the City to protect the City's interests in this matter. The City has made no recommendation to the Grantee as to the amount of insurance coverage necessary to protect the Grantee's interests. Any decision by the Grantee to carry or not carry insurance amounts in excess of the above is solely that of the Grantee.

(C)Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The City shall be designated as an additional insured;

(b) Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's primary insurance and shall not contribute to it; and

(c) The policy shall contain a severability of interests' provision. Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) The insurance provided herein shall not be cancelled or the limits reduced so as to be out of compliance with the requirements of this Section without forty-five (45) days written notice first being given to the City. If the insurance is cancelled Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise (and as specified above, thereafter).

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

(E) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices, and are to be provided to the City upon acceptance of this Franchise. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

5.3 Letter of Credit

(A) If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all

of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of one hundred fifty thousand dollars ($150,000).

(B) If a letter of credit is furnished pursuant to subsection (A), the letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.

(C) After written notice has been provided to Grantee and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under this Franchise;

(2) Reimbursement of costs and expenses borne by the City to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee as provided in this Franchise.

(D) Within thirty (30) days following notice that a withdrawal has occurred, Grantee shall restore the letter of credit to the full amount required by subsection (A). Grantee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.

(E) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at the maximum allowed rate as provided under State law.

5.4 Bonds

(A) Within sixty (60) days of the Effective Date of this Franchise, Grantee will provide a performance bond to the City, in the total sum of $250,000.00 which will remain in effect for the term of this Franchise in a form acceptable to the City. The performance bond is to ensure the faithful performance of Grantee's obligations under the Franchise including the payment by the Grantee of any penalties, claims, liens, fees, or taxes due the City which arise by reason of the operation, maintenance, or construction of the Cable System within the Franchise Area, except as otherwise provided herein. Grantee shall comply with all additional bonding requirements as set forth in the Maple Valley Municipal Code.

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

(C) If the Franchise is terminated, or upon expiration or transfer of the Franchise, the City will return the original bond or sign the necessary documentation to release the bond

promptly if Grantee does not have any unexpired obligations with respect to right of way work and does not owe funds to the City or is not in default of a material provision of the Franchise.

Section 6.
Customer Service

6.1 Customer Service Standards
Grantee shall comply with Customer Service Standards as the same may be adopted and amended from time to time by the City Council. Grantee reserves the right to challenge any customer service standard that it believes is inconsistent with its contractual rights granted under this Franchise or State or Federal law.

6.2 Subscriber Privacy
Grantee will comply with privacy rights of subscribers in accordance with federal, State and local laws.

Section 7.
Reports and Records

7.1 Open Records
The City shall have access to, and the right to inspect, any books and records of Grantee and its Affiliates if necessary for the enforcement of the provisions of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any Affiliate or a third Person. The City may, in writing, request copies of any such records or books, and Grantee shall provide such copies within thirty (30) days of receipt of such request, provided that such copies are not considered confidential or proprietary by the Grantee. Confidential or proprietary books and records will be handled as outlined in this section below. A copy of all such reports and records required under this or any other section of the Franchise shall be furnished to the City at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request that the City inspect them at Grantee's local office. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all travel expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality
Grantee shall not be required to disclose books and records of any Affiliate of Grantee that is not necessary for the enforcement of the provisions of this Franchise. The Grantee recognizes that the City is under a duty to comply with requests for public records, under the State Public Records Acts, Ch. 42.56 RCW. The City agrees to keep confidential any identified proprietary or confidential books or records of Grantee to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary. For confidential or proprietary books and records, Grantee shall accommodate the review of these books and records through a Non-Disclosure Agreement negotiated with a City designated third-party consultant. For purposes of this Section, Grantee considers the following items to be subject to its definition of "proprietary or confidential" including, but not limited to, information relating to the

Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive.

7.3 Records Required
Grantee shall provide to the City upon request:

(A) A route map that depicts the general location of the Cable System facilities placed in the Right-of-Ways. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Grantee shall also provide, if requested, an electronic format of the aerial/underground facilities in relation to a Right-of-Way centerline reference to allow the City to add this information to City's geographic information system program;

(B) A copy of all FCC filings issued by Grantee or its Affiliates which relate to the operation of the Cable System in the Franchise Area;

(C) Unless otherwise required by the terms of this Franchise, the results of any tests required to be filed by Grantee with the FCC or in the Grantee's public file shall upon request of the City also be filed with the City within ten (10) days of the request.

(D) A copy of Grantee’s Cable Services, rates and Channel line-up;

(E) A compilation of subscriber complaints, actions taken and resolution, and a log of service calls; and Grantee shall make available at its local office for inspection, as-built maps of the Cable System in the Franchise Area.

7.4 Submittal of Documents
Subject to applicable law, Grantee shall submit to the City copies of any applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's System within the Franchise Area. Grantee shall submit such documents to the City no later than thirty (30) days after submittal by Grantee and Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.5 Reports
Upon request, thirty (30) days of a request after the end of the first quarter, Grantee shall submit to the City a written report, which shall include the following information:

(A) A gross revenue statement for the preceding year and all deductions and computations for the period. Such statement shall be reviewed by a certified public accountant, who may also be the chief financial officer or controller of Grantee, prior to submission to the City;

(B) A summary of the previous year's activities regarding the development of the Cable System, including, but not limited to, beginning and ending plant miles constructed and any technological changes occurring in the Cable System;

(C) A description of planned construction, if any, for the current year;

(D) An executive summary of subscriber complaints (oral and written) received in the previous year;

(E) Most recent corporate annual report;

(F) The number of homes for which cable is available;

(G) The number of subscribers for each class of Cable Service (i.e., Basic and Digital Packages, etc.);

(H) The number of Installations in the previous year;

(I) The number of disconnects in the previous year;

(J) A statement of its current billing practices and a sample copy of the bill format;

(K) A current copy of its New Customer Welcome packet; and

(L) A copy of the most current Proof of Performance Report.

7.6 False Statements
Any intentional false or misleading statement or representation in any report required by this Franchise shall be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise or otherwise.

7.7 Failure to Report
The failure or neglect of Grantee to file any of the information required under this Franchise (not including clerical errors or errors made in good faith) may, at the City's option, be deemed a breach of this Franchise.

Section 8.
Programming

8.1 Broad Programming
Categories Grantee shall provide at least the following initial broad categories of programming to the extent such categories are reasonably available:

(A) Educational programming;
(B) News, weather and information;
(C) Sports;
(D) General entertainment including movies;

(E) Children, family oriented;
(F) Arts, culture and performing arts;
(G) Foreign language programming; and
(H) Science/documentary.

8.2 Deletion of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without prior written notice to the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the effective date of this Franchise shall be maintained.

8.3 Ascertainment of Customer Satisfaction – Page 21

In the event Grantee conducts a renewal ascertainment of its Subscribers, Grantee agrees to provide the results of said renewal ascertainment survey to the City within thirty (30) days of the completion thereof.

8.4 Obscenity

Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene under applicable federal, State or local laws, statutes, regulations or standards now existing or hereafter adopted.

8.5 Parental Control Device

Upon request by any subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a subscriber to control access to any or all Channels. Grantee shall inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Such devices, traps or filters will be provided at no charge to the subscriber, unless otherwise provided by federal law.

8.6 Services for the Disabled

Grantee shall comply with the Americans With Disabilities Act and any amendments or successor legislation thereto.

Section 9.
Access

9.1 PEG Access Channels

As of the effective date of this Franchise, the Grantee is providing and maintaining three (3) Access Channels (Channels 21, 26, and 77) to Subscribers within the Franchise Area. Both parties acknowledge that these Access Channels have been provided by Grantee with programming from regional PEG programmers from outside of the City. Channel 21 is the Government Access Channel, receiving a feed from the City of Seattle Government Access Channel. Channel 26 is the Educational Access Channel, receiving a feed from Puget Sound Educational Service District. Channel 77 is the Public Access Channel, receiving a feed from the Seattle Public Access Channel. Grantee agrees that it will continue making these three PEG Access Channels available to Subscribers within the Franchise Area throughout the term of this Franchise.

9.2 Future Government Access Programming

At any time during the term of this Franchise, the City may elect to undertake responsibility to program the Government Access Channel. To do so, the City shall provide Grantee written notice of its intent to program the Government Access Channel. Upon receipt of the written notice, the City and Grantee shall meet to discuss and mutually agree upon an implementation plan to activate said Channel. Nothing in this Franchise prevents the City from collaborating with another neighboring community(s), serviced by the Grantee, to facilitate the City's needs for Government Access programming.

9.3 Future PEG Funding

Within 30 days following the City's notice to Grantee of its intent to program the Government Access Channel, Grantee shall place an amount of $.35 per month on Subscriber billing statements as a PEG Access fees (the "PEG Fee"). From the total PEG Fee dollars received each month the Grantee will recoup and remit the monthly total to the City as PEG contributions to be used by the City in lawful support of Government Access programming. The PEG contribution shall be paid quarterly to the City on the same quarterly schedule as franchise fee payments. Grantee shall not be responsible for paying the PEG contribution with respect to gratis or Bad Debt accounts. To the extent allowed by federal law, the PEG contribution may be treated as an external cost by Grantee and itemized on subscribers' bills. The City shall have discretion to allocate the PEG contribution in accordance with applicable law. At the election of the City, and within 30 days of a written request by the City, Grantee shall advance up to 36 months or the remaining months of the term of this Franchise, whichever is less, of the anticipated PEG Fee revenue. In the event the City receives an advance of PEG Fee revenues, Grantee may recover the advance through the $.35 PEG Fee. To the extent the City makes Access PEG investments using City funds prior to receiving the PEG advance or PEG contribution funds, the City is entitled to apply the subsequent PEG advance or PEG contribution payments from Grantee toward such City PEG investments. Upon the Grantee's written request, the City shall submit a report annually on the use of the City specific PEG Fee. The City shall submit a report to the Grantee within one hundred twenty (120) days of a written request. The Grantee may review the records of the City regarding the use of the PEG Fee. The City and Grantee agree that any PEG Contribution shall be referred to on subscribers' bills as a "PEG fee" or language substantially similar thereto.

In the event the PEG Fee payment required above is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%) or the maximum rate permitted by law. The Grantee waives any right to claim that any interest or penalties imposed hereunder constitute franchise fees within the meaning of 47 U.S.C. § 542. Failure to pay required the PEG Grant in a timely manner shall also be a material violation of this Franchise, subject to all sanctions and remedies herein, and the City may, at its discretion, declare this Franchise void and of no further force and effect.

9.4 Management and Control of the Future Government Access Channel.

In the event the City elects to program the Government Access Channel, the City may authorize a Designated Access Provider to control, operate, and manage the use of any and all City specific Government Access facilities, including without limitation, the operation of the Channel. The City or its designee may formulate rules for the operation of the City's Government Access Channel, consistent with Section 611(d) of the Cable Communications Policy Act of 1984, as

amended, 47 U.S.C. § 531(d) and the Franchise. Nothing herein shall prohibit the City from authorizing itself to be a Designated Access Provider. Grantee shall cooperate with the City and designated Access provider in the use of the Cable System and City's specific Access facilities for the provision of the Government Access Channel.

9.5 Location of Access Channels

In the event the City elects to program the Government Access Channel, the Grantee shall provide one hundred twenty (120) days written notice to the City prior to any relocation of the Government Access Channel. The Government Access Channel reassignment must be to a Channel that meets or exceeds the service and technical standards required by this Franchise. In connection with the movement of the City's Government Access Channel to another Channel number, Grantee shall provide a bill message on subscribers' bills along with a message on subscribers' converter boxes.

9.6 Access Interconnections

Grantee may interconnect the Access Channels of the Cable System with the Access Channels of any other contiguous cable system that is owned or operated by Grantee or its Affiliates provided that the City has received authorization for use of the Access programming originating in the neighboring community. Interconnection of Access Channels may be accomplished by direct fiber optic or cable connection or by other appropriate methods.

9.7 Access Channels on Lowest Tier

As long as the Grantee's System carries Basic Cable Service Channels in analog format, the Grantee must make the PEG Access Channels available on the Basic Cable Service tier in analog format to Subscribers within the City. If and when the Grantee's Cable System carries PEG Access Channels only in digital format, those digital PEG Channels must be made available to all Subscribers in the City. Such PEG Channels shall be accessed by Subscribers through use of standard digital equipment compatible with Grantee's Cable System. In the event the Basic Cable Service tier lawfully ceases to exist, all PEG Access Channels carried as provided by applicable laws and regulations. If the Grantee opts to carry PEG Access Channels in a digital format, it shall assume the cost of replacing all equipment necessary to ensure that once the PEG Access signals leave the City's or programmer's router, the signals can be transmitted on the Grantee's appropriate service tier.

9.8 Access Channel Quality

(A) All PEG Access Channel required shall comply with the FCC Technical Standards for quality. The Grantee shall provide Headend and hub equipment and routine maintenance and repair and replace, if necessary, any of Grantee's equipment required to carry the Access signal to and from the City's and any other Access origination point and the Grantee's Headend and hubs for the Access Channels.

(B) If Grantee makes a change in its Cable System and related equipment and facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or method or type of transmission of Access programming or services, Grantee shall take all necessary technical steps and provide necessary technical assistance, including the acquisition of

all necessary equipment, up to the point of demarcation to ensure that the capabilities of the Access Channels and delivery of Access programming are not diminished or adversely affected by such change.

(C) Grantee shall not exercise editorial control over the programming of any Access Channel. Grantee will not interrupt the signal provided on any Access Channel except during circumstances beyond Grantee's control or if necessary for testing or planned System maintenance purposes.

9.10 Information on Access Programming

(A) The Grantee, upon request, shall provide the City the opportunity to include one (1) bill insertion per year. The City shall be responsible for the cost of printing its bill insertion, the cost of inserting the information into Grantee's bills and for any incremental postage costs. Bill insertions must conform to Grantee's reasonable mailing requirements. The Grantee shall be provided an opportunity to review and approve all Access bill insertions, which approval shall not be unreasonably withheld.

(B) Grantee will facilitate the listing of City's Government Access programming on an interactive programming guide (such as TV GUIDE) on Tiers of service in which it is available. This requirement will only be enforceable so long as the service is available on Grantee's Cable System and City agrees to pay for all costs associated with the service.

9.11 Return Lines

(A) When the City provides notice to the Grantee concerning its election to program the Government Access Channel, the City shall designate its proposed Government Access facility location. Within sixty (60) days of receiving notice, the Grantee shall review its facilities and records and provide either: 1) notice of an existing Grantee controlled fiber to the location it will allow the City to utilize for PEG return; 2) notice that others control existing fiber to the location that the City may attempt to negotiate the use of for the purpose of PEG return; or 3) an estimate of costs associated with the construction and activation of a fiber optic return line capable of transmitting Video Programming to enable the distribution of the City's Government Access programming to Subscribers on the provided Government Access Channel. The return line shall run from a location to be determined by the City to the Grantee's facilities. Within a reasonable time-period of receiving the City's directive, the Grantee shall construct and activate a return line in accordance with the cost estimate previously provided. The City agrees to pay the actual costs of the return line within ninety (90) days of construction / activation and receipt of an invoice from the Grantee.

(B) At the time of the renewal negotiations, the City planned to utilize the Tahoma School District Central Services building as its possible Government Access facility. The location has Grantee owned fibers at the site, but they are solely dedicated to the King County I-Net. During the term of this Franchise, if the Grantee reclaims control of any of the existing fiber to the School district building and the City elects that site to house its Government Access facility, Grantee agrees to reserve one fiber it will allow the City to utilize for PEG return.

9.12 Costs and Payments Not Franchise Fees.

The parties agree that any and all costs and expenses to the Grantee and payments from the Grantee associated with the provision of PEG Access Channels/capacity, PEG Access Channel/capacity signal transport, PEG facilities and equipment, PEG programming, interconnection and/or the I-Net pursuant to this Franchise are voluntary and cable-related, and are not intended to constitute and are not part of a franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542.

Section 10.
General Right-of-Way Use and Construction

10.1 Right to Construct
Subject to the other provisions of this Franchise, Grantee may perform all construction in the Right-of-Ways for any facility needed for the maintenance, operation or extension of Grantee's Cable System, subject to Maple Valley City Code Chapter 12.15 and generally applicable laws.

10.2 General Standard
All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All equipment shall be durable and installed and maintained in accordance with good engineering practices and comply with applicable law.

10.3 Movement of Facilities During Emergencies
During emergencies, except those involving imminent danger to the public health, safety or welfare, the City shall provide notice to Grantee, at a designated emergency response contact number, to allow Grantee the opportunity to respond and rectify the problem without disrupting Cable Service. If after providing notice, there is no immediate response, the City may move Grantee's facilities.

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

10.5 Permits Required
Pursuant to Maple Valley City Code Chapter 12.15, prior to doing any work in the Right-of-Way or other public property (with the exception of installations or general maintenance that involves no construction and with no disruption to the use of the Right-of-Ways or other public property), Grantee shall apply for, and obtain, in advance, appropriate permits from the City. As part of the permitting process, the City may impose such conditions as allowed by applicable law. Grantee shall pay all generally applicable fees for the requisite City permits.

10.6 Emergency Permits
In the event that emergency repairs are necessary, Grantee may initiate such emergency repairs, and, if necessary, shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.7 Poles & Undergrounding Requirements
(A) If all of the wires and lines of electric and telephone service providers in any given area within the Franchise Area are now or in the future placed underground, the Grantee shall place its Cable System distribution cables underground. In any part of the Franchise Area where the wires and lines of the electric and telephone service providers are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables or any part thereof, aerially or underground. In areas where the electric and telephone service providers wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial

installation. Nothing in this subsection shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as power supplies, or pedestals.

(B) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on poles or equipment of the City or of any other Person.

10.8 Movement of Cable System Facilities

(A) Relocation at Request of City. Nothing in this Franchise shall prevent the City from constructing any public work or capital improvement. Upon thirty (30) days prior written notice to Grantee, City shall have the right to require Grantee to relocate any part of the Cable System within the Right-of-Way when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. In the event of any capital improvement project exceeding $500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may affect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System. Within forty-five (45) days of receipt of an itemized list of those costs, the Grantee shall pay the City. If the City requires Grantee to relocate its facilities located within the Right-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Right-of-Way. If public funds are available to any Person using such Right-of-Way for the purpose of defraying the cost of any of the foregoing, the Grantee may make application for such funds.

(B) In the case of relocation projects where the City hires and designates an independent contractor to accommodate and coordinate the conversion of overhead utilities within a City capital improvement project, if the Grantee decides to participate in the joint trench opportunity than the Grantee shall pay to the City the Grantee's portion trench costs, including excavation and other associated costs, trench bedding, and backfill commensurate with Grantee's proportionate share of trench usage. However, notwithstanding anything to the contrary set forth herein, if bids from the City's contractor for placement of Grantee's conduits and vaults/pedestals in the supplied joint trench, in the reasonable estimation of the Grantee, are not acceptable, the Grantee shall have the option to utilize contractor(s) of its choice to complete the required work at its sole cost. The City's contractor shall coordinate with the Grantee's contractor(s) to provide reasonable notice and time to complete the placement of the Grantee's facilities in the supplied joint trench.

10.9 Movement of Cable System Facilities for Others

(A) If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder(s) or any facilities-based entity authorized to provide Cable Services or comparable Video Programming within the Franchise Area without a franchise granted by the City, Grantee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs

associated with the removal, replacement, modification or disconnection of the Cable System be paid by the benefited party, and Grantee may require a reasonable deposit of the estimated payment in advance.

(B) The Grantee shall, upon reasonable prior written request of any Subscriber or City residence, relocate its aerial distribution cable facilities underground, as long as, the responsible Person pays for the Grantee's time and material costs associated with the project and Grantee is issued a permit for such work by the City.

(C) In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new land use development, not associated with a City capital improvement project, this Franchise shall in no way limit the Grantee's right to recoup all time and material costs associated with the underground conversion of the Cable System from the Person responsible for the project.

(D) At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder.

Section 11.
Technical Standards

11.1 Subscriber Network

(A) Grantee's current hybrid fiber coaxial Cable System has the capacity to distribute Video Programming throughout the City. The Cable System is two-way capable and supports a range of Cable Services offered by Grantee.

(B) Equipment must be installed so that all closed captioned programming received by the Cable System shall include the closed captioned signal, so long as the closed captioned signal is provided consistent with FCC standards. Equipment must also be installed so that all signals received in stereo are retransmitted in stereo.

(C) Grantee will take prompt corrective action if it finds that any facility or equipment related to the Cable System is not operating as expected, or if it finds that the facility or equipment does not comply with the requirements of this Franchise or applicable law.

(D) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Hearing on Services

The City may hold a hearing at any time to review whether or not the Cable Services offered by the Grantee in the City are meeting demonstrated community needs and interests, taking into account the cost of meeting those needs and interests. The parties recognize that, as of the effective date of this Franchise, the City is not permitted to require the provision of specific Video Programming pursuant to this subsection.

11.3 Technical Performance
The technical performance of the Cable System shall meet or exceed all applicable federal technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

11.4 Cable System Performance Testing
(A) Grantee shall perform all tests required by the FCC on its Cable System. Upon written request, all FCC required tests may be witnessed by representatives of the City.

(B) Grantee shall maintain written records of all Cable System test results performed by or for Grantee. Copies of such test results will be available as part of its public file available for inspection at Grantee's local office.

(C) Grantee shall promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Sites shall be re-tested following correction.

11.5 Additional Tests
(A) Where there exists a pattern of evidence which in the judgment of the City casts doubt upon the reliability or technical quality of the Cable System, the City shall have the right and authority, upon thirty (30) days prior written notice, to require Grantee to conduct additional tests and analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such tests and shall prepare a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

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

(2) the Cable System component tested;

(3) the equipment used and procedures employed in testing;

(4) the method, if any, in which such complaint or problem was resolved; and

(5) any other information pertinent to said tests and analysis, which may be required.

Section 12.
Service Extension and Service to Public Buildings

12.1 Service Availability
(A) <u>In General</u>. Subject to the density provisions described in Section 12.1(D) (Customer Charges for Extensions of Service) below Grantee shall provide Cable Service within seven (7) business days of a request by any potential residential subscriber within the City provided, however, that service can be installed via a standard installation, as described below. For

purposes of this subsection, a request shall be deemed made on the date of signing a service agreement or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Section.

(2) At a nondiscriminatory installation charge for a standard installation, consisting of a one hundred fifty (150) foot service drop from the cable plant in the Right-of-Way to the exterior demarcation point for residential subscribers, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations. For non-standard installations that cannot be accommodated without an extension of Grantee's Cable System, the Grantee may elect to provide Cable Service to the requesting resident(s) for the line extension on a time and material cost basis.

(3) At nondiscriminatory monthly rates in accordance with applicable laws.

(B) Provision of Cable Service. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area. Notwithstanding the foregoing, Grantee may introduce new or expanded Cable Services on a geographically phased basis, where such services require an upgrade of the Cable System.

(C) Service to Multiple Dwelling Units. The Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with this Franchise and separately negotiated agreements between the property owner(s) and the Grantee.

(D) Customer Charges for Extensions of Service. The Grantee must make Cable Service available to every residential Dwelling Unit within the Franchise Area where the minimum density is at least twenty-five (25) Dwelling Units per strand mile in areas served by overhead facilities and sixty (60) Dwelling Units per mile in areas served by underground facilities. The Grantee may elect to provide Cable Service to areas not meeting the above density standard and charge the requesting resident(s) for the line extension on a time and material cost basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

(E) Annexations. Areas subsequently annexed shall be provided with cable availability and the City's PEG Channels, if applicable, within twelve (12) months of the annexation election certification or within six (6) months of the effective date of the annexation, whichever occurs first.

(F) New Developments. The City shall use its best efforts to provide the Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments, within the Franchise Area, requiring underground installation and/or conversion of Cable System as part of the approval condition(s).

12.2 Connection of Public Facilities

(A) Upon request through the designated City representative, the Grantee will voluntarily make available without charge, a standard installation and a minimum of one outlet of Basic and Expanded Basic Cable Services, including standard equipment necessary to receive Basic and

Expanded Basic Cable Services at active outlets (including any additional outlets constructed by the City as allowed below), to City administrative buildings as designated by the City (whether they are owned or leased), and fire station(s), police station(s), libraries, Access facilities and K-12 public School(s). If the installation to such building does exceed one hundred fifty (150) feet the City or other agency agrees to pay the incremental cost of such installation in excess of one hundred fifty (150) feet or a necessary distribution line extension of the Cable System, including the cost of such excess labor and materials. The recipient of the service will secure any necessary right of entry. The Cable Service will not be used for commercial purposes, and the outlets will not be located in jail cells or areas open to the public excepting one outlet to be located in a public lobby in City Hall that will be used by the public for viewing City Council meeting broadcasts. The City will take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, loss or damage to the Cable System. If additional outlets of Cable Service are needed in such buildings, only the Grantee is authorized to complete the Cable Service expansion to support the outlet installation(s) and the building occupant will pay the standard installation fees; unless the City constructs and maintains additional outlets beyond the required outlet in accordance with Grantee specifications supplied by Grantee when requested by the City. No other Cable Service and standard equipment fees shall be owed in connection with additional outlets.

(B) Notwithstanding Section A, Grantee shall provide, without any connection or service extension charge and at no cost to the City, the cable service required under this section to the following locations:

(1) City Hall and Police Station at 22017 SE Wax Rd or future location at the City owned property on the Westside of Maple Valley Black Diamond Rd SE across from the Tahoma School District Administration Office;

(2) The Tahoma School District Administrative Offices at 25720 Maple Valley Black Diamond Rd SE;

(3) Lake Wilderness Lodge (Parks and Recreation Department) at 22500 SE 248th St; and

(4) The Future Public Works building at the City owned property at 27600 Maple Valley Black Diamond Rd SE.

Section 13.
Franchise Violations

13.1 Procedure for Remedying Non-Material Franchise Violations

(A) If the City believes that Grantee has failed to perform any non-material obligation under this Franchise, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City’s assertion that a default has occurred, and request a meeting in accordance with subsection (B), below; or

(2) cure the default; or

(3) notify the City that Grantee cannot cure the default within thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or denies the default and requests a meeting in accordance with subsection (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or breach within such reasonable timeframe as the City shall determine. In the event Grantee does not cure the default within such time to the City's reasonable satisfaction, the City may:

(1) Revoke this Franchise pursuant to the procedures in subsection 13.2 (Revocation); or

(2) Seek Alternative Remedies pursuant to subsection 13.6 (Alternative Remedies);or

(3) Assess monetary damages pursuant to subsection 13.7 (Assessment of Monetary Damages).

13.2 Revocation

(A) The City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in any of the following circumstances:

(1) If Grantee fails to perform any material obligation under this Franchise;

(2) If Grantee willfully fails for more than three (3) days to provide continuous Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or subscribers;

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee willfully misrepresents material facts in the negotiation of this Franchise; or

(6) If Grantee repeatedly breaches a material provision of the Customer Service Standards.

(B) Prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have forty-five (45) days from receipt of such notice to object in writing and to state its reasons for such objection and provide any explanation or cure the alleged default.

In the event the City does not receive a timely and satisfactory response from Grantee, it may then seek a termination of the Franchise in accordance with this subsection.

(C) The City Manager shall submit a report and recommendation as to termination of the Franchise to the Hearing Examiner who shall conduct a public hearing to determine if revocation of the Franchise is warranted and make a recommendation to the City Council. The City Council shall act as the final decision maker for the City.

(1) At least twenty one (21) calendar days prior to the public hearing, the City Clerk shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City shall hear any Persons interested therein; and provide that the Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses, consistent with the adopted Hearing Examiner rules.

(2) The Hearing Examiner shall hear testimony, take evidence, hear oral argument and receive written briefs. A transcript may be made of such proceeding and the cost shall be shared equally between the parties. The Hearing Examiner shall create for the City Council a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording.

(3) Within twenty (20) calendar days after the close of the hearing, the Hearing Examiner shall issue a written recommendation on the revocation and termination of the Franchise, including findings of fact upon which the recommendation is based and the conclusions derived from those findings.

(D) The City Council shall, at a public meeting, consider and take final action on a recommendation of the Hearing Examiner. The City Council shall consider the complete record developed before the Hearing Examiner and the recommendation of the Hearing Examiner.

(E) The City Council shall adopt a written decision by a majority vote of the members of the City Council. If the decision of the City Council is to revoke and terminate the Franchise, the decision shall declare that the Franchise is revoked and terminated, and any form of surety is forfeited. The City Council's written decision shall include findings of fact and conclusions

derived from those facts which support the decision of the City Council. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.

(F) Grantee shall be bound by the City Council's decision to revoke the Franchise unless an appeal to a court of competent jurisdiction is timely filed as allowed by applicable law.

13.3 Procedures in the Event of Termination

(A) If this Franchise lawfully terminates, the City may, subject to applicable law:

(1) Require Grantee to maintain and operate its Cable System on a month-to month basis until the Cable System is sold; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4 (Purchase of Cable System), below.

(B) The City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all rights-of-way and public places in as good a condition as that prevailing prior to Grantee's removal of its equipment and without affecting electrical or telephone wires or attachments. The indemnification and insurance provisions, and the letter of credit, if any, shall remain in full force and effect during the period of removal.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs and expenses incurred within thirty (30) days after receipt of an itemized list of the costs and expenses, or the City may recover the costs and expenses through the letter of credit, if any, or other surety if Grantee has not paid such amount within the foregoing time period.

13.4 Purchase of Cable System

(A) If at any time this Franchise lawfully terminates, the City shall have the option to purchase the Cable System subject to any applicable law.

(B) The City may, at any time after Franchise termination, offer in writing to purchase Grantee's Cable System. In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a balance sheet and current profit and loss statement of Grantee's Cable System. The City shall, as applicable, pay for the Cable System by wire transfer or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(C) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no

value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City may assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

13.5 Receivership and Foreclosure

(A) At the option of the City, subject to applicable law, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is timely vacated; or

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

(B) If there is a foreclosure or other involuntary sale of the Cable System, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked forty-five (45) days after service of such notice, unless:

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

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

13.6 Alternative Remedies

No provision of this Franchise shall be deemed to bar the City or the Grantee from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.7 Assessment of Monetary Damages

The City and Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of Grantee's breach of certain provisions of this Franchise. Accordingly, instead of requiring such proof, the City and Grantee agree that Grantee shall pay to the City, at the discretion of the City, the sums set forth below for each day or part thereof that Grantee shall be in breach of specific provisions of this Franchise. Such amounts are agreed to by both parties as a reasonable estimate of the actual damages the City would suffer in the event of Grantee's breach of such provisions of this Franchise. Monetary

damages as defined by this subsection may be assessed for no more than one-hundred and eighty (180) calendar days for any individual incident, after which time the City may implement other remedies as defined in this Franchise and under applicable law.

Subject to the City's giving written notice to the Grantee and a thirty (30) day right to cure period, the City may assess against Grantee monetary damages as follows: two hundred dollars ($200.00) per day for material departure from the FCC technical performance standards; two hundred dollars ($200.00) per day for failure to follow the undergrounding requirements of this Franchise; two hundred dollars ($200.00) per day for failure to timely remedy any construction related problem; five hundred dollars ($500.00) per day for failure to provide the Access Channels or any equipment related thereto which is required hereunder; five hundred dollars ($500.00) per day for each material violation of the Customer Service Standards; one hundred fifty dollars ($150.00) per day for failure to provide reports or notices as required by this Franchise; and up to five hundred dollars ($500.00) per day for any material breaches or defaults not previously listed.

13.8 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, the City, at its option, may obtain an injunction, or operate the Cable System or designate another entity to operate the Cable System temporarily until either the Grantee restores service pursuant to the terms of the Franchise, or until the Franchise is revoked and a new franchisee is selected by the City. If the City operates the Cable System or designates another entity to operate the Cable System, the Grantee shall reimburse the City or the City's designee, as applicable, for all reasonable costs, expenses and damages incurred.

Section 14.
Franchise Renewal

14.1 Franchise Renewal

The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures or substantive protections set forth therein shall be deemed to be preempted and/or superseded by any subsequent provision of federal or State law.

Section 15.
Franchise Transfer

15.1 Franchise Transfer

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

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

(C) The parties to the sale, Transfer of the Franchise or change of Control shall make a written request to the City for its approval of the Transfer of the Franchise or change of Control and shall furnish all information required by law.

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

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

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

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

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

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

(F) In reviewing a request for Transfer of the Franchise or change of Control, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said Transfer of the Franchise or change of Control upon such terms and conditions as it deems reasonably appropriate and as are consistent with federal law; provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee. Additionally, such Person shall effect changes as promptly as practicable in the operation of the Cable System, if any changes are necessary to cure any violations or defaults presently in effect or ongoing.

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

(H) Within sixty (60) days of closing any Transfer of the Franchise or change of Control, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed(s), agreement(s), lease(s) or other written instrument(s) evidencing such Transfer of the Franchise or change of Control, certified and sworn to as correct by Grantee and the transferee or new controlling entity. In the case of a Transfer of the Franchise or change of Control, the transferee or the new controlling entity, upon request by the City, shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise and will not be required to file an additional written acceptance.

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

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

Section 16.
Miscellaneous Provisions

16.1 Local Employment Efforts

Grantee shall use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever the Grantee employs contractors to perform work under this Franchise.

16.2 Notices

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

Grantee's address shall be:

Comcast of California/Colorado/Washington I, Inc.
4020 Auburn Way N.
Auburn, WA 98002
Attention: Franchise Director

With a copy to:

Comcast of California/Colorado/Washington I, Inc.
15815 25th Ave W.
Lynnwood, WA98087
Attention: Franchising Department

City's address shall be:

City of Maple Valley
22017 SE Wax Road, Suite 200
P.O. Box 320
Maple Valley, WA 98038
Attention: City Manager

With a copy to:

City of Maple Valley
22017 SE Wax Road, Suite 200
P.O. Box 320
Maple Valley, WA 98038
Attention: City Attorney

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

16.4 Costs to be borne by Grantee
Grantee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, within forty-five (45) days of receipt of a statement from the City stating the amount owed.

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

16.6 Authority to Amend
In addition to certain amendment provisions of subsection 3.9 (Maximum Franchise Fees), this Franchise may also be amended at any time by mutual written agreement between the parties.

16.7 Venue
Venue for any dispute related to this Franchise shall be in King County Superior Court.

16.8 Governing Laws
This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington (as amended), the Cable Act as amended, any applicable rules, regulations and orders of the FCC, and any other applicable local, State and federal laws, rules, regulations, legislation or orders (as such now exist, are later amended or subsequently adopted).

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

16.10 No Joint Venture
Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

16.11 Waiver
The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same, nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

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

16.13 Changes in Law.
If any federal or State law or regulation shall require or permit the City or the Grantee to perform any service or act or shall prohibit the City or the Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. The Grantee and the City shall conform to State laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective. The Grantee shall, at all times during the term of this Franchise, including all extensions or renewals hereof, comply with applicable federal, State and local laws and regulations.

16.14 Entire Agreement
This Franchise and Exhibit represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties.

16.15 Force Majeure
In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by a reason beyond the control of Grantee, Grantee shall have a reasonable time,

under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City, work delays caused by waiting for utility providers to service or perform make-ready services on their utility poles or other facilities to which the Grantee's Cable System is attached, and Grantee's inability to obtain federal, State or railroad permits despite Grantee's best efforts to do so.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the provisions of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

16.16 Attorneys' Fees
If any action or suit arises in connection with this Franchise, the prevailing or substantially prevailing party (either the City or Grantee, as the case may be) shall be entitled to recover all of its reasonable attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper.

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

16.18 Acceptance
Within sixty (60) days of receipt of the Franchise after its execution by the City, this Franchise shall be accepted by Grantee by filing with the City Clerk an unconditional, written acceptance of all of the terms, provisions, and conditions of this Franchise. The failure of Grantee to file such an acceptance maybe deemed a rejection by Grantee, and this Franchise may then be voidable at the discretion of the City.

IN WITNESS WHEREOF, this Franchise Agreement is signed in the name of the City of Maple Valley, Washington, this _____ day of _____, 2011.

CITY OF MAPLEVALLEY

_____
David W. Johnston, City Manager

Attest:

_____
Shaunna Lee Rice, City Clerk

Approved as to Form:

_____
Christy A. Todd, City Attorney

Accepted and approved this ____ day of_____, 2011.

COMCAST OF
CALIFORNIA/COLORADO/WASHINGTON I, INC.
_____
By: _____
Its: _____

Attest:

_____
Secretary

PUBLICATION SUMMARY
OF ORDINANCE O-11-448

AN ORDINANCE OF THE CITY OF MAPLEVALLEY GRANTING COMCAST OF CALIFORNIA/COLORADO/WASHINGTON I, INC. A CABLE TELEVISION FRANCHISE

SECTION 1. Authorizes the City Manager to execute a Cable Television Franchise with Comcast of California/Colorado/Washington I, Inc., a copy of which is attached to the Ordinance and incorporated by reference as if fully set forth.

SECTION 2. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.05.020 Maple Valley Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any Person upon request made to the City Clerk for the City of Maple Valley. The Ordinance was passed by the Maple Valley City Council at its meeting on the 28th day of February, 2011.

I certify that the foregoing is a summary of Ordinance O-11-448 approved by the Maple Valley City Council for summary publication.

_____
Shaunna Lee Rice, City Clerk