



PACIFIC CITY COUNCIL AGENDA
Council Chambers - City Hall. 100 3rd Ave. SE

November 20, 2023
Monday

Workshop Meeting
Immediately following Committee of the Whole

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL OF COUNCIL MEMBERS**
- 3. ADDITIONS TO/APPROVAL OF AGENDA**
- 4. DISCUSSION ITEMS**
 - (02) **A. AB 23-532: Resolution No. 2023-917:** Authorizing the Mayor to sign an amendment with the City of Sunnyside for a term beginning January 1, 2024 (Interim Chief Hendrickson)
 - (21) **B. AB 23-534: Ordinance No. 2023-2085:** Adopting the Budget for the Year 2024 and Setting Forth the Estimated Revenues and Appropriations. (Brenda Rolph)
 - (25) **C. AB 23-535: Ordinance No. 2023-2086:** Granting Comcast Cable Communications Management, LLC, a Washington limited liability company, a non-exclusive franchise to construct, maintain, operate, replace, and repair a cable communications system, in, across, over, along, under, through and below public rights-of-way of the City of Pacific, Washington. (Mayor Guier)
- 5. CLOSED SESSION:** Per RCW 42.30.140(4) to discuss collective bargaining of the City of Pacific
- 6. GOOD OF THE ORDER**
- 7. ADJOURN**

Council may add other items not listed on this agenda unless specific notification period is required.

Please turn off cell phones during meeting and hold your questions for staff until the meeting has been adjourned.
Meeting materials are available on the City's website at: www.pacificwa.gov or by contacting the City Clerk's office at (253) 929-1105.
For ADA accommodations, please contact City Hall at (253) 929-1105 prior to the meeting. Thank you.



Agenda Bill No. 23-532

TO: Mayor Guier and City Council Members

FROM: Interim Chief Robert Hendrickson

MEETING DATE: November 20, 2023

SUBJECT: Sunnyside Jail Amendment

ATTACHMENTS:
 Resolution No. 2023-917
 Amendment to Agreement for Inmate Housing
 Resolution 2023-895 with original ILA

Previous Council Review Date: N/A

Summary: The City of Pacific signed an interlocal agreement with the City of Sunnyside for Inmate Housing in 2023 for guaranteed bed space at that facility. Sunnyside has increased the booking fee to \$63.00.

Recommended Action: Authorize Mayor Guier to sign the amendment.

Motion for Consideration: “I move to approve Resolution 2023-917 authorizing the Mayor to execute an amended agreement with the City of Sunnyside for a term beginning January 1, 2024.”

Budget Impact: Minimal increase of \$63 per inmate.

Alternatives: None

**CITY OF PACIFIC
WASHINGTON**

RESOLUTION NO. 2023-917

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC,
WASHINGTON AUTHORIZING THE MAYOR TO SIGN AN AMENDMENT
WITH THE CITY OF SUNNYSIDE FOR A TERM BEGINNING JANUARY 1,
2024**

WHEREAS, the City of Pacific Police Department depends on quality inmate housing at a reasonable rate to serve the public safety needs of the City and its residents;

WHEREAS, in 2023, pursuant to Resolution No. 2023-895, the City executed an Interlocal Agreement for inmate housing at the City of Sunnyside Jail, a facility owned and operated by the City of Sunnyside; and

WHEREAS, on October 12, 2023, the City of Sunnyside notified the City of an increased daily inmate rate to \$63.00 starting January 1, 2024; and

WHEREAS, The City of Sunnyside has provided an amendment to reflect these increased costs; and

WHEREAS, the City Council has determined that executing the amendment is necessary as the City of Sunnyside is the most cost effective and functional facility for the City's use to best serve the public safety needs of its residents;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF PACIFIC, WASHINGTON,**

Section 1. The Pacific City Council authorizes the Mayor to sign the amendment to the Sunnyside Interlocal Agreement, attached hereto as Exhibit A and incorporated herein by this reference, and ratifies all actions taken prior to this date consistent with this authorization.

Section 2. This Resolution shall take effect and be in full force upon passage and signatures heron.

**PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF
ON THE 27th DAY OF NOVEMBER, 2023.**

CITY OF PACIFIC

LEANNE GUIER, MAYOR

ATTEST/AUTHENTICATED:

LAURIE CASSELL, MMC
CITY CLERK

APPROVED AS TO FORM:

CHARLOTTE ARCHER, CITY ATTORNEY



City of Sunnyside
818 East Edison Avenue
Sunnyside, Washington 98944
(509) 836-6305 Office

INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUNNYSIDE, WASHINGTON
AND THE CITY OF PACIFIC, WASHINGTON, FOR THE HOUSING OF INMATES

ADDENDUM I

THIS ADDENDUM TO OUR INTERLOCAL AGREEMENT (hereinafter referred to as "Agreement") is made
and entered into by and between the City of Sunnyside, Washington and the City of Pacific, Washington;

WHEREAS, the City of Sunnyside and the City of Pacific already have an Agreement for the housing of
inmates;

WHEREAS, the City of Sunnyside desires to modify this Agreement;

NOW THEREFORE, in consideration of the mutual covenants, condition and promises contained herein,
the parties hereto mutually agree as follows:

SECTION 6(a) COMPENSATION shall be repealed and replaced with:

(a) Rates. Sunnyside agrees to accept and house City of Pacific inmates for
compensation per inmate at the rate of \$63.00 per day. The date of booking into the Sunnyside
Jail of any City of Pacific inmate shall be charged a minimum of a full daily rate per inmate
regardless of the time of booking within a 24 hour period. The date of release from the
Sunnyside Jail and/or returned to City of Pacific, regardless of the time frame within a 24 hour
day shall not constitute a charge by the City of Sunnyside against City of Pacific.

This Agreement shall be effective from January 1, 2024 or once fully endorsed by both parties,
whichever is latter.

The remainder of the original Agreement remains unchanged.

CITY OF SUNNYSIDE

City of Pacific

[Signature]
City Manager

DATE: 10/2/23

DATE: _____

ATTEST:

[Signature]
City Clerk

City Clerk

CITY CONTRACT NO: A-2024-04
RESOLUTION NO: 2014-55
COUNCIL MTG: X

**CITY OF PACIFIC
WASHINGTON**

RESOLUTION NO. 2023-895

**A RESOLUTION OF THE CITY OF PACIFIC, WASHINGTON, AUTHORIZING
THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE
CITY OF SUNNYSIDE FOR THE HOUSING OF INMATES**

WHEREAS, the City of Pacific is obligated to provide housing services for inmates subject to incarceration for misdemeanors and gross misdemeanors; and

WHEREAS, the City of Pacific currently contracts with SCORE (South Correctional Entity) for the housing of its misdemeanor arrestees; and

WHEREAS, the daily bed rate at SCORE has become financially burdensome for the City of Pacific, posing challenges to the city's budget; and

WHEREAS, the City of Sunnyside has expressed a willingness to collaborate with Pacific by offering a significantly lower daily bed rate compared to SCORE, presenting a cost-effective alternative for long-term inmate housing; and

WHEREAS, entering into an Interlocal Agreement (ILA) with Sunnyside would provide Pacific with financial predictability, cost savings, and improved resource allocation; and

WHEREAS, Chapter 39.34 of the Revised Code of Washington, the Interlocal Cooperation Act, authorizes the City and Sunnyside to enter into an Interlocal Agreement to provide this cooperative service; and

WHEREAS, the City Council finds that entering into an Interlocal Agreement with the City of Sunnyside for jail services benefits the general health, safety, and welfare of Pacific's residents;

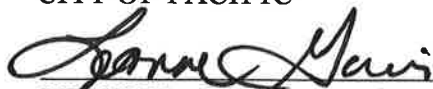
**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC,
WASHINGTON, DOES RESOLVE AS FOLLOWS:**

Section 1. The City Council of Pacific authorizes the Mayor to execute an Interlocal Agreement with the City of Sunnyside for the Housing of Inmates, a copy of which is attached hereto as Exhibit A, in a form acceptable to the City Attorney.

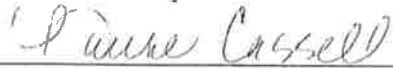
Section 2. This Resolution shall take effect and be in full force upon passage and signatures hereon.

**PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON
THE 10th DAY OF JULY, 2023.**

CITY OF PACIFIC


LEANNE GUIER, MAYOR

ATTEST/AUTHENTICATED:



LAURIE CASSELL, MMC
CITY CLERK

APPROVED AS TO FORM:



CHARLOTTE ARCHER, CITY ATTORNEY

ATTEST/AUTHENTICATED:



LAURIE CASSELL, MMC
CITY CLERK

APPROVED AS TO FORM:

CHARLOTTE ARCHER, CITY ATTORNEY

WHEN RECORDED RETURN TO:
City of Sunnyside, Washington
818 East Edison
Sunnyside, WA 98944

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUNNYSIDE, WASHINGTON
AND THE CITY OF PACIFIC, WASHINGTON, FOR THE HOUSING OF INMATES**

THIS INTERLOCAL AGREEMENT is made and entered into on this 10th day of July, 2023, by and between the City of Pacific, Washington, hereinafter referred to as "Pacific", and the City of Sunnyside, , hereinafter referred to as "Sunnyside", each party having been duly organized and now existing under the laws of the State of Washington.

WITNESSETH:

WHEREAS, Sunnyside and Pacific are authorized by law to have charge and custody of the Sunnyside City Jail and Pacific prisoners or inmates, respectively; and

WHEREAS, Pacific wishes to designate Sunnyside as a place of confinement for the incarceration of one or more inmates lawfully committed to its custody; and

WHEREAS, Sunnyside is desirous of accepting and keeping in its custody such inmate(s) in the Sunnyside Jail for a rate of compensation mutually agreed upon by the parties hereto; and

WHEREAS, RCW 39.34.080 and other Washington law, as amended, authorizes any city to contract with any other city/county to perform any governmental service, activity or undertaking which each contracting city/county is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by RCW 39.34.080 and other Washington law, as amended,

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. GOVERNING LAW. The parties hereto agree that, except where expressed otherwise, the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to an inmate(s) confined pursuant to this Agreement.

2. DURATION. This Agreement shall enter into full force and effect from the date of execution and end, subject to earlier termination as provided by Section 3 herein. This agreement shall be renewed automatically for like successive periods under such terms and conditions as the parties may determine. Nothing in this Agreement shall be construed to require Pacific to house inmates in Sunnyside continuously.

3. TERMINATION.

(a) By either party. This Agreement may be terminated by written notice from either party to the other party and to the State Office of Financial Management as required by RCW 70.48.090 stating the grounds for said termination and specifying plans for accommodating the affected prisoners. This Agreement may only be terminated by ninety (90) days written notice of termination of this Agreement, to all parties to this Agreement and the State Office of Financial Management. The Notice of termination shall state the ground for termination and the specific plans for accommodating the affected jail population. The notice must be delivered by regular mail to the contact person identified herein. Termination shall become effective ninety (90) working days after receipt of such notice. Within said ninety (90) days, PACIFIC agrees to remove its inmate(s) from Sunnyside.

(b) By Pacific due to lack of funding. The obligation of Pacific to pay Sunnyside under the provision of this Agreement beyond the current fiscal year is expressly made contingent upon the appropriation, budgeting availability of sufficient funds by Pacific. In the event that such funds are not budgeted, appropriated or otherwise made available for the purpose of payment under this Agreement at any time after the current fiscal year, then Pacific shall have the option of terminating the Agreement upon written notice to Sunnyside, except that all services provided to that point shall be compensated at the agreed rate. The termination of this Agreement for this reason will not cause any penalty to be charged to Pacific.

(c) Termination for Breach. In the event either party breaches or fails to perform or observe any of the terms or conditions herein, and fails to cure such breach or default within *seven* (7) days of written notice thereof, or, if not reasonably capable of being cured within such *seven* (7) days, within such other period of time as may be reasonable in the circumstances, the non-breaching party may terminate under this Agreement in addition to and not in limitation of any other remedy at law or in equity, and the failure of the non-breaching party to exercise such right at any time shall not waive the non-breaching party's right to terminate for any future breach or default.

(d) In the event of termination of this agreement for any reason, Pacific shall compensate Sunnyside for prisoners housed by Sunnyside after notice of such termination until Pacific retakes its inmates in the same manner and at the same rates as if this agreement had not been terminated.

4. MAILING ADDRESSES. All notices, reports, and correspondence to the respective parties of this Agreement shall be sent to the following:

To Sunnyside:	City of Sunnyside 818 E. Edison Avenue Sunnyside, WA 98944
Primary Contact Person:	Andrew Gutierrez, Corrections Sergeant 509-836-6200, agutierrez@sunnyside-wa.gov
Secondary Contact:	Johnnie Gusby, Support Services Commander 509-836-6216, JGusby@sunnyside-wa.gov

To Pacific: Pacific Police Department
133 3rd AVE SE
Pacific, WA 98047

Billing: City of Pacific
ATTN: Accounts Payable
100 3rd AVE SE
Pacific, WA 98047

Primary Contact Person: Ron Schaub, Chief of Police
253-929-1131, RSchaub@ci.pacific.wa.us

Secondary Contact: Robert Hendrickson, Lieutenant
253-929-1160, RHendrickson@ci.pacific.wa.us

Notices mailed shall be deemed given on the date mailed. The Parties shall notify each other in writing of any change of address.

5. DEFINITIONS. The Parties hereby agree that the following terms shall have the specified meanings unless indicated otherwise herein:

(a) Day. A twenty-four-hour-long unit of time commencing at 00:00:00 a.m., and ending 23:59:59 p.m.

(b) Inmate Classifications shall be pursuant to the Sunnyside's Objective Jail Inmate Classification System which is modeled after the National Institute of Corrections Jail Classification System:

(i) "**Minimum**" classification shall apply to those inmates who present a low risk to staff and the community.

(ii) "**Medium**" classification shall apply to those inmates who present a moderate risk to staff and the community.

(iii) "**Maximum**" classification shall apply to those inmates who present a substantial risk to staff and the community.

6. COMPENSATION.

(a) Rates. Sunnyside agrees to accept and house PACIFIC inmates for compensation per inmate at the rate of \$60.00 per day. This includes minimum and medium classification inmates. The parties agree that Sunnyside will not charge a separate booking fee in addition to such rate. The date of booking into the Sunnyside Jail of Pacific inmates shall be charged a minimum of a full daily rate per inmate regardless of the time of booking within a 24-hour period. The date of release from Sunnyside Corrections and/or returned to Pacific, regardless of the time frame within a 24-hour day shall not constitute a charge by the City of Sunnyside against Pacific.

(b) Billing and Payment. Sunnyside agrees to provide Pacific with an itemized invoice listing all names of housed inmates, the case/citation number, the number of days housed (including the date and time of booking and date and time of release), and the payment amount due. Sunnyside agrees to provide said invoice by the 10th of each month. Pacific agrees to make payment to the City of Sunnyside within *thirty* (30) days of receipt of such invoice for the amount billed for the previous calendar month.

(c) Transportation of inmates is included in the cost and is provided by Sunnyside Corrections.

7. RIGHT OF INSPECTION. Pacific shall have the right to inspect, at all reasonable times, all Sunnyside facilities in which inmates of Pacific are confined in order to determine if such jail maintains standards of confinement acceptable to Pacific and that such inmates therein are treated equally regardless of race, religion, color, creed or national origin; provided, however, that Sunnyside shall be obligated to manage, maintain and operate its facilities consistent with all applicable federal, state and local laws and regulations.

8. FURLOUGHS, PASSES, AND WORK RELEASE. Sunnyside agrees that no early releases or alternatives to incarceration, including furloughs, passes, work crews, electronic home detention or work release shall be granted to any inmate housed pursuant to this Agreement without written authorization by the committing court.

9. INMATE ACCOUNTS. Sunnyside shall establish and maintain an account for each inmate received from Pacific and shall credit to such account all money which is received and shall make disbursements, debiting such accounts in accurate amounts for the inmate's personal needs. Disbursements shall be made in limited amounts as are reasonably necessary for personal maintenance. Sunnyside shall be accountable to Pacific for such inmate funds. At either the termination of this Agreement, the inmate's death, and release from incarceration or return to either Pacific or indefinite release to the court, the inmate's money shall be refunded in the form of a pre-paid debit card or check issued to the inmate at the time of their release or transfer.

10. INMATE PROPERTY. Pacific may transfer to Sunnyside only agreed amounts of personal property of Pacific inmates recovered from or surrendered by inmates to Pacific upon booking. Only those items which fit into a 12-inch by 14-inch bag will be allowed on transports, when such transports are conducted by Sunnyside Jail Personnel. Additional legal material or personal belongings may be shipped to the Sunnyside Jail at the expense of the inmate or Pacific.

11. RESPONSIBILITY FOR OFFENDER'S CUSTODY. It shall be the responsibility of Sunnyside to confine the inmate or inmates; to provide treatment, including the furnishing of subsistence and all necessary medical and hospital services and supplies; to provide for the inmates' physical needs; to make available to them programs and/or treatment consistent with the individual needs; to retain them in said custody; to supervise them; to maintain proper discipline and control; to make certain that they receive no special privileges and that the sentence and orders of the committing court in the State are faithfully executed; provided that nothing herein contained shall be construed to require the City of Sunnyside, or any of its agents, to provide service,

treatment, facilities or programs for any inmates confined pursuant to this Agreement, which it does not provide for similar inmates not confined pursuant to this Agreement. Nothing herein shall be construed as to require Sunnyside to provide services, treatment, facilities or programs to Pacific inmates above, beyond or in addition to that which is required by applicable law.

12. MEDICAL SERVICES.

(a) Inmates deemed Pacific inmates shall receive such medical, psychiatric and dental treatment when **emergent** and necessary to safeguard their health while housed in Sunnyside. Sunnyside shall provide or arrange for the providing of such medical, psychiatric and dental services. Except for routine minor medical services provided in the Sunnyside Jail, Pacific shall pay directly or reimburse Sunnyside for any and all costs associated with the delivery of any emergency and/or major medical service provided to Pacific inmates. Pacific shall be responsible for any and all **emergent** medical, dental and psychiatric treatment provided outside of the Sunnyside Jail and shall be billed therefor.

(b) An adequate record of all such services shall be kept by Sunnyside for Pacific's review at its request, to the extent consistent with confidentiality regulations. Any medical or dental services requiring treatment from providers outside of the Sunnyside Jail shall be reported to Pacific as soon as time permits.

(c) Should medical, psychiatric or dental services require hospitalization, Pacific agrees to compensate Sunnyside dollar for dollar any amount expended, or cost incurred in providing the same; provided that, except in emergencies, Pacific will be notified by contacting the duty supervisor at Pacific prior to the inmate's transfer to a hospital, if and when circumstances allow, or as soon afterward as practicable.

(d) Sunnyside will make all reasonable efforts to ensure that medical care providers providing services to Pacific inmates adhere to payment requirements of RCW 70.48.130 when such services are not billed directly to Pacific by the medical care provider. Sunnyside may elect to have the medical care provider(s) bill Pacific directly. Pacific will have the responsibility for notifying medical care providers of these payment requirements when billed directly by medical care providers.

13. DISCIPLINE. Sunnyside shall have physical control over and power to execute disciplinary authority over all inmates of Pacific. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by applicable law.

14. RECORDS AND REPORTS.

(a) Pacific shall forward to Sunnyside before or at the time of delivery of each inmate, a copy of all inmate records pertaining to the inmate's present incarceration. If additional information is requested regarding a particular inmate, the parties shall mutually cooperate to provide any additional information in a timely manner.

(b) Sunnyside shall keep all necessary and pertinent records concerning such inmates in the manner mutually agreed upon by the parties hereto. During an inmate's confinement in Sunnyside, Pacific shall upon request be entitled to receive and be furnished with copies of any report or record associated with said inmate(s) incarceration.

15. REMOVAL FROM THE JAIL. An inmate of Pacific legally confined in Sunnyside shall not be removed from the jail by any person without written authorization from the Pacific Municipal Court or by order of any court having jurisdiction. Pacific hereby designates the Corrections Sergeant as the official authorized to direct Sunnyside to remove Pacific inmates from the Sunnyside Jail. Sunnyside agrees that no early releases or alternatives to incarceration, including furloughs, passes, work release, work crews or electronic home detention shall be granted to any inmate without written authorization from the committing court. This paragraph shall not apply to an emergency necessitating the immediate removal of the inmate for medical, dental, psychiatric treatment or other catastrophic condition presenting an eminent danger to the safety of the inmate or to the inmates or personnel of the Sunnyside Jail. In the event of any such emergency removal, Sunnyside shall inform Pacific of the whereabouts of the inmate or inmates so removed, at the earliest practicable time, and shall exercise all reasonable care for the safe keeping and custody of such inmate or inmates.

16. ESCAPES. In the event any Pacific inmate escapes from Sunnyside's custody, Sunnyside will use all reasonable means to recapture the inmate. The escape shall be reported immediately to Pacific. Sunnyside shall have the primary responsibility for and authority to direct the pursuit and retaking of the inmate or inmates within its own territory. Any cost in connection therewith shall be chargeable to and borne by Sunnyside; however, Sunnyside shall not be required to expend unreasonable amounts to pursue and return inmates from other counties, states or other countries.

17. DEATH OF AN INMATE.

(a) In the event of the death of a Pacific inmate, the Yakima County Coroner shall be notified. Pacific shall receive copies of any records made at or in connection with such notification.

(b) Sunnyside shall immediately notify Pacific of the death of a Pacific inmate, furnish information as requested and follow the instructions of Pacific regarding the disposition of the body. Pacific hereby designates the Chief of Police as the official authorized to request information from and provide instructions to Sunnyside regarding deceased inmates. The body shall not be released except on written order of said appropriate official(s) of Pacific. Written notice shall be provided within three weekdays of receipt by Pacific of notice of such death. All expenses relative to any necessary preparation of the body and shipment charges shall be paid by Pacific. With Pacific's consent, to be obtained on an individual basis, Sunnyside may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by Pacific. The provisions of this paragraph shall govern only the relations between or among the parties hereto and shall not affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

(c) Pacific shall receive a certified copy of the death certificate for any of its inmates who have died while in the City of Sunnyside's custody.

18. RETAKE OF INMATES. Upon request from Sunnyside, Pacific shall, at its expense, retake any Pacific inmate within *thirty-six* (36) hours after receipt of such request. In the event the confinement of any Pacific inmate is terminated for any reason, Pacific shall, at its expense, retake such inmate at the Sunnyside Facility.

19. HOLD HARMLESS AND INDEMNIFICATION.

(a) Nothing contained in this Section or this Agreement shall be construed to create a right of indemnification in any third party.

(b) The terms of section 19 shall survive the termination or expiration of this Agreement.

19.1 SUNNYSIDE – HOLD HARMLESS AND INDEMNIFICATION. Sunnyside agrees to hold harmless, indemnify and defend the City of Pacific, its officers, agents and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, or damage to property, arising out of any willful misconduct, negligent act, error, or omission of PacificSunnyside, its officials, officers, agents, volunteers or employees, in connection with the services required by this agreement, provided, however, that:

(a) Sunnyside's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or negligence of Pacific, its officials, agents, officers, employees or volunteers; and

(b) In the event that the officials, agents, officers, and/or employees of both Pacific and Sunnyside are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees).

19.2 PACIFIC – HOLD HARMLESS AND INDEMNIFICATION. Pacific agrees to hold harmless, indemnify and defend Sunnyside, its officers, agents and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of Pacific, its officials, officers, agents, volunteers or employees, in connection with the services required by this agreement, provided, however, that:

(a) Pacific's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or negligence of Sunnyside, its agents, officers, employees or volunteers; and

(b) In the event that the officials, agents, officers, and/or employees of both Pacific and Sunnyside are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees).

20. RIGHT OF REFUSAL AND TRANSPORTATION.

(a) Sunnyside shall have the right to refuse to accept any inmate from Pacific when, in the opinion of Sunnyside, its inmate census is at capacity such that there is a substantial risk that, through usual operation of the jail, the reasonable operational capacity limits of the jail might be reached or exceeded.

(b) Sunnyside shall further have the right to refuse to accept any inmate from Pacific who, in the judgment of Sunnyside, has a current illness or injury which may adversely affect the operations of the Sunnyside Jail, has a history of serious medical problems, presents a substantial risk of escape, or presents a substantial risk of injury to other persons or property, or is classified as a maximum-security inmate pursuant to Sunnyside's Objective Jail Classification System.

(c) Pacific prisoners incarcerated in Sunnyside pursuant to this Agreement shall be transported to Sunnyside by and at the expense of Sunnyside and shall be returned, if necessary, to Pacific's custody by Sunnyside personnel and at Sunnyside's expense provided that notice of the necessity of transport is received by Sunnyside *three* (3) days prior to time of expected transport.

21. INDEPENDENT CONTRACTOR. In providing services under this contract, Sunnyside is an independent contractor and neither it nor its officers, agents or employees are employees of Pacific for any purpose, including responsibility for any federal or state tax, industrial insurance or Social Security liability. Neither shall the provision of services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of Pacific under any applicable law, rule or regulation.

22. GENERAL PROVISIONS.

(a) Severability. In the event any provisions of this Agreement shall be determined to be unenforceable or otherwise invalid for any reason, such provisions shall be enforced and valid to the extent permitted by law. All provisions of this Agreement are severable, and the unenforceability or invalidity of a single provision herein shall not affect the remaining provisions.

(b) Dispute Resolution. In the event of a dispute regarding the enforcement, breach, default, or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, with both parties waiving the right of a jury trial upon trial de novo, with venue placed in Sunnyside, Yakima County, Washington. Each party shall bear its own attorney fees and costs.

(c) Waiver of Breach. The waiver by either party of the breach of any provision of this Agreement by the other party must be in writing and shall not operate nor be construed as a waiver of any subsequent breach by such other party.

(d) Savings Clause. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be severed only to the extent necessary to bring it within legal requirements.

(e) Filing. This Agreement shall be filed with the Yakima County Auditor's Office or, alternatively, listed by subject on each or either party's web site or other electronically retrievable public source pursuant to RCW 39.34.040.

23. INTERPRETATION. This Agreement has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration or weight given to its being drafted by any party or its counsel. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and gender neutral.

24. ACCESS TO RECORDS CLAUSE. The parties hereby agree that authorized representatives of the parties shall access to any books, documents, paper and record of the other party which are pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. All such records and all other records pertinent to this Agreement and work undertaken pursuant to this Agreement shall be retained by the parties for a period of *three* (3) years after the final expiration date of this Agreement or any amendments hereto, unless a longer period is required to resolve audit, findings or litigation. In such cases, the parties may expressly agree by an amendment or separate agreement for such longer period for record retention.

25. INTERLOCAL COOPERATIVE ACT PROVISIONS Each party shall be solely responsible for all costs, materials, supplies and services necessary for their performance under the terms of this Agreement. All property and materials secured by each party in the performance of this Agreement shall remain the sole property of that party. All funding incident to the fulfillment of this Interlocal Agreement, shall be borne by each party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incident to this Interlocal Cooperation Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement. The City Manager of the City of Sunnyside, Washington, shall be designated as the Administrator of this Interlocal Cooperative Agreement.

A copy of this Interlocal Agreement shall be filed or placed on the City's and the Port's website as provided by RCW 39.34.

26. ENTIRE AGREEMENT. This Agreement represents the entire integrated Agreement between Pacific and Sunnyside and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed in duplicate by the parties hereto and made effective on the day and year first above written:

CITY OF SUNNYSIDE

By: _____
Elizabeth Alba, City Manager

ATTEST:

Jacqueline Renteria, City Clerk

APPROVED AS TO FORM:

Kerr Law Group, PLLC,
Attorneys for the City of Sunnyside

THE CITY OF PACIFIC

By: _____
Leanne Guier, Mayor

ATTEST:

Laurie Cassell MMC, City Clerk

APPROVED AS TO FORM:

Charlotte Archer
Inslee Best Doezie & Ryder, PS
Attorney for the City of Pacific

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed in duplicate by the parties hereto and made effective on the day and year first above written:

CITY OF SUNNYSIDE

By: Elba
Elizabeth Alba, City Manager

ATTEST: Jacqueline Renteria
Jacqueline Renteria, City Clerk

APPROVED AS TO FORM:

34949
Kerr Law Group, PLLC,
Attorneys for the City of Sunnyside

CITY CONTRACT NO: A-2023-08
RESOLUTION NO: 2014-55
COUNCIL MTG: X

THE CITY OF PACIFIC

By: Leanne Guier
Leanne Guier, Mayor

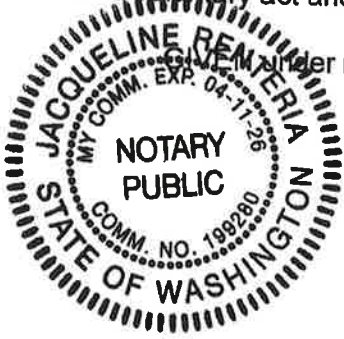
ATTEST: Laurie Cassell
Laurie Cassell MMC, City Clerk

APPROVED AS TO FORM:

Charlotte Archer
Charlotte Archer
Inslee Best Doezie & Ryder, PS
Attorney for the City of Pacific

STATE OF WASHINGTON)
: ss.
THE CITY OF PACIFIC)

On this day personally appeared before me Elizabeth Alba, City Manager, of the City of Sunnyside, to be known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

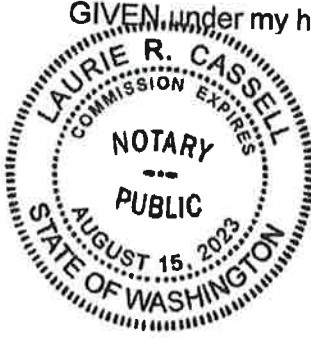


GIVEN under my hand and official seal this 24th day of July, 2023.

Elizabeth Alba
NOTARY PUBLIC in and for the State of Washington
Residing at: Grandview, WA
My Commission Expires: 04/11/2026

STATE OF WASHINGTON)
: ss.
THE CITY OF PACIFIC)

On this day personally appeared before me Leanne Guier, Title, of the CITY OF PACIFIC, to be known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.



GIVEN under my hand and official seal this 11th day of July, 2023.

Laurie R. Cassell
NOTARY PUBLIC in and for the State of Washington
Residing at: Spanaway WA
My Commission Expires: 8/15/23



Agenda Bill No. 23-533

TO: Mayor Guier and City Council Members
FROM: Brenda Rolph, Interim Finance Director
MEETING DATE: November 20, 2023
SUBJECT: Proposed 2024 Budget

ATTACHMENTS:

- Ordinance No. 2023-2085

Previous Council Review Dates: November 6, 2023 (Public Hearing - Revenues), November 13, 2023 (Budget Presentation & Public Hearing), and November 20, 2023 (Budget Public Hearing).

Summary: A Public Hearing was held on November 6, 2023 to receive citizen comments on the 2024 proposed revenues and the property tax levy. The Mayor’s Proposed Preliminary Budget and Budget Message was delivered to the City Council on November 3, 2023. On November 13, 2023, the Mayor provided a 2024 budget presentation along with City staff to present department budget requests, and allow Council to ask questions and provide direction. A Public Hearing was held in conjunction with the budget presentation to receive comments regarding the proposed budget. A second Public Hearing on the 2024 Proposed Budget is being held on November 20, 2023 along with Council discussion of the Proposed Budget. First reading of the budget ordinance is scheduled for November 27, 2023. Adoption of the budget ordinance is scheduled for December 11, 2023.

Recommendation/Action: Adopt Ordinance No. 2023-2085 adopting the Annual Budget by fund for the year 2024.

Motion for Consideration: Adopt Ordinance No. 2023-2085 adopting the Annual Budget by fund for the year 2023.

Budget Impact:

Alternatives:

**CITY OF PACIFIC
WASHINGTON**

ORDINANCE NO. 2023-2085

**AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, ADOPTING
THE BUDGET FOR THE YEAR 2024 AND SETTING FORTH THE
ESTIMATED REVENUES AND APPROPRIATIONS.**

WHEREAS, after notice as prescribed by law, the City Council held public hearings on the 2024 Budget on November 6, 2023, November 13, 2023 and November 20, 2023, at which time public testimony for or against any part of the Budget were heard; and

WHEREAS, the 2024 Proposed Budget does not exceed the lawful limit of taxation allowed by law to be levied on the property within the City of Pacific for the purposes set forth in the Budget, and the estimated expenditures set forth in the Budget being all necessary to carry on the government of Pacific for 2024 and being sufficient to meet the various needs of Pacific during 2024; and

WHEREAS, this ordinance was presented for review during a regular City Council workshop on November 20, 2023; and

WHEREAS, this ordinance was considered by the City Council for adoption during a regular City Council meeting on November 27, 2023;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. The Budget for the City of Pacific, Washington, for the year 2024 is hereby adopted at the fund level in its final form and content.

Section 2. Estimated resources, including beginning fund balances, for each separate fund of the City of Pacific, and aggregate total for all funds combined, for the year 2024 are set forth in summary form, and are hereby appropriated for expenditure during the year 2024 as set forth below:

Section 3. The City Clerk is directed to transmit a certified copy of the Budget hereby adopted to the Office of the State Auditor and the Association of Washington Cities.

Section 4. Effective Date. This Ordinance shall take effect and be in full force five (5) days from and after its passage, approval and publication as required by law.

2024 CITY OF PACIFIC BUDGET ORDINANCE

FUND	FUND NAME	ESTIMATED RESOURCES	APPROPRIATIONS
001	GENERAL FUND	\$ 8,041,276	\$ 6,511,279
096	CUSTOMER/DEVELOPER DEPOSITS	128,308	-
098	GENERAL FUND EQUIPMENT RESERVE	597,545	174,602
099	GENERAL FUND CUMULATIVE RESERVE	584,959	-
101	STREET FUND	729,829	606,558
107	TOURISM FUND	280,270	25,000
209	LID 6 REDEMPTION FUND	616,801	464,745
210	LID 6 RESERVE FUND	489,889	-
300	MUNICIPAL CAPITAL IMPR FUND	1,109,741	690,000
301	STREETS CAPITAL IMPROVEMENT FUND	1,450,541	1,112,300
305	PARKS CAPITAL IMPROVEMENT FUND	432,493	98,596
307	MILWAUKEE BLVD PROJECT	2,093	2,093
308	VALENTINE ROAD PROJECT	27,909	27,909
309	WEST VALLEY	213,814	210,000
310	STEWART THORTON AVE PROJECT	70,877	-
333	FIRE CAPITAL IMPROVEMENT FUND	378,277	40,000
401	WATER FUND	3,703,698	2,367,119
402	SEWER FUND	4,265,722	4,041,465
404	UTILITY REVENUE BOND REDEMPTION	302,330	276,504
406	WATER CAPITAL IMPROVEMENT FUND	1,977,512	1,155,000
408	SEWER CAPITAL IMPROVEMENT FUND	912,918	787,500
409	STORMWATER FUND	1,965,300	1,195,673
410	STORMWATER CAPITAL IMPR FUND	718,709	20,000
411	PIERCE COUNTY WATER AREA FUND	295,175	86,939
499	UTILITIES EQUIPMENT RESERVE	998,713	445,000
500	INFORMATION TECHNOLOGY FUND	348,855	297,135
TOTAL ALL FUNDS		\$ 30,643,554	\$ 20,635,417

**PASSED BY THE CITY COUNCIL AT A REGULAR MEETING
THEREOF ON THE 11th DAY OF DECEMBER, 2023.**

CITY OF PACIFIC

LEANNE GUIER, MAYOR

ATTEST/AUTHENTICATED:

**LAURIE CASSELL, MMC
CITY CLERK**

APPROVED AS TO FORM:

CHARLOTTE ARCHER, CITY ATTORNEY



TO: Mayor Guier and City Council Members
FROM: Mayor Guier
MEETING DATE: November 20, 2023
SUBJECT: Comcast Franchise Agreement

-
- ATTACHMENTS:**
1. Ordinance No. 2023-2086
 2. Comcast Franchise Agreement
 3. Renewal Side Letter
 4. Copy of Ordinance No. 1224
-

Previous Council Review Date: None

Background: On June 13, 1994, the City of Pacific through Ordinance 1224 granted a 15-year Franchise agreement to operate and maintain a cable communications system to TCI of Auburn, Inc.; and on November 18, 2002, the City was notified of the change of control involving Comcast Corporation and AT&T Corp., TCI's indirect parent; and on December 3, 2002, the City was notified that the legal name of the cable system operators changed from Cable TV Puget Sound and TCI Cablevision of Washington, Inc. to Comcast of Puget Sound, Inc. and Comcast of Washington IV, Inc. Comcast.

That franchise has long since expired. The City and Comcast have continued to operate under the 1994 agreement. A new franchise is needed to keep Comcast operating and providing services in Pacific. The City Attorney's office negotiated the new franchise with Comcast and recommends its approval.

Under RCW 35A.47.040, the City Council may only adopt this Franchise Ordinance after two readings which are at least five days apart. The schedule for this Ordinance meets this standard.

Recommendation: Staff recommends approval of Ordinance No. 2023-2086

Budget Impact: The City receives revenue pursuant to the terms of the Franchise; the revenue would continue.

Motion for Consideration: I move to approve Ordinance No. 2023-2086 granting Comcast Cable Communications Management, LLC, to construct, maintain, operate, replace and repair a cable communications system.

**CITY OF PACIFIC
WASHINGTON**

ORDINANCE NO. 2023-2086

AN ORDINANCE OF PACIFIC, WASHINGTON, GRANTING COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A CABLE COMMUNICATIONS SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW PUBLIC RIGHTS-OF-WAY OF THE CITY OF PACIFIC, WASHINGTON.

WHEREAS, in accordance with RCW 35A.11.020, RCW 35A.11.030 and RCW 35A.47.040, the City of Pacific (“City”) has the right to control its streets and rights of way; and

WHEREAS, in accordance with RCW 35A.11.030 and RCW 35A.47.040, the City has the right to allow use of its rights of way by franchise agreement or other methods; and

WHEREAS, the City is a franchising authority in accordance with Title VI of the Cable Act, 47 U.S.C. § 522(10), and Washington State law; and

WHEREAS, Comcast Cable Communications, LLC and Comcast Cable Communications Management, LLC (“Comcast”) is a provider of cable communications; and

WHEREAS, with the adoption of Ordinance No. 1224, the City Council previously granted Comcast a fifteen(15) year non-exclusive franchise with an expiration date of June 2009; and

WHEREAS, that franchise is expired and needs to be replaced in order to allow Comcast to continue to operate in Pacific; and

WHEREAS, the City Council has determined that the renewal of a nonexclusive franchise to Comcast is consistent with the public interest; and

WHEREAS, the City and Comcast also have historically had a “Side Letter” for the Institutional Network (I-Net) that connects the City’s facilities, and this Side Letter is also due to be renewed; and

WHEREAS, the City Council, having determined that the financial, legal, and technical ability of Comcast is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to grant a franchise for the construction, operation, and maintenance of a cable communications system; and

WHEREAS, the City Council finds that it is desirable and in the best interests of the health, safety, and welfare of residents of the Pacific community to grant a non-exclusive franchise to Comcast for the operation of a cable service system within the City’s rights-of-way; and

WHEREAS, the City and Comcast have reached agreement on the terms and conditions of a non-exclusive franchise and the parties have agreed to be bound by those terms and conditions; and

WHEREAS, in accordance with RCW 35A.47.040, the City Council considered this Ordinance at two Council Meetings on the following dates: November 27, 2023 and December 11, 2023 and these dates were at least five days apart; and

WHEREAS, notice of this Ordinance has been or will be published at least once in a newspaper of general circulation in the City prior to the effective date of this Non-Exclusive Franchise; and

WHEREAS, in consideration of the renewal of a franchise to Comcast, Comcast's promise to provide cable service to residents of the City of Pacific pursuant to and consistent with the Cable Act, 47 USC § 521 et seq.;

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

Section 1. Findings. The findings and recitals set forth above are hereby adopted and incorporated herein by this reference.

Section 2. Grant of Franchise. The City of Pacific Grants Comcast Cable Communications Management, LLC ("Comcast") a non-exclusive franchise authorizing the use of public rights-of-way for a cable service system subject to the terms and conditions the Franchise Agreement which is attached hereto as Exhibit "1" and incorporated herein by this reference as if set forth in full. The Mayor is authorized to execute the Franchise Agreement once all of requirements in Sections 4 through 6 of this Ordinance have been satisfied.

Section 3. Authorization to Renew Side Letter. The Mayor is authorized to execute the Side Letter which is attached hereto as Exhibit "2" and incorporated herein by this reference as if set forth in full.

Section 4. Acceptance. The rights and privileges granted pursuant to this Ordinance shall not become effective until its terms and conditions are accepted by Comcast. Acceptance shall be accomplished by the submission of a written instrument, executed, and sworn to by a corporate officer of Comcast before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Ordinance. Such instrument shall evidence the unconditional acceptance of the terms hereof and a promise to comply with and abide by the provisions, terms, and conditions hereof. The City will not sign the Franchise Agreement until such time as Comcast has accepted its terms and reimbursed the City for its costs as to the maximum extent required under State and Federal law.

Section 5. Reimbursement of Costs. Comcast shall reimburse the City for its incidental costs of negotiating and approving this Franchise, including publication costs, prior to the City's execution of the Franchise Agreement.

Section 6. Performance Bond and Insurance. The insurance policies provided by Comcast pursuant to the Franchise shall remain in effect during the franchise period and any extension thereof.

Section 7. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 8. Effective date. This Ordinance shall take effect after all of the following have occurred: (1) Comcast has provided acceptance of the Franchise in accordance with Section 4 above; (2) Comcast has reimbursed the City for incidental costs in the award of this Franchise in accordance with Section 5 above; and (3) at least five days have elapsed following passage and legal publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 11th DAY OF DECEMBER, 2023.

CITY OF PACIFIC

LEANNE GUIER, MAYOR
ATTEST/AUTHENTICATED:

LAURIE CASSELL, MMC
CITY CLERK

APPROVED AS TO FORM:

CHARLOTTE ARCHER, CITY ATTORNEY

Attachments: 1. Comcast Cable Franchise Agreement
2. Comcast Side Letter Agreement

Exhibit “1”

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

AND

THE CITY OF PACIFIC, WASHINGTON

CABLE FRANCHISE AGREEMENT

Exhibit “2”

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

AND

THE CITY OF PACIFIC, WASHINGTON

SIDE LETTER AGREEMENT

**COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND
THE CITY OF PACIFIC, WASHINGTON**

CABLE FRANCHISE AGREEMENT

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SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. 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 discretionary. A list that follows the use of the word "including" is intended to illustrate examples, not be an exhaustive list, unless the context clearly indicates otherwise. The Grantor and Grantee may be collectively referred to as the "Parties."

1.1 "Access" means the availability for non-commercial use by various agencies, institutions, organizations, groups, and individuals in the community, including the Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. "Educational Access" means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, "school" means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges, and universities.

b. "Government Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 "Access Channel" means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

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

1.5 "Applicable Law" means any statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law that determines the legal standing of a case or issue.

1.6 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 "Basic Service" is the level of programming service which includes the retransmission of local television Broadcast Channels made available to all Cable Services Subscribers in the Franchise Area.

1.8 "Broadcast Channel" means local commercial television stations, qualified low power

stations and qualified local non-commercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes, or any other means.

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) 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.

1.12 “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.

1.13 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) 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 Section 621(c) (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; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 “City Administrator” means the chief administrative officer of the City of Pacific or designee.

1.16 “City” is the City of Pacific, Washington, a body politic and corporate under the laws of the State of Washington.

1.17 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.18 “Designated Access Provider” means the entity or entities designated now or in the future by the Grantor to manage or co-manage Access Channels and facilities. The Grantor may be a Designated Access Provider.

1.19 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.20 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.21 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation, and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units, unless the additional facilities are clearly accessory.

1.22 “FCC” means the Federal Communications Commission.

1.23 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Grantor and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements, and other related matters.

1.24 “Franchise Area” means the area within the jurisdictional boundaries of the Grantor, including any areas annexed by the Grantor during the term of this Franchise.

1.25 “Franchise Fee” means that fee payable to the Grantor described in subsection 3.1.

1.26 “Grantee” means Comcast Cable Communications Management, LLC or its lawful successor, transferee, or assignee.

1.27 “Grantor” means the City of Pacific, Washington.

1.28 “Grantor Council” means the Pacific City Council, or its successor, the governing body of the City of Pacific, Washington.

1.29 “Gross Revenues” means, and shall be construed broadly, to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;

- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees, and administrative fees, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees;
- commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Franchise Area and shall be allocated on a pro rata basis using Grantee’s Cable System Subscribers within the Franchise Area in relation to the total number of Grantee’s Cable Service subscribers covered under the advertising arrangement. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast EffectTV or their successors associated with sales of advertising on the Cable System within the Franchise Area allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion that is subsequently collected, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- any taxes and/or fees on services furnished by Grantee imposed by a municipality, State, or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state, or other governmental unit on Grantee, including but not limited to Public, Educational and Governmental (hereinafter “EG”) Fees;

- launch fees and marketing co-op fees; and
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services that includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, State, or local law. The allocations shall be done for each bundled package separately, and updated and revised within sixty (60) days, each time an element within the package has its rate card changed, including when an element is substituted for another element within the bundled package. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this subsection 1.31 in order to meet the standards required by governing accounting principles, as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF"), and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee shall notify Grantor of any changes in allocation methodologies in its next quarterly franchise fee reports delivered to Grantor.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP"), as promulgated and defined by the FASB, EITF, and/or the SEC. Notwithstanding the foregoing, the Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including the application of GAAP to Franchise Fees and the interpretation of GAAP as promulgated and defined by the FASB, EITF, and/or the SEC.

1.30 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks that are part of the Cable System, and all other related equipment and facilities.

1.31 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.32 "Municipal Code" means the Pacific Municipal Code adopted for application and enforcement within the City of Pacific, Washington. This may also be referred to as the "PMC."

1.33 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.34 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program, or per-event basis.

1.35 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding Persons residing in such Multiple Dwelling Units to the extent Cable Services are billed on a bulk-billing basis.

1.36 “Right(s)-of-Way” means land acquired or dedicated for public roads and streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, and easements dedicated for compatible use and consistent with Section 621 of the Cable Act , but does not include:

(a) State highways where the Grantor does not have authority to grant permits related to Cable Systems;

(b) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public, unless specifically used as a utility corridor;

(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;

(f) City parks, City Hall, or other City property (whether owned in fee or an easement or by other right) that is not “right of way”; 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.

1.37 “State” means the State of Washington.

1.38 “Subscriber” means any Person who or which has entered into an agreement to receive Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who has not been disconnected for failure to adhere to Grantee's regular and non-discriminatory terms and conditions for receipt of service.

1.39 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.40 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.41 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.42 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The Grantor hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way consistent with the requirements of 47 U.S.C. § 541(a)(2), within the Franchise Area to construct, operate, maintain, reconstruct, and rebuild a Cable System and to provide Cable Service subject to the terms and conditions set forth in this Franchise and Applicable Law.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Grantor ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision, or condition herein is subject to the provisions of State law, federal law, and the generally applicable ordinances and regulations enacted by the Grantor Council pursuant thereto, portions of which may be codified in the Municipal Code. To the extent there is any conflict between this Franchise and any provision of the Grantor's Code as it exists on the Effective Date of this Franchise, the terms of this Franchise shall control. Subject to the Grantor's right to exercise its police power under subsection 2.5, the Grantor may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) If allowed under Applicable Law, this Franchise shall not be interpreted to prevent the Grantor from imposing additional lawful conditions, for use of the Rights-of-Way should Grantee provide service other than Cable Service, nor shall this Franchise be interpreted to either prevent or authorize Grantee from making any other lawful uses of the Cable System as permitted by Applicable Law related to Grantee's non-Cable Service operations.

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

(F) 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 required for the privilege of transacting and carrying on a business within the Franchise Area that may be required by the ordinances and laws of the Grantor;

(2) Any permit, agreement, or authorization required by the Grantor for Right-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 and Right-of-Way use permits; or

(3) Any generally applicable permits or agreements for occupying any other property of the Grantor or private entities 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.

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

2.2 Use of Rights-of-Way

(A) Subject to the Grantor's supervision and control, 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, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Franchise Area.

(B) Grantee must follow Grantor's established non-discriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by the Grantor or others, including others that may be installing communications facilities. Within limits reasonably related to the Grantor's role in protecting public health, safety, and welfare, the Grantor may require that Cable System facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Grantor's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the Grantor, or that is installed without prior Grantor approval of the time, place, or manner of installation, and charge Grantee for all the costs associated with removal and repair.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges, and authority granted hereunder shall take effect on _____, 2023 (the "Effective Date"), and shall terminate on _____, 2033, unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or licenses granted by the Grantor to any Person to use any property, Right-of-Way, right, interest, or license for any purpose whatsoever, including the right of the Grantor to use the same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Grantor may at any time grant authorization to use the Rights-of-Way for such additional franchises for Cable Systems as the Grantor deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Grantor or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Grantor shall have the right to adopt, from time to time, such ordinances as it may deem necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Grantor's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the Grantor reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Rights-of-Way in order to provide Cable Services within the Franchise Area. If the Grantor grants such an additional franchise or other similar lawful authorization to utilize the Rights-of-Way for Cable Services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then the Grantor agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, following Grantee's request as described in subsection 2.6(B), so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The Parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.

(B) The modification process of this Franchise as provided for in subsection 2.6(A) shall only be initiated by written notice by the Grantee to the Grantor regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the authorization granted in subsection 2.6(A) that are materially different from Grantee's obligations under this Franchise; (2) identifying the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; (3) identifying the Franchise terms and conditions for which Grantee is seeking amendments; and (4) providing text for any proposed Franchise amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent. Notwithstanding any modification of this Franchise pursuant to the provisions of this subsection 2.6, should any entity, whose authorization to provide Cable Services or similar video programming service resulted in a triggering of the amendments under this Section, fail or cease to provide such services within the Franchise Area, the Grantor may provide ninety (90) days' written notice to Grantee of such fact, and the Grantor

and Grantee shall enter into good faith negotiations to determine the original terms, conditions, and obligations of this Franchise shall be reinstated and fully effective.

(C) Upon receipt of Grantee's written notice as provided in subsection 2.6(B), the Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Grantor shall amend this Franchise to include the modifications.

(D) Notwithstanding anything contained in subsection 2.6(A) through (D) to the contrary, the Grantor shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar video programming service available for purchase by Subscribers or customers under its franchise or similar agreement with the Grantor.

(E) In the event that a wireline multichannel video programming distributor, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or wireline video services within the Franchise Area without a Cable Service franchise or other similar lawful authorization granted by the Grantor, then Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend this Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide the text of all proposed Franchise amendments to the Grantor, and (4) identify all material terms or conditions in the applicable state or federal authorization that are substantially more favorable or less burdensome to the competitive entity. The Grantor shall not unreasonably withhold consent to Grantee's petition.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges, and agreements 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, and consistent with all local, State, and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor'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 FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Grantor's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the Grantor, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

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

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the Grantor 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 Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by Grantee was due or such shorter period if required by Applicable Law.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the Grantor, or concurrently sent under separate cover, 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 Annual Franchise Fee Reports

Grantee shall, as provided under Section 7.4, furnish to the Grantor a statement stating the total amount of Gross Revenues for the year and all payments, deductions, and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the Grantor, including Grantor's Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise for a period of time in accordance with state law (the "audit period"). Pursuant to subsection 1.30, as part of the Franchise Fee audit/review, the Grantor shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the

event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, “relevant data” shall include, at a minimum, Grantee’s records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for the Grantor’s subscribers during the audit period. To the extent that the Grantor does not believe that the relevant data supplied is sufficient for the Grantor to complete its audit/review, the Grantor may require other relevant data. For purposes of this subsection 3.6, the “other relevant data” shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers), and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the Grantor to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the actual and verifiable cost of the audit/review, such cost not to exceed seven thousand five hundred dollars (\$7,500.00) for each year of the audit period. The Grantor’s right to audit/review and Grantee’s obligation to retain records necessary to complete any audit under this subsection shall expire consistent with the applicable statute of limitations period under State law; provided, however, that this would not apply to a time period covered under a pending audit.

3.7 Late Payments

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due at the then current maximum rate set forth in RCW 19.52.020, calculated from the date the payment was originally due until the date the Grantor receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the then current maximum rate set forth in RCW 19.52.020, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Grantor.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the Grantor through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall comply with any other Applicable Law related to the right to occupy the Grantor’s Rights-of-Way and compensation therefor.

3.10 Maximum Legal Compensation

The Parties acknowledge that, at present, applicable federal law limits the Grantor to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the Grantor is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the Grantor, by resolution of Grantor Council, to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Grantor hereunder,

provided that Grantee has received at least ninety (90) days' prior written notice from the Grantor of such amendment, so long as all cable operators in the Franchise Area are paying the same Franchise Fee amount. In the event that at any time throughout the term of this Franchise, the Grantor is limited by federal law to collecting an amount which is less than five percent (5%) of Gross Revenues in any twelve (12) month period, Grantee may request reduction of the Franchise Fee payments to the Grantor in accordance with federal law and the parties hereby agree to amend the Franchise unless the Grantor would be covered under grandfathered provisions under federal law to keep the Franchise Fee at five percent (5%) of Gross Revenues.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise fees. Grantee agrees that the obligation to provide Access Channels and those commitments subject to exclusion under 47 USC 542(g)(2) are not Franchise fees, nor are they to be offset or credited against any Franchise fee payments due to the Grantor, nor do they represent an increase in Franchise fees to be passed through to subscribers.

3.12 Tax Liability

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 Grantor. Any other license fees, taxes, or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the Grantor upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the Grantor deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, signed by a representative of Grantee under penalty of perjury under the laws of the State of Washington, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in the letter of credit or other security provided by the Grantee, or any other manner authorized by Applicable Law.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

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(A) The Grantor shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under federal, State, and local law, to any agent in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the Grantor's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Grantor to the full extent authorized by Applicable Law.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, gender identity, marital, military, or economic status, physical or mental disability, or, where consistent with any requirement of federal or State law, geographic location within the Franchise Area. Nothing herein shall be construed to prohibit:

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

(B) The offering of rate discounts for Cable Service; or,

(C) The Grantee from establishing different and non-discriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Grantor a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the Grantor, 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, terms, and conditions established by Grantee for Leased Access Channels.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the Grantor reserve all rights they may have under the Cable Act and any other relevant provisions of Applicable Law.

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, and sufficient grounds for the Grantor to invoke any relevant remedy in accordance with subsection 13.1 of this Franchise.

4.8 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, or such other time as the Parties may agree, the Grantor and Grantee shall meet to discuss the proposed amendment(s). If the Parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Grantor Council for its approval. If so approved by the Grantor Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.9 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 Law.

(B) Nothing in this subsection shall be deemed to create, limit, or otherwise affect the ability of the Grantee to impose other assessments, charges, fees, or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule, or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be non-discriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Franchise Area without regard to the neighborhood or income level of the Subscriber.

4.10 Force Majeure

In the event either party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of such party, the delayed party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation. Those conditions that are not within the control of a party include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, pandemics and epidemics, and severe or unusual weather conditions, all of which have a direct and substantial impact on the party's ability to perform its commitments under this Franchise and were not caused and could not have been avoided by the party, who used its best efforts in its operations to avoid such results.

If a party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party claiming a force majeure condition has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend, and hold the Grantor, its officers, officials, boards, commissions, agents, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the Grantor while conducting its defense of the Grantor. Grantee shall not be obligated to indemnify the Grantor to the extent of the Grantor's negligence or willful misconduct. The provisions of this section shall survive the expiration or termination of this Franchise.

(B) RCW 4.24.115. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the Grantor, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Franchise.

(C) Indemnification for Relocation. Grantee shall indemnify the Grantor for any damages, claims, additional costs, or reasonable expenses assessed against, or payable by, the Grantor resulting from, Grantee's failure to remove, adjust, or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by this Franchise.

(D) Additional Circumstances. Grantee shall also indemnify, defend, and hold the Grantor harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way resulting from:

(1) The lawful actions of the Grantor in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

(E) Procedures and Defense. If a claim or action arises, the Grantor or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The Grantor's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. The Grantor may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses, or other costs the Grantor may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(G) is required. In that event, the provisions of Paragraph 5.1(G) shall govern Grantee's responsibility for Grantor's attorneys' fees, expenses, or other costs. In any event, Grantee may not agree to any settlement of claims affecting the Grantor without the Grantor's approval.

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

(G) Expenses. If separate representation to fully protect the interests of both Parties is or becomes necessary, such as a conflict of interest between the Grantor and the counsel selected by Grantee to represent the Grantor, Grantee shall select separate counsel that does not have such a conflict to represent Grantor. Provided, however, that in the event that such separate representation is or becomes necessary, and Grantor desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Grantor shall be required to obtain Grantee's consent to the engagement of such counsel, experts, or consultants, such consent not to be unreasonably withheld. The Grantor's expenses shall include all reasonable out-of-pocket costs and expenses, such as consultants' fees and court costs, and shall also include the reasonable value of any services rendered by the Grantor's attorney or his/her assistants or any employees of the Grantor or its agents, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided to the Grantor by Grantee.

(H) Inspection. Inspection or acceptance by the Grantor of any work performed by Grantee at the time of completion of construction or maintenance projects shall not be grounds for avoidance of any of these covenants of indemnification.

(I) Damage to Grantee Facilities. Notwithstanding any other provisions of this subsection 5.1, Grantee assumes the risk of damage to its Cable System facilities located in or upon the Rights-of-Way from activities conducted by the Grantor, and agrees to release and waive any and all such claims against the Grantor except to the extent any such damage or destruction is caused by or arises from the negligence or criminal actions of the Grantor.

(J) Survival. The indemnification, defense, and hold harmless obligations contained in this subsection 5.1 shall survive the expiration, abandonment or termination of this Franchise.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by the current ISO CG 00 01 or its equivalent and include severability of interests with respect to each additional insured. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The Grantor shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect this Franchise Agreement using the current ISO endorsement CG 20 12 05 09.

(2) Commercial Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles, with a minimum combined single limit for bodily injury and property damage of five million dollars (\$5,000,000.00) per accident. The policy shall contain a severability of interests provision with respect to each additional insured.

(3) Excess or Umbrella Liability insurance shall be written with limits of not less than five million dollars (\$5,000,000.00) per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits. Such insurance shall name Grantor, its officers, officials, and employees as additional insureds.

(B) The insurance shall provide for notice of cancellation in accordance with policy provisions. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide notice of such cancellation or material alteration within two (2) business days of its receipt of such notice. Grantee shall additionally provide evidence of a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after

expiration of this Franchise.

(C) The Grantee shall cause each of its subcontractors to provide insurance coverage reasonably appropriate to the scope of each such subcontractor's work.

(D) Failure on the part of the Grantee to maintain the insurance as required shall constitute a material breach of this Agreement.

(E) Endorsements.

(1) All commercial general, automobile, and umbrella excess liability policies required herein shall contain, or shall be endorsed so that:

(a) Grantor, its officers, officials, boards, commissions, and employees are to be covered as, and have the rights of, additional insureds with respect to liability for which the Grantee is responsible herein;

(b) Grantee's insurance coverage shall be primary insurance with respect to each additional insured. Any insurance or self-insurance maintained by the additional insured shall be in excess of the Grantee's insurance and shall not contribute to it with respect to liability for which the Grantee is responsible hereunder; and

(c) Grantee's insurance shall provide for severability of interest with respect to each additional insured.

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

(G) Verification of Coverage. The Grantee shall furnish Grantor with certificates of insurance, evidencing the required endorsements, including but not limited to blanket additional insured status. The certificates are to be on standard forms or such forms as are consistent with standard industry practices.

(H) Adequacy of Limits and Coverage. It is agreed that these insurance requirements shall not in any way act to reduce or otherwise alter the liability of Grantee herein. No representation is made that the minimum insurance requirements of this Franchise are sufficient to cover the obligations of Grantee hereunder.

5.3 Performance Bond

Grantee shall provide a performance bond ("Performance Bond") in the amount of twenty-five thousand dollars (\$25,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore the Grantor Rights-of-Way and other property. The Performance Bond shall be in a standard industry form. Grantee shall pay all premiums or costs

associated with maintaining the Performance Bond and shall keep the same in full force and effect at all times. Except as expressly provided herein, Grantee shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence.

After completion of the procedures set forth in subsection 13.1 or other applicable provisions of this Franchise, the bond proceeds may accessed by the Grantor for purposes including, but not limited to, the following:

- (1) Failure of Grantee to pay the Grantor sums due under the terms of this Franchise;
- (2) Reimbursement of actual costs borne by the Grantor to correct Franchise violations not corrected by Grantee;
- (3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and
- (4) Failure to comply with any Customer Service Standards of the Grantor, as the same may be amended from time to time by the Grantor Council acting by ordinance or resolution.

The Grantor shall give Grantee 15 days' advance written notice of intent to obtain bond proceeds under this subsection. If the bond is utilized by the Grantor, the Grantee shall promptly, within thirty (30) days of the bond being utilized by the Grantor renew, restore or replace the bond to its full value as set forth in this Section.

5.4 Bonds

Grantee, at its expense, shall comply with all of the applicable bonding requirements provided for in the Grantor's Code or construction / development standards officially adopted by the Grantor.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with customer service standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619, as amended, and any local standards adopted in accordance with applicable law. Grantee acknowledges the Grantor's ability to enact customer service standards that exceed those enacted by the FCC and the Grantor acknowledges Grantee's right to recover the costs associated with complying with such standards. The Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or the requirements of any applicable customer service standards. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the Grantor a sample of the Subscriber contract or service agreement then in use.

6.4 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the Grantor, Grantee shall place the Grantor's contact information on its Subscriber bills.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Grantor. The Grantor, or its authorized representative shall have access to, and the right to inspect, books and records of Grantee, its parent corporations and Affiliates that are reasonably necessary to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate, or a third party. The Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Grantor, 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, within ten (10) days of a request, require that the Grantor or its designee inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and are not made available in copies to the Grantor or its designee upon written request as set forth above, and if the Grantor determines that an examination of such records is necessary or appropriate for the performance of any of the Grantor's duties, administration, or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by the Grantee.

7.2 Confidentiality

The Grantor agrees to treat as confidential any books or records that constitute proprietary or confidential information under RCW 42.56, the Public Records Act ("PRA"), to the extent Grantee makes the Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or

proprietary information and shall provide a brief written explanation as to why such information is confidential under the PRA. As a public agency, records and information may be subject to a request submitted under the PRA. If the Grantor receives a request under the PRA to inspect or copy the information so identified by Grantee and the Grantor determines that release of the information is required by the PRA or otherwise appropriate, Grantor will use its best efforts to promptly provide Grantee with notice of the request in accordance with RCW 42.56.540, and a copy of any written request by the party demanding access to such information, in order to have a reasonable time (of no less than ten (10) business days) within which Grantee may seek an injunction to prohibit the Grantor's disclosure of the requested record. If the Grantee fails to timely obtain a court order enjoining disclosure, the Grantor will release the requested information on the date specified. Grantee shall join the Person requesting the documents to such an action. Grantee shall defend, indemnify, and hold the Grantor harmless from any claim or judgment.

The Grantor has, and by this Section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the PRA. The Grantor shall not be liable to the Grantee for releasing records. The Grantor shall not be liable to the Grantee for any records that the Grantor releases in compliance with this Section or in compliance with an order of a court of competent jurisdiction.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall make available to the upon thirty (30) days prior written request and subject to Applicable Law:

(1) A complete set of maps showing the location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Grantor's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Grantor. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations, or Affiliates that relate to the operation of the Cable System in the Franchise Area;

(3) Number of current subscribers by Tier;

(4) A log of Cable Services added or dropped, Channel changes, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates, and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Grantor is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within ninety (90) days of the Grantor's written request, Grantee shall submit to the Grantor a written report, in a form acceptable to the Grantor, which shall include, but not necessarily be limited to, the following information for the Grantor:

- (A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;
- (B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);
- (C) The number of homes passed, beginning and ending plant miles, and any technological changes occurring in the Cable System;
- (D) A statement of planned construction, if any, for the next year; and,
- (E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

7.5 Copies of Federal and State Reports

Within sixty (60) days of a written request, Grantee shall submit to the Grantor copies of all regular reports maintained in the ordinary course of business submitted by Grantee or its parent corporation(s), to any federal, State, or local courts, regulatory agencies, and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. 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.

7.6 Complaint File and Reports

Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System for the previous twelve (12) months, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints, and shall provide such information to Grantor within sixty (60) days of a written request.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

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

- (A) Educational programming;
- (B) Washington news, weather, and information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture, and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather, and information; and,
- (J) Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction 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 the prior written consent of the Grantor.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming that is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming that is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 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 both the audio and video portions of 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. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Reserved for Future Re-Opener. At the time of this Franchise Agreement, the City does not intend to use any public access channels. The Parties agree that if, at a future time, the City desires to utilize public access that Comcast will reopen this issue during the Franchise Term and will provide terms for public access to the City that are comparable to what it offers other cities in King and Pierce County, Washington. Any such future agreement may be adopted as an amendment to the Franchise or as a separate agreement between the Parties.

9.2 Access Channels

(A) For the purpose of meeting the community's need for Access programming, the Grantee shall make available one (1) Standard Digital (SD) Government Access Channel throughout the term of this Franchise.

(B) The Grantor acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirements listed in subsection 9.2(A) above. This is accomplished through the inclusion of other regional access programming within the regional channel line-up that services the Franchise Area. The Grantee will endeavor to provide the Subscribers in the Franchise Area with the other regional access channels so long as the programmers offer them for use on the Cable System. Unless the access channel issue is re-opened in accordance with 9.1 above, the access channel shown in City will be the City of Auburn Channel 21.

(C) In the event Grantee makes any change in the Cable System and related equipment and facilities or in signal delivery technology, which change directly or indirectly affects the signal quality or transmission of any Access Channel programming or services, Grantee shall, at its own expense, take necessary technical steps, acquire new equipment so that the Access facilities and equipment may be used as intended to ensure that delivery of Access Video Programming signals is not diminished or adversely affected, including, among other things, so that live and taped programming can be cablecast with as good or better signal quality than existed prior to such change.

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

10.1 Right to Construct

Subject to Applicable Law, regulations, rules, resolutions, and ordinances of the Grantor and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Joint Trenching/Boring

Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Franchise Area.

10.3 General Standard

(A) All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. All installations of equipment shall be permanent in nature, durable, and installed in accordance with good engineering practice and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic. Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of bundles of unused cables.

(B) All construction shall be subject to the Grantor's permitting process.

(C) Grantee and Grantor shall meet, at the Grantor's request, to discuss the progress of the design plan and construction.

(D) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(E) 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.

10.4 Permits Required for Construction

Prior to doing any work in the Right-of-Way, Grantee shall apply for, and obtain, appropriate permits from the Grantor. As part of the permitting process, the Grantor may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Grantor

permits received by Grantee.

10.5 Emergency Permits

In the event that emergency repairs are necessary, Grantee may immediately initiate such emergency repairs, and shall notify Grantor prior, provided such emergency contact information has been provided. Grantee shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.6 Compliance with Applicable Codes

(A) Construction Codes. Grantee shall comply with all applicable industry, State and Grantor construction codes and standards.

(B) Safety Codes. Grantee shall comply with all federal, State, and Grantor safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by Applicable Law during construction, operation, and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

10.7 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules, and regulations of the Grantor regarding geographic information mapping systems for users of the Rights-of-Way.

10.8 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Grantor, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the Grantor's authority. The Grantee's Cable System shall be located, erected, and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Grantor may deem proper to make, or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic.

10.9 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change, and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of

adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.10 Hazardous Substances

(A) Grantee shall comply with all Applicable Laws, statutes, regulations, and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the Grantor may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to defend, indemnify, and hold the Grantor harmless against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by or assessed against the Grantor arising out of a release of hazardous substances caused by Grantee's Cable System.

10.11 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the Grantor and to the notification association established in Ch. 19.122 RCW, as amended.

Within forty-eight (48) hours after any Grantor employee, contractor, franchisee, licensee, or permittee notifies Grantee of a proposed Right-of-Way excavation or the need for a design locate, Grantee shall, at Grantee's expense:

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

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

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

10.12 Notice to Private Property Owners

Grantee shall give reasonable notice to private property owners of work on or adjacent to private property, consistent with the requirements of the permit authorizing such work.

10.13 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations, or rules of Grantor or applicable State or federal law, or Grantor project, Grantee's Cable System shall be placed underground at no expense to Grantor or Subscribers unless funding is generally available for such

relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with Grantor's applicable code requirements and rules. In areas where either electric or telephone utility 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.

(C) The Grantee shall utilize existing poles wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of undergrounding an extension of the Cable System or for placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. Grantor will reasonably determine the most appropriate option between undergrounding and erecting new poles considering site specific details and availability of space in the Right-of-Way. If poles are used, all poles of Grantee shall be located as designated by the proper Grantor authorities. Grantor will determine if such poles and related facilities may be placed based on reasonable availability of space within the right of way.

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

10.14 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

10.15 Prewiring

Any ordinance or resolution of the Grantor which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

10.16 Repair and Restoration of Property

(A) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its

prior condition, normal wear and tear excepted, at its own expense.

(B) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the Grantor may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within sixty (60) days of receipt of an itemized list of those costs, including the costs of labor, materials, and equipment, the Grantee shall pay the Grantor.

(C) Private Property. Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

10.17 Acquisition of Facilities

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

10.18 Discontinuing Use/Abandonment of Cable System Facilities

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

10.19 Movement of Cable System Facilities For Grantor Purposes

(A) The Grantor shall have the right to require Grantee to, at the Grantor's request, locate (which may include potholing) and survey Grantee's facilities and equipment, relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the Grantor for public purposes, in the event of an emergency; or when the public health, safety, or welfare requires such change. For example, without limitation, this movement of or the request to locate Grantee's facilities may be needed by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Grantor for public purposes. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this subsection 10.19 shall be borne by Grantee. Such work shall be performed at Grantee's expense.

(B) Except when a shorter time is necessitated due to an emergency, Grantee shall, within sixty (60) days' written notice by the Grantor, or such longer period as the Grantor may specify, complete all work to temporarily or permanently relocate, remove, replace, modify, or disconnect any of its facilities and equipment located in the Rights-of-Way or on any other property of the Grantor. In the event of any capital improvement project exceeding five hundred thousand dollars (\$500,000.00) in expenditures by the Grantor, which requires the removal, replacement, modification, or disconnection of Grantee's facilities or equipment, the Grantor shall provide at least one hundred twenty (120) days' written notice to Grantee. Following notice by the Grantor, if other users of the Right-of-Way relocate aerial facilities underground as part of an undergrounding project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. If the Grantor requires Grantee to relocate its facilities located within the Rights-of-Way, the Grantor will work collaboratively with Grantee to identify available alternate locations within the Rights-of-Way for Grantee to relocate its facilities at Grantee's cost.

(C) If Grantee fails to complete this work within the time prescribed above and to the Grantor's satisfaction, the Grantor may cause such work to be done and bill the cost of the work to Grantee, including all costs and expenses incurred by the Grantor due to Grantee's delay. In such event, the Grantor shall not be liable for any damage to any portion of Grantee's Cable System. Within sixty (60) days of receipt of an itemized list of those costs, Grantee shall pay the Grantor. In any event, if Grantee fails to timely relocate, remove, replace, modify or disconnect Grantee's facilities and equipment, and that delay results in any delay damage accrued by or against the Grantor, Grantee will be liable for all documented costs of construction delays attributable to Grantee's failure to timely act. Grantee reserves the right to challenge any determination by the Grantor of costs for construction delays related to an alleged failure to act in accordance with this subsection 10.19.

10.20 Movement of Cable System Facilities for Other Entities

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 entity with the rights to use the Rights-of-Way, Grantee shall, after at least sixty (60) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee shall require that the costs associated with the removal or relocation be paid by the benefited party.

10.21 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit (a "Permittee") 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 Permittee, and Grantee may require a reasonable deposit of the estimated payment in advance. The cost of such temporary change may be charged by the Grantee to the Permittee, and Grantee may require the estimated payment in advance. Such payment is an exchange between the Grantee and the Permittee, and the Grantor will not be the administrator of these transactions.

10.22 Reservation of Grantor Use of Right-of-Way

Nothing in this Franchise shall prevent the Grantor or public utilities owned, maintained, or operated by public entities other than the Grantor from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the use and operation of Grantee's Cable System but insofar as the Cable System, or any portion thereof, is required to be relocated to accommodate the construction of the Grantor or public utility, Grantee shall be solely responsible for the costs associated with relocation, in accordance with State law.

10.23 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Grantor's Rights-of-Way that interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulation of the Grantor regarding tree trimming except in emergencies. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.24 Inspection of Construction and Facilities

The Grantor may inspect any of Grantee's facilities, equipment, or construction located in the Rights-of-Way at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. If an unsafe condition is found to exist, the Grantor, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Grantor establishes. The Grantor has the right to correct, inspect,

administer, and repair the unsafe condition if Grantee fails to do so, and to charge Grantee for its costs.

10.25 Stop Work

(A) On notice from the Grantor that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Grantor, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Grantor.

(B) The stop work order shall:

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

Grantee shall be liable for all costs incurred by the Grantor and associated with Grantee's violation and the Grantor's issuance of the stop work order. Grantee reserves the right to challenge any Grantor determination of Grantee's obligations under this Section.

10.26 Removal of Facilities from Poles

If Grantee leases or otherwise utilizes a pole within the Rights-of-Way owned by a third party for attachment of Grantee's facilities, and such third party subsequently abandons the pole, for example by building a replacement pole, Grantee shall remove or relocate its facilities from such pole within ninety (90) days of notification from either the third party pole owner or the Grantor. If Grantee requires additional time to accomplish the removal and/or relocation, Grantee shall notify the Grantor in writing of the reasons for the additional time and its anticipated schedule.

10.27 Work of Contractors and Subcontractors

Grantee shall be responsible for all work performed by its contractors, subcontractors, and others performing work on its behalf, as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Prior to the Effective Date of this Franchise, the parties acknowledge that Grantee undertook a voluntary upgrade of its Cable System to a hybrid fiber coaxial (HFC) fiber-to-the node system architecture, with fiber optic cable deployed from its Headend to nodes and tying into a coaxial system serving Subscribers. The Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted. Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise and in no case shall such System fail to meet the minimum standards set forth below.

(B) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver a broad set of diverse Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(C) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

11.2 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Grantor no later than thirty (30) days following receipt of a request.

11.3 Emergency Alert Capability

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the Grantor shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

11.4 Technical Performance

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

11.5 Cable System Performance Testing

(A) Grantee shall provide to the Grantor a copy of its current written process for resolving complaints about the quality of the video programming services signals delivered to Subscribers and shall provide the Grantor with any amendments or modifications to the process at such time as they are made.

(B) Grantee shall, at Grantee's expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the Franchise Area for a period of at least one (1) year, and individual Subscriber complaints from the Franchise Area for a period of at least three (3) years, and make such information available to the Grantor at Grantee's office upon reasonable request.

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

(D) Grantee shall perform any tests required by the FCC.

11.6 Additional Tests

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

- (A) the nature of the complaint or problem that precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis that may be required.

SECTION 12. SERVICE AVAILABILITY

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Franchise Area. For purposes

of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. The seven (7) day requirement shall be extended if necessary to comply with any underground construction permitting requirements. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement;

(2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Grantor; and

(3) At non-discriminatory monthly rates for Residential Subscribers consistent with subsection 4.3 above.

(B) Service to Multiple Dwelling Units. The Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise, and all applicable laws.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remediating Franchise Violations

(A) If the Grantor reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the Grantor 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 Grantor, contesting the Grantor's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the Grantor that Grantee cannot cure the default within the 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 Grantor in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Grantor 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

by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the Grantor orders a meeting in accordance with subsection (A)(3), the Grantor shall set a meeting to investigate said issues or the existence of the alleged default. The Grantor 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 Grantor determines that a default exists, the Grantor shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Grantor shall determine. In the event Grantee does not cure within such time to the Grantor's reasonable satisfaction, the Grantor may:

(1) Withdraw an amount from the letter of credit as monetary damages imposed under subsection 13.8;

(2) If a material violation, recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,

(3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Grantor, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

(E) It shall not be a violation of this Franchise if Grantee decides, on a company-wide basis, to cease providing Cable Services. Grantee shall provide a minimum of one (1) year's written notice to Grantor of the termination date, and upon that date, all rights, duties, and obligations of this Franchise shall terminate except for those that by their nature, should survive termination.

13.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the Grantor may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance, or document regarding the Grantor and Grantee;

(2) If Grantee fails to restore service to the Cable System after three (3) consecutive days of an outage or interruption in service; except in the case of an emergency or during a Force Majeure occurrence, or when approval of such outage or interruption is obtained from the Grantor, it being the intent that there shall be continuous operation of the Cable System;

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

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

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property, and equipment of Grantee, the Grantor 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 thirty (30) days after service of such notice, unless:

(1) The Grantor 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 Grantor to assume and be bound by all of the terms and provisions of this Franchise.

(D) Any proceeding under the paragraph above shall be conducted by the Grantor Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the Parties. The Grantor Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Grantor Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or, if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Grantor Council determines are reasonable under the circumstances. If the Grantor determines that the Franchise is to be revoked, the Grantor shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the Grantor's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days

of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Grantor Council may, at its sole discretion, take any lawful action that it deems appropriate to enforce Grantor's rights under the Franchise in lieu of revocation of the Franchise.

13.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the Grantor may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the Grantor's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4 below; or

(3) Upon written request of Grantee, permit the Franchise term to continue pursuant to subsection 14.1(C), or commence the transfer provisions of subsection 14.2(C).

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Grantor may order the removal of the above-ground Cable System facilities and such underground facilities from the Grantor at Grantee's sole expense within a reasonable period of time as determined by the Grantor. 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, public places, and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3(B) to the Grantor's satisfaction, after written notice to Grantee, the Grantor may cause the work to be done and Grantee shall reimburse the Grantor for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Grantor may recover the costs through the letter of credit provided by Grantee.

(D) The Grantor may seek legal and equitable relief to enforce the provisions of this Franchise.

(E) However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other, permitted and lawful, non-cable services and has obtained or is in the process of obtaining a franchise or other local authority to maintain facilities in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

13.4 Purchase of Cable System

If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Grantor shall have the option to purchase the Cable System in accordance with Sect. 627 of the Cable Act.

13.5 Receivership and Foreclosure

(A) At the option of the Grantor, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days 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 vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree 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 whole or any part of the plant, property, and equipment of Grantee, the Grantor 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 thirty (30) days after service of such notice, unless:

(1) The Grantor 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 Grantor to assume and be bound by all of the terms and conditions of this Franchise.

13.6 No Monetary Recourse Against the Grantor

Grantee shall not have any monetary recourse against the Grantor or its officers, officials, boards, commissions, agents, or employees for any loss, costs, expenses, or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State, and local law. The rights of the Grantor under this

Franchise are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under Applicable Law.

13.7 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the Grantor to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement, or directive promulgated thereunder. 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 Grantor to recover monetary damages for such 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.

13.8 Assessment of Monetary Damages

(A) The Grantor may assess against Grantee monetary damages of (i) up to five hundred dollars (\$500.00) per day for any general construction delays, (ii) up to two hundred fifty dollars (\$250.00) for failure to provide EG Channels, or (iii) up to one hundred dollars (\$100.00) per day for any other material breaches. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the Grantor in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs, and expenses that are incurred by Grantor by reason of the breach of this Franchise.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may: operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor, or until the Franchise is revoked and a new franchisee is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses, and damages incurred.

13.10 What Constitutes Abandonment

The Grantor shall be entitled to exercise its options in subsection 13.9 if:

The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for three (3) consecutive days, unless in the case of Force

Majeure event or if the Grantor authorizes a longer interruption of service.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor 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 and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement, and Grantee and Grantor are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and Grantor shall continue to comply with all obligations and duties under the Franchise.

14.2 Transfer of Ownership or Control

(A) 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 or entity without the prior written consent of the Grantor, which consent shall be by the Grantor Council, acting by ordinance.

(B) The Grantee shall promptly notify the Grantor 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 stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Grantor shall have consented in writing thereto.

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

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

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State, or local law or regulations, 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 the proposed transferee 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 or a broadband system;

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

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

(E) The Grantor 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 this Franchise and/or by Applicable Law. Subject to the foregoing, if the Grantor 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 Grantor agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease, or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee 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, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical, and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Grantor shall not be required for any sale, assignment, or transfer of the Franchise or Cable System to an entity controlling, controlled by, or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Grantor; 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.

SECTION 15. SEVERABILITY

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

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State, and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the 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 overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the Grantor or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast Cable Communications Management, LLC
900 132nd Street SW
Everett, WA 98204
Attention: Franchising Department

The Grantor's address shall be:

City of Pacific
100 3rd Ave SE,
Pacific, WA 98047
Attn: City Administrator

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the Grantor for all costs incurred in publishing this Franchise.

16.5 Binding Effect

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

16.6 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.

16.7 Waiver

The failure of the Grantor at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Grantor hereafter to enforce the same. Nor shall the waiver by the Grantor 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.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

16.9 Entire Agreement

This Franchise and all Exhibits represent the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the Parties.

16.10 Jurisdiction

Venue for any judicial dispute between the Grantor and Grantee arising under or out of this Franchise shall be in King County Superior Court, Washington, or in the United States District Court for the Western District of Washington in Seattle.

16.11 No Third-Party Beneficiaries

Nothing in this Franchise is or was intended to confer third-party beneficiary status on any Person or any member of the public to enforce the terms of this Franchise.

16.12 Acceptance

Within sixty (60) days of receipt of an executed Franchise from the Grantor, this Franchise shall be executed by Grantee by filing with the Grantor Clerk. In addition to filing the executed Franchise, Grantee shall furnish the additional insured endorsements and certificates of insurance required pursuant to Section 5. The failure of Grantee to file the executed Franchise shall be deemed a rejection by Grantee and this Franchise shall then be voidable at the discretion of the Grantor.

16.13 Termination of Prior Franchise Grantee and the Grantor agree that this Franchise replaces and supersedes Ordinance 1224 (the “Prior Franchise”) with respect to Grantee; provided, however, that the grant of this Franchise shall have no effect on Grantee’s obligations to indemnify or insure the Grantor against acts and omissions occurring during the period(s) that the Prior Franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees consistent with Washington State statute of limitations that were due and owed under a Prior Franchise.

IN WITNESS WHEREOF, this Franchise is signed in the name of the _____ of _____, Washington this ___ day of _____, 2023.

ATTEST:

CITY OF PACIFIC, WASHINGTON:

Laurie Cassell, City Clerk

Leanne Guier, Mayor

APPROVED AS TO FORM:

Charlotte A.
Attorney

Archer, City

Accepted and approved this _____ day of _____, 2023.

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

Name/Title: _____



900 132nd ST SW
Everett, WA 98204

The purpose of this letter agreement is to set forth a commitment between Comcast Cable Communications Management, LLC (“Comcast”) and the City of Pacific, Washington (the “City”) that is in addition to the renewal franchise agreement to be adopted by ordinance (hereinafter, “the Franchise”). This item has been negotiated in good faith and agreed to as part of the informal franchise renewal process pursuant to 47 U.S.C. § 546(h), and specifically relate to the unique community needs that exist in the City.

Institutional Network –

Under the previous franchise, Ordinance 1224, Comcast made available a fiber optic system (“I-Net”), as part of the Comcast’s Cable System, to City Hall, police station(s), fire station(s) Community Center(s), public school buildings and library for non-commercial private network communications. Both parties acknowledge the FCC’s Section 621 Order in MB Docket No. 05-311, which was released by the FCC on August 2, 2019 (“Order”), as it may be modified by any court of competent jurisdiction or subsequent FCC order. The Order affirmed how certain non-cash cable-related provisions under the Cable Act (including I-Nets) are treated and count toward the five-percent (5%) franchise fee cap under Federal law. The Order, which was then reviewed and modified in part by the U.S. Court of Appeals for the Sixth Circuit, established that, should a local franchise authority elect to take a portion of its 5% franchise fee in the form of “in-kind” services, those services shall be assigned a value equal to the cable operator’s marginal cost in providing them. The City’s I-Net is impacted by the Order and ruling of the Sixth Circuit Court of Appeals and as such both parties agree that:

1. Unless otherwise agreed to by the parties, the I-Net will continue for the duration of this Franchise, and any extension or renewal hereof, for the I-Net connection between City Hall at 100 3rd Ave SE and the City Police Station at 133 3rd Ave SE. Comcast is relieved of any obligation to maintain past connections to sites which were formerly listed in Section 3.B.4 of the prior franchise agreement and can recover the use of those existing fibers.
2. The ongoing maintenance and repair of the I-Net, whether scheduled or not scheduled, or prompted by an emergency, shall be performed by Comcast as part of an annual maintenance fee that reflects the marginal cost of providing such service. Such fee shall be Seven Hundred Dollars (\$700.00) per strand mile per year and shall adjust annually, after the first year, for the applicable annual maintenance fee by an amount equal to the increase in the Consumer Price Index (CPI) for Seattle-Tacoma-Bremerton (All Urban Consumers) area. Total I-Net strand mileage for the City Hall to Police Station connection is .24 miles. Such maintenance and repair fee shall apply without regard to the number of necessary non-emergency or emergency repair incidents required, and shall cover, without limitation, restoration of outages caused by third-party plant damage, damage wrought by inclement weather, quarterly system drive-outs for preventive maintenance, code compliance inspections, fiber functionality testing and re-documentation, pole change-outs and pole relocations, strand replacement, strand/facilities re-tensioning and anchoring, and all labor, materials and equipment charges and associated engineering costs. Within thirty (30) days after the start of each year, Comcast will provide the City with an annual maintenance fee calculation

with the applicable CPI added in. Comcast shall recoup the annual maintenance fee through a deduction by Comcast from the first yearly quarterly franchise fee payment owed to the City under the Franchise.

3. Both parties concur that the negotiated annual maintenance fee is in conformance with the FCC's Order.

The terms and conditions of this letter agreement are binding upon the City and Comcast and their successors and assigns. It is understood that fulfillment of these obligations is also necessary and part of the consideration to secure the renewed Franchise.

Comcast Cable Communications Management, LLC

By: _____

Its: _____

Date: ___ day of _____, 2023

City of Pacific, Washington

Acknowledged and agreed to this ___ day of _____, 2023.

By: _____

Its: _____

City of Pacific, WA

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ORDINANCE NO. 1224

AN ORDINANCE of the City of Pacific, Washington, granting a Franchise to TCI of Auburn, Inc. to operate and maintain a Cable Communications System in the City; setting forth conditions accompanying the grant of Franchise; providing for City regulation and administration of the Cable Communications System; and prescribing penalties for violation of the Franchise provisions.

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

Section 1. Definitions. For the purposes of this ordinance, the following terms, phrases, words, and derivations shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "Basic service" means service regularly provided to all subscribers at a basic monthly rate including, but not limited to, the retransmissions of local broadcast television, non-origination and PEG access services.

B. "Cable Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("CTCPA")

C. "City" means the City of Pacific, Washington and, subject to RCW 35A.14.900, all the territory within its present and future boundaries.

D. "Cable Communications System" or "System", also referred to as "Cable Television System", "Cable System", "CATV System", or "Community Antenna TV System", means a system of antennae, cables, wires, lines, towers, waveguides or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for:

(1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and

(2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

E. "Franchise" means the right granted and conditioned by this ordinance under which City authorizes Grantee to erect, construct, reconstruct, operate, dismantle, test, use and maintain a cable communications system in city. The Franchise shall be a nonexclusive Franchise.

F. "Franchise Fee" includes any tax, fee or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber or both, solely because of its status. Franchise Fee does not include any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against Cable Subscribers).

G. "Grantee" means TCI of Auburn, Inc. ("TCI"), its agents, employees, lawful successors, transferee or assignees.

H. "Gross Revenue" means any compensation directly received by Grantee from operation of the Cable Communications System and its use of City's right of way, minus costs associated with bad debt recovery. Gross Revenue shall include basic and pay service receipts, installation and remote control receipts along with the applicable percentage of local and regional advertising revenues, and any leased access revenues should such develop. Gross revenues shall not include any taxes on services furnished by Grantee, which taxes are imposed directly on a Subscriber or user by a city, county, state or other governmental unit, and collected by Grantee for such entity.

I. "Institutional network" means a cable communications network designed principally for non-entertainment two-way service to schools or agencies for use in the ongoing operation of such institutions.

J. "Interactive services" means services provided to Subscribers whereby the Subscriber either (a) both receives information consisting of either television or other signal and transmits signals generated by the Subscriber or equipment under the Subscriber's control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose or (b) transmits signals to any other location for any purpose.

K. "Leased access" means the use of a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of City, and shall include without limitation all use pursuant to Section 612 of the Cable Act (47 USC 521 et. seq.).

L. "Person" means any individual, corporation, partnership, association, joint venture or organization of any kind and its lawful trustee, successor, assignee, transferee or personal representative.

M. "Subscriber" means any person who legally receives any one or more of the services provided by the Cable Communications System.

N. "Street" means the surface of and the space above and below the right of way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway or driveway now or hereafter existing within City.

Section 2. Franchise.

A. Grant of Franchise. City grants to Grantee a nonexclusive Franchise, subject to the terms of this ordinance, to construct and operate a Cable System and offer cable service and other services in, along, among, upon, across, above, over, under, or in any matter connected with the streets of City, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon across or along any street or extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system. The Franchise shall constitute both a right and an obligation to provide the services of a Cable Communications System as required by this ordinance.

B. Franchise Term. The Franchise shall be for an initial term of fifteen (15) years from the effective date of this ordinance, unless otherwise extended or terminated under this ordinance.

C. Franchise Area. The Franchise shall be that area within the present or future city limits of City, subject to RCW 35A.14.900. Service shall be provided to all persons whose homes or businesses are within the line extension policy outlined in this ordinance and to such further homes or businesses as are agreed to by Grantee.

D. Formal Performance Reviews (Reopeners). The parties may conduct a formal performance review at least every three years. The review may include, but shall not be limited to, customer service, interconnection, Franchise Fees, new technologies, technical standards, system performance, programming, access channels, facilities and networks, Franchise amendments, Congressional actions, FCC rulings, telephone answering, local access channel and operating equipment. The review shall commence in January of 1997, 2000, 2003, 2006, 2009, and 2012, if applicable. If after each review City is satisfied that the public interest will be served by extending the term of the Franchise, it may, with the consent of Grantee, extend the term by one (1) additional year. The total term of the Franchise, including such extensions, shall not exceed twenty (20) years. City reserves the right to conduct periodic reviews from time to time, not more than annually, on subject matters of concern to City.

E. Franchise Nonexclusive. The Franchise shall be nonexclusive. City reserves the right to grant, at any time, such additional franchises for a Cable Communications System as it deems appropriate; provided, that such additional grants shall be coextensive with, and on substantially the same terms and conditions, as the Franchise granted to the Grantee.

F. Other Codes and Ordinances. Nothing in the Franchise shall waive the requirements of other codes and ordinances of City regarding permits, fees or construction.

G. Universal Service. Subject to Section 4. (D) (1) herein, Grantee shall provide access to equal and uniform cable television service within the Franchise area.

H. Franchise Renewal or New Franchise. City may establish appropriate requirements for new franchises or franchise renewals consistent with Cable Act, and other applicable federal, state and local law. With mutual agreement between City and Grantee, City may modify such requirements from time to time and in accordance with the "reopener" section of the franchise to reflect changing conditions in the cable industry. To apply for a new Franchise or renewal of the existing Franchise, Grantee shall submit to City a written application providing such information as is reasonably requested by City, at the time and place designated by City and including such reasonable application fees, not exceeding \$1,000, as are designated by City to cover costs of reviewing the application. The parties agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the parties may agree to undertake and formalize negotiations regarding the renewal of the then current Franchise, and City may grant a renewal. The parties consider the terms set forth in this section to be consistent with Section 626 of the Cable Act. A reproduction of Section 626 as such existed as of the effective date of the Cable Act, is attached as exhibit A and incorporated by this reference.

I. Procedure for Remedying Franchise Violations.

1. Notice of Violation. If City believes that Grantee has not complied with any material terms of the Franchise, it shall notify Grantee in writing of the nature of the alleged noncompliance.

2. Grantee's Right to Cure or Respond. Grantee shall have thirty (30) days from receipt of the notice of noncompliance to (a) contest the assertion of noncompliance, or (b) cure, or if the noncompliance by its nature cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy the noncompliance and notify City of the steps being taken and the projected date of completion.

3. Public Hearing. If Grantee fails to respond to the notice of noncompliance, or cure it, City shall schedule a public meeting to investigate the noncompliance. City shall give Grantee ten (10) business days notice of the time and place of such meeting and provide Grantee with an opportunity to be heard.

4. **Enforcement.** If after such meeting City determines that Grantee is in default of material provisions of the franchise, City may:

a. Foreclose on all or any part of any security provided by Grantee; provided, that the foreclosure shall only be in such a manner and in such an amount as City reasonably determines is necessary to remedy the default;

b. Commence an action at law for monetary damages or seek other equitable relief;

c. In the case of a substantial default of a material provision of the Franchise, declare the Franchise to be revoked; or

d. Seek specific performance of any provision of the franchise, which reasonably lends itself to such remedy, as an alternative to damages.

5. **Failure to Enforce.** Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of City to enforce prompt compliance.

6. **Acts of God.** Grantee shall not be in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its control; provided, that Grantee shall take all reasonable steps necessary to provide service despite such occurrences.

7. **Alternative Remedies.** Pursuant to the due process procedures set forth in Section 2. I., City may seek or obtain judicial relief from a violation of any material provision of the Franchise or any rule, regulation, requirement or directive promulgated under the Franchise. City's use of other remedies in this ordinance shall not bar or otherwise limit the right of City to recover monetary damages (except where liquidated damages are otherwise prescribed) for a violation by Grantee, or to obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

8. **Transfers.** Grantee's rights, title or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered without the prior consent of City, which consent shall not be unreasonably withheld. No such consent shall be required for a transfer in trust, by mortgage, or by any other assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness, or for a transfer or assignment to any parent, subsidiary or other affiliate of Grantee.

J. **Amount and Payment of Franchise Fees.** During the Franchise, Grantee shall pay to City an amount equal to Five (5) percent of Grantee's annual gross revenue. The Fees shall be paid quarterly not later than May 15, August 15, November 15, and February 15 for the preceding three month period ending, respectively, March 31, June 30, September 30 and December 31. Not later than the date of each payment, Grantee shall file with City a written statement signed by an officer of Grantee, which identifies in detail the sources and amounts of gross revenues received by Grantee during the quarter for which payment is made. Acceptance of any payment shall not be construed as an accord of the correct amount or as a release of any claim which City may have for future or additional sums payable under this section.

The City may raise the Franchise Fee, if so permitted by federal and state law. Prior to implementation of any increase in Franchise Fees, the Grantee may request a public hearing by the City Council to discuss said increases. Following such hearing, the City Council may require the implementation of such increase in accordance with the provisions of this agreement.

K. Interest on Delinquent Franchise Fees. Any franchise fees that are not paid on time shall be delinquent and shall thereafter accrue interest at twelve (12) percent per annum or two (2) percent above the prime lending rate of major Seattle banks, whichever is greater.

L. Accounting Standards. City shall have the right to determine the accuracy of franchise fee payments through audit of Grantee's books and records. If payments made by Grantee are more than six (6) percent less than the amount actually owed, Grantee shall pay the cost of the audit and discharge.

M. Auditing and Financial Records. With 48 hours notice, City may review Grantee's books and records during normal business hours and in a non-disruptive manner to monitor compliance with the terms of this ordinance. Such books and records shall include, but shall not be limited to, any public records required to be kept by Grantee pursuant to FCC rules and regulations. Grantee may withhold information which it reasonably deems to be proprietary or confidential. Subject to Chapter 42.17RCW, City shall to treat any information disclosed by Grantee as confidential and only to disclose it to employees, representatives and agents of City that have a need to know, or in order to enforce the provisions of this ordinance. Further, Grantee agrees to meet with representatives of City upon request to review its methodology of computing Franchise Fee obligations. Grantee shall be fully liable for any and all delinquent franchise fee payments and shall promptly pay any arrearage.

N. Limitation on Franchise Fee Actions. The period of limitation for recovery of any Franchise Fee payable hereunder shall be three years from date on which payment by the Grantee is due. Unless within three years from and after such payment due date the City initiates a lawsuit for recovery of such Franchise Fees in a court of competent jurisdiction, such recovery shall be barred and the City shall be stopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies.

Section 3. Standards.

A. Standards of Service - Physical conditions.

1. Use of Streets. Grantee may, subject to the terms of this ordinance, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, and attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable Communications System within City.

2. Construction or Alteration. Prior to construction or alteration of the Cable System, Grantee shall comply with all City ordinances and regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Cable System. Grantee shall, upon request, provide information to City regarding its progress in completing or altering the Cable System.

3. Non-Interference. Grantee shall exert its best efforts to construct and maintain a Cable Communications System so as not to interfere with other use of City streets. Grantee shall, where possible for above ground lines, make use of existing poles and other facilities available to Grantee. Grantee shall individually notify all residents affected by proposed construction prior to commencement of that work where and when reasonably possible.

4. Compliance With Law. Notwithstanding the grant to use City streets, no street shall be used by Grantee if City, in its reasonable opinion, determines that such use is inconsistent with the

terms, conditions or provisions by which such street was created or dedicated, or is presently used under state and local laws, unless such non-use places an undo financial or constructional burden on Grantee.

5. Undergrounding. Grantee shall place underground all of its transmission lines which are located or are to be located above or within the City streets in the following cases:

a. When it becomes necessary to remove existing overhead facilities belonging to Grantee or another utility and used by Grantee, for a distance of 500 feet or more because of a roadway widening project or other similar reason;

b. When existing overhead facilities of Grantee or another utility whose poles are used by Grantee, are to be replaced for a distance of 500 feet or more for reasons other than casualty, damage or replacement of wire or cable only;

c. When Grantee's transmission facilities are extended beyond those facilities existing on the effective date of this ordinance, except for extension by Grantee of its transmission facilities solely by use of existing overhead poles of another utility; or

d. If another utility having facilities along a street or easement places its facilities underground for a distance of over 500 feet; provided, that this subsection shall not apply to amplifier boxes and pedestal-mounted terminal boxes which may be placed above ground where existing technology, operational considerations and cost require the same. However, Grantee shall exercise its best efforts to insure that the equipment is not unsightly or unsafe.

If an ordinance is passed creating a Local Improvement District (LID) which involves placing underground certain utilities including that of Grantee which are then located overhead, Grantee shall be made a member of said LID and shall participate in such underground project and shall remove poles, cables and wires from the surface of the streets within such district and shall place the same underground in conformity with the requirements of the City's Utility Superintendent.

6. Restoration. Where work conducted by Grantee disturbs any street, sidewalk, alley, public way, or paved area, Grantee shall, reimburse any City incurred cost and shall, at its own cost and expense, and in accordance with the requirements of local law, restore such street, sidewalk, alley, public way, paved area or public utility to the condition that existed before commencement of the work.

7. Work on Private Property. Grantee, with the consent of property owners, is authorized to trim trees upon and overhanging streets, alleys, sidewalks and public ways to prevent the branches of such trees from touching the wires and cables of Grantee.

8. Relocation. If City elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain, or otherwise alter any above ground or underground cable, wire, conduit, pipe, line, pole, wire-holding structure, structure, or other facility utilized for the provision of utility or other services or transportation of drainage, sewage or other liquids, Grantee shall, except as otherwise provided in this ordinance and at its sole expense, remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. If such removal or relocation is required within a subdivision in which all utility lines, including those for the Cable Television System, were installed at the same time, the companies involved may decide among themselves who is to bear the cost of relocation; provided, that City shall not be liable to Grantee for such costs. Regardless of who bears the costs, Grantee shall take action to remove or relocate at such times as are directed by the agency or company undertaking the work. City shall give no less than ninety (90) days advance written notice to Grantee

of the date or dates of removal or relocation. City agrees to pursue all reasonable opportunities for grant funds to assist in relocation and/or undergrounding of cable utilities.

9. Movement of Buildings. Grantee shall, upon request of any person holding a building moving permit, Franchise or other approval issued by City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to required such payment in advance. City shall require all building movers to provide not less than seventy-two (72) hours notice to Grantee to arrange for such temporary wire changes.

10. Removal. Upon expiration or the termination of the Franchise, if the Franchise is not renewed and neither City nor an assignee purchases the Cable Television System, Grantee may remove any underground cable if it can be removed without trenching or other opening of the streets along the extension of the cable to be removed. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of the cable to be removed, except as hereinafter provided. Subject to applicable law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City Council based upon a determination by the City Council, that removal is required to eliminate or prevent a hazardous condition. Any decision by the City Council to remove cable or conduit shall be mailed to Grantee not later than thirty (30) calendar days following the date of expiration of the Franchise. Grantee shall file written notice with the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Utility Superintendent of City. Removal shall be completed not later than twelve (12) months following the date of expiration of the Franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in City.

B. General Capability of Existing System Grantee shall, commencing with the effective date of the Franchise, at a minimum:

1. Make available to Subscribers those broadcast signals that are required to be made available by the FCC;
2. Distribute, in color, all television signals which are received in color unless a substantial reason for noncompliance can be demonstrated;
3. Make available, upon request of a Subscriber, and at Subscriber cost, parental control devices (lock boxes) which prevent unauthorized viewing of one or more channels;
4. Make available upon request an RF switch (an A/B switch) permitting conversion from cable to antennae reception, at a reasonable cost to the Subscriber;
5. Make available thirty-two (32) channels;
6. Insure that citizens of City receive at least one channel for public, educational or governmental purposes. Within 180 days from the acceptance of this Franchise, the Operator shall contribute a character generator such as a Texscan/MSI Model SG-3BRM or its equivalent, so that the City may cablecast messages of community interest.
7. At the option of City and without installation or service charge, provide an outlet of basic service to every public building that is passed by its Cable System, including City Hall, Community Center, fire and police buildings, and any library, or school buildings. Users of such

outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. (Exhibit B)

C. **System Upgrade.** Grantee shall upgrade its cable facilities located in City to a system with at least fifty-four (54) channels, no later than June 30, 1998. The upgraded Cable Communications System shall provide the following:

1. **Standby Power.** The system shall include equipment capable of providing standby powering for headend and truck amplifiers for minimum of two (2) hours. The equipment shall automatically revert to the standby mode when the AC power returns.

2. **Override Capability.** The system shall include an "Emergency Alert Capability" which will permit City, in times of emergency, to override the audio of all channels simultaneously. The system shall include the capability to broadcast from City headquarters for civil defense, disaster and emergency services, or from a regional headquarters when such designation has been made. City agrees to hold Grantee harmless from any claim for damages resulting from City or other Civil defense directive or information, or any other use of such emergency alert system.

3. **Interactive Capability.** Grantee shall not construct its system so as to preclude the possibility of an interactive capable system without notifying City of same and securing City's permission to so proceed. Upon the occurrence of such an event, Grantee shall present its reasons as to why it wishes to move away from a system that is potentially interactive capable and City shall not unreasonably refuse to grant Grantee permission to do same. At the periodic reviews (occurring every third year), City may submit information demonstrating the demand for such services. Grantee shall provide such services when technical and economic viability are demonstrated. If Fifty (50) percent of the systems operated by the Grantee provide an interactive capability, Grantee shall provide same within twenty-four (24) months of notification that the standard has been met.

4. **Insertion Points for Institutional Network.** Grantee shall provide at City Hall, police station(s), fire station(s) Community Center(s), public school buildings and any library building constructed in City, points where programming for two way transmission may be inserted into the Cable System. City acknowledges its responsibility for obtaining necessary equipment to facilitate the transmission.

Section 4. Service Requirements.

A. **Elderly and Disabled Person Discount.** Grantee's may offer a discount of thirty percent (30) from the normal rate to Subscribers for Basic Services to those persons who are aged sixty-five (65) or older, and/or disabled, provided that such person(s) are the legal owner or lessee/tenant of their residence and that their combined disposable income from all sources does not exceed the Housing and Urban Development standards for the Seattle-Everett area for the current and preceding calendar year.

The City shall be responsible for certifying to the Grantee that such applicants conform to the specified criteria.

B. **Rate Regulation.** The City may regulate rates for the provision of Basic Cable and other services and equipment as expressly permitted by applicable law.

C. **Service.** Grantee shall provide a comprehensive service agreement and/or a customer manual for use in establishing Subscriber service, which agreement and/or manual shall contain the following:

1. Procedure for investigation and resolution of Subscriber service complaints;
2. Services to be provided and rates for such services;

3. Billing procedures;
4. Service termination procedure;
5. Change in service notifications;
6. Liability specifications;
7. Converter/Subscriber terminal equipment policy; and
8. Breach of agreement specifications.

D. Responses. Grantee shall promptly respond to all requests for service, repair, installation and other matters. Annually, Grantee shall make available to Subscribers information regarding the handling of complaints. Grantee acknowledges City's interest in the prompt resolution of all cable complaints and commits itself to working in close cooperation with City to resolve them. If the complaints are not resolved in a prompt manner, Grantee agrees to meet with City and mutually develop resolution strategies.

1. Required Line Extensions. Grantee shall provide service upon request at the standard installation rate where the potential Subscriber can be served by extension of distribution cable past occupied dwelling units equivalent to a density of fifteen (15) dwelling units per 1,320 cable bearing strand feet of cable contiguous to the already active system. Such density shall be computed on the basis of dwelling units which can be serviced on either side of the cable.

2. Required Service Offerings. The Cable System, as constructed as of the date of the passage and final adoption of this Franchise, substantially complies with the material provisions hereof. Whenever the Grantee shall receive a request for service from at least 15 residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under Section E of this Franchise.

E. Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than 150 feet of distance from distribution cable to connection of service to Subscribers, or a density of less than 15 residences per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which Cable Service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals 15 residences. Subscribers who request service hereunder, will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

F. Exception. Grantee may serve areas not covered under this Section upon agreement with developers, property owners or residents.

G. Service Office. Grantee shall provide an office within reasonable proximity to City. City acknowledges that Grantee's City of Auburn office or a Payment Center discharges this requirement. Grantee agrees to make available to City residences a toll-free telephone number for the office.

Section 5. Insurance, Indemnification, and Bonds or Other Security.

A. Performance Bond

1. **Corporate Surety Bond.** When Grantee accepts the Franchise, it shall file with the City, and unless otherwise authorized by City Council, at all times thereafter shall maintain in full force and effect a Corporate Surety Bond Corporate Guarantee in Lieu of a Bond in the amount of \$50,000 until such time as the upgrade as described in Section 3C has been completed, at which time it shall be in the amount of \$10,000.

2. **Bond Does Not Excuse Faithful Performance.** Any bond accepted by City, or any damages recovered by City on a bond shall not excuse Grantee's faithful performance or limit Grantee's liability under the Franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

3. **Validity of Bond.** If the condition of the corporate surety shall change in such manner as to render the bond unsatisfactory to City, Grantee shall replace the bond with a corporate surety satisfactory to City. The City Council may authorize or require appropriate and reasonable adjustments in the amount of the bond due to a change in Grantee's legal, financial or technical qualifications which would materially prohibit or impair its ability to comply with Franchise. Prior to any required increase in the amount of the bond, city shall give Grantee at least sixty (60) days prior notice thereof stating the reason for the adjustment.

B. **Indemnification by Grantee.** Grantee shall, at its sole expense, fully indemnify, defend and hold harmless City, and the officers and employees of City, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise, except those arising from negligence of City or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of, or through the acts or omissions of Grantee, its officers, agents, employees, or contractor, or to which Grantee, its officers, agents, employees or contractors, in any way contribute; arising out of any claim for damages for Grantee's invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or Grantee's failure to comply with any federal, state or any local law or regulation applicable to Grantee in its business. Nothing in this section shall prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at such party's expense. The participation shall not under any circumstances relieve Grantee from its duty of defense or of paying any judgment entered against Grantee.

C. **Grantee Insurance.** Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, Comprehensive General Liability Insurance in the amount of \$2,000,000 combined single limit for bodily injury, and property damage. The Grantee shall provide a Certificate of Insurance designating the City as an additional insured. Such insurance shall be noncancelable except upon 30 days prior written notice to the City.

Should the City find the amount of insurance coverage to be deficient or excessive, the City and the Grantee are agreeable to reopen that portion of the agreement for negotiation.

D. **Liquidated Damages.**

1. By acceptance of the Franchise, Grantee agrees that failure to complete the rebuild/upgrade of the system in accordance with the provisions in Section 3. (C) of this Franchise, will result in damage to City and the actual amount of damages will be impracticable to determine. The parties agree that unless the City specifically approves the delay, Grantee shall pay a fine up to the amount of Five Hundred Dollars (\$500.00) per day for each day or part thereof that the delay continues. Notwithstanding the above,

Grantee shall not be liable for liquidated damages or fines for any delay caused by acts of God, force majeure or circumstances beyond its reasonable ability to control.

2. If City concludes that Grantee is liable for liquidated damages pursuant to this Section, it shall send by certified mail a notice of intention to assess liquidated damages. The notice shall set forth the reasons for the assessment, and shall inform Grantee that liquidated damages will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the City Council and the City Council determines that (a) the violation has been corrected, or if the violation by its nature cannot be corrected by the date of the hearing, Grantee has initiated reasonable steps to correct the violation and has notified City of the steps being taken and the projected date of completion, or (b) an extension of time or other relief should be granted. Grantee shall appeal by sending a written notice of appeal by certified mail to City within thirty (30) days of the date on which City sends the notice. The hearing appeal shall be held within thirty (30) days of receipt by City of the notice of appeal. Unless the City Council indicated to the contrary, the liquidated damages shall be assessed beginning with the date on which the City sends the notice of the intention to assess liquidated damages and continuing thereafter until such time as the violation ceases.

3. Grantee shall have no recourse against City for any loss, cost, expense or damage arising out of any provision or requirement of this Franchise or its enforcement, except where such loss, cost, expense or damage is the result of the direct negligence of City. No privilege or exemption is granted or conferred unto Grantee by the Franchise except those specifically prescribed herein, and any such privilege claimed under the Franchise by Grantee in any subsequent improvement or installation therein.

Section 6. Miscellaneous

A. Publication. Grantee shall pay the cost of publishing this ordinance on or before acceptance of the Franchise.

B. Communications with Regulatory Agencies. Upon City's request, Grantee shall submit within ten (10) days a summary, or at City's request actual copies, of all petitions, applications, communications and reports submitted by Grantee to the FCC or any other federal or state regulatory commission or agency having jurisdiction over any matters affecting construction or operation of a Cable Television System or services provided through such a system.

C. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

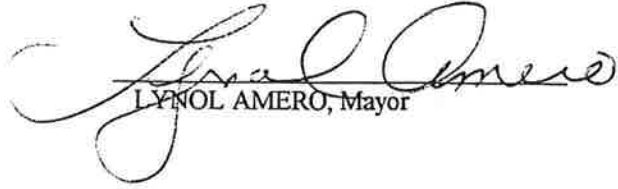
D. Intergovernmental Administrative Agency. City reserves the right to join with one or more of other local area cities or counties in the formation and operation of an intergovernmental administration of the cable communications franchises of the various members of the joint authority. City reserves the right to assign the administration of the provisions of the Franchise to such a duly established joint authority, and to join with other members of the authority in developing such intergovernmental agreements, bylaws, rules and regulations as are necessary for the proper administration of the joint authority; provided, that no association or assignment by City shall interfere with or derogate from the rights of or increase the obligations of Grantee under a preexisting Franchise agreement. Notwithstanding the above, only the City has the right to enforce the provisions of this Franchise, conduct formal performance reviews (reopeners) and shall not delegate this right to any third party whatsoever.

Section 7. Acceptance. This ordinance shall be void if Grantee shall not within forty-five (45) days of the passage of this ordinance file its written acceptance thereof with the City Clerk.

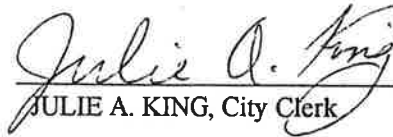
Section 8. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as required by law.

PASSED by the City Council this 13 day of June, 1994

APPROVED by the Mayor this 13 day of June, 1994


LYNOL AMERO, Mayor

AUTHENTICATE/ATTEST:


JULIE A. KING, City Clerk

APPROVED AS TO FORM:

ROD P. KASEGUMA, City Attorney

Published: 6-16-94
Effective Date: 6-21-94
Ordinance No. 1224

"Exhibit B"

PACIFIC CITY HALL

100 3rd Avenue SE
Pacific, WA 98047

SENIOR CENTER

100 3rd Avenue SE
Pacific, WA 98047

PACIFIC GYM

100 3rd Avenue SE
Pacific, WA 98047

PACIFIC FIRE DEPARTMENT

133 3rd Avenue SE
Pacific, WA 98047

PACIFIC POLICE DEPARTMENT

133 3rd Avenue SE
Pacific, WA 98047

ALPAC SCHOOL

310 Milwaukee Blvd. N.
Pacific, WA 98047

ILALKO SCHOOL

202 Oravetz Road
Auburn, WA 98002

KING COUNTY LIBRARY

ALGONA/PACIFIC BRANCH

255 Ellingson Road
Pacific, WA 98047