

**EXHIBIT “A”**

**CABLE TV FRANCHISE AGREEMENT  
BETWEEN THE**

**City of Fircrest  
&  
City of Tacoma**

**Department of Public Utilities, Light Division  
Click! Network**

## **CABLE TELEVISION FRANCHISE**

This Cable Television Ten-Year Nonexclusive Franchise is entered into in Fircrest, Washington, this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Tacoma, Department of Public Utilities Light Division, providing cable TV services as CLICK! NETWORK, hereinafter (“Grantee”) and the CITY OF FIRCREST, WASHINGTON, a municipal corporation, hereinafter (“Grantor” or the “City”). Grantor and Grantee are sometimes referred to hereinafter collectively as the "parties."

WHEREAS, the Grantor has reviewed Grantee’s application for a cable television franchise, has identified the future cable-related needs and interests of the Grantor and its citizens, has considered the financial, technical and legal qualifications of Grantee, and has determined whether Grantee's plans for constructing, operating and maintaining its System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, Grantee is the existing electric utility franchisee for the Grantor, and Grantee’s Business Plan proposes a telecommunications system throughout its entire electric service area so as to provide improved electric service and other benefits to electric customers, and additional capacity will be provided in this hybrid fiber coaxial telecommunications system for cable television and other telecommunications services; and

WHEREAS, upon passage of this franchise by the City Council of Fircrest and acceptance by Grantee, Grantee shall be authorized to provide both cable television and other telecommunication services within the franchise area; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's proposal to provide Cable Service within the territorial limits of Grantor; and

WHEREAS, the Grantor has a legitimate and necessary regulatory role in ensuring the availability of cable service, high technical capability and reliability of cable systems in its jurisdiction, the availability of local programming (including educational and governmental access programming) and quality customer service; and

WHEREAS, diversity in cable service and local and non-local programming is an important policy goal and the Grantee's System should offer a wide range of programming services; and

WHEREAS, flexibility to respond to changes in technology, subscriber interests and competitive factors within the cable service market should be an essential characteristic of this Franchise and both the Grantor and the Grantee will stress maximum system flexibility to take advantage of new technology to benefit subscribers and citizens as such technology becomes available; and

WHEREAS, the Grantor is authorized by federal law and RCW 35A.47.040 to grant one or more nonexclusive franchises to construct, operate and maintain a cable television system within the boundaries of the Grantor.

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

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## **SECTION 1. DEFINITIONS**

For the purposes of this Franchise and all exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings 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 directory.

### **"Access"**

means the availability for Noncommercial use by various governmental and educational agencies, including Grantor and its designees, of particular channels on the System to receive and distribute Video Programming to Subscribers, 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, and

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

### **"Access Center"**

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

### **"Access Channel"**

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

### **"Access Fees"**

means the Capital Fee paid to the Grantor by the Grantee in accordance with Section 9 below.

### **"Activation" or "Activated"**

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

### **"Affiliated Entity" or "Affiliate,"**

means when used in connection with Grantee any municipal or other corporation, Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee and its successor corporations.

### **"Bad Debt"**

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

"Basic Service"

means the Cable Service tier which includes, at a minimum, the retransmission of local television Broadcast Signals and Access programming.

"Broadcast Signal"

means a television or radio signal transmitted over the air to a wide geographic audience, and received by a System off-the-air by antenna, microwave, satellite dishes or any other means.

"Buildout"

means the Cable System is constructed and capable of offering Cable Service to all residents and businesses passed by public rights-of-way within the Franchise Area.

"Cable Acts"

means the Cable Communications Policy Act of 1984, and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996, and any amendments thereto.

"Cable Modem Service" or "Cable Internet Service"

means any service offered through Grantee's Cable System whereby Persons receive access to the Internet.

"Cable Operator"

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

"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.

"Channel"

means a portion of the frequency band capable of carrying a Video Programming, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.

"City" or "Grantor"

means the City of Fircrest, Washington, a municipal corporation, of the State of Washington.

"Connection,"

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



"Designated Access Provider"

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

"Designated Distributor" means any entity authorized by Grantor to distribute Access Programming including, but not limited to, the RCC or the RMC.

"Downstream Channel"

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

"Dwelling Unit"

means any residential building, or each portion thereof.

"Expanded Basic Service"

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

"FCC"

means the Federal Communications Commission or its lawful successor.

"Fiber Optic"

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

"Franchise"

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

"Franchise Area"

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

"Franchise Fee" means

1. "franchise fee" includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such;
2. the term "franchise fee" does not include—
  - A. 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 operators or cable subscribers);
- B. in the case of any franchise in effect on October 30, 1984, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities;
  - C. in the case of any franchise granted after October 30, 1984, capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities;
  - D. requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
  - E. any fee imposed under title 17.

#### "Gross Revenues"

means any and all revenue derived directly or indirectly by the Grantee, or by any other entity that is a Cable Operator of the Cable System including Grantee's Affiliates, from the operation of Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Service, any expanded tiers of Cable Service, optional Premium Services; installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, all Cable Service lease payments from the Cable System, late fees and administrative fees, payments or other consideration received by the Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System video service equipment; advertising sales revenues; the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service and accounted for as revenue under GAAP; revenues from program guides, additional outlet fees, Franchise Fees, revenue from interactive services to the extent they are considered Cable Services under federal law, revenue from the sale or carriage of other Cable Services, and revenues from home shopping, and other video service revenue-sharing arrangements. Gross Revenues shall include revenue received by any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include (i) to the extent consistent with GAAP, Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) the Capital Fee specified in subsection 9.1; (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit; (iv) Revenues from the sale of Cable Services on the Cable System to a reseller, when the reseller pays the cable Franchise Fees on the resale of the Cable Services; (v) revenue from the sale of capital assets or surplus equipment not used by the purchaser to review video service from the seller of those assets or surplus; (vi) charges, other than those described hereinabove, that are aggregated or bundled with amounts described hereinabove for video services and billed to video service subscribers, including but not limited to any revenues received by grantee or its affiliates for telecommunications services or information services, if grantee can reasonably identify such charges on books and records kept in the regular course of business. The Franchise Fee is not such a tax.

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

"Headend" or "Hub"

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

"Institutional Network" or "I-Net"

means an independent telecommunications network, which may or may not be, owned and operated by the City or that part of the System facilities or capacity that may be designed for use by non-residential Subscribers including communications to, from and among government agencies, schools, libraries and other public agencies.

"Leased Access Channel"

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

"Noncommercial"

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

"Normal Business Hours"

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

"Normal Operating Conditions"

means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, rate increases, and maintenance or upgrade of the System.

"Pay Service" or "Premium Service"

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

"Person"

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

“RCC”

Rainier Communications Commission, established as an interlocal governmental cooperative, pursuant to the Interlocal Cooperation Act, RCW 39.34, et. seq., and the general laws of the State of Washington, its lawful successor, or, if none, that other consortium or interlocal agreement formed by Grantor and any other municipal corporations that is designed to cooperate on telecommunications and cable television services.

“RMC”

means the educational and governmental Access Center known as the Rainier Media Center which is operated by the RCC or its lawful successor, or if none, that consortium formed by Grantor and other political subdivisions and any other municipal corporations that is designed to cooperate on Educational and Government Access services.

“Rights-of-Way”

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

"School"

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

“Service Interruption”

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

"State"

means the State of Washington.

"Street"

means Rights-of-Way.

"Subscriber"

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

"System" or “Cable System”

means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-

of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of 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; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, the term “Cable System” or “System” shall mean Grantee’s Cable System in the Franchise Area.

"Tier"

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

“Upstream Channel”

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

“Video Programming”

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

## **SECTION 2. GRANT OF FRANCHISE**

### **2.1 Grant**

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

(B) The Grantee, through this Franchise, is granted the right to operate its System using the Grantor's Rights-of-Way within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of general applicability lawfully enacted, or hereafter lawfully enacted, by the Grantor to the extent that the provisions of the codes and ordinances do not have the effect of materially limiting the benefits or materially expanding the obligations of the Grantee that are granted by this Franchise. Grantee reserves the right to challenge provisions of any ordinance adopted, subsequent to the execution of this Franchise that conflicts with rights granted herein.

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

(D) 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 System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

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

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

## **2.2 Use of Rights-of-Way**

(A) Subject to 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 (both coaxial and fiber optic), conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a System for the provision of Cable Services within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter. This grant does not include the installation, maintenance or construction, repair or replacement of any wireless telecommunications facilities or equipment within Rights-of-Way or otherwise on Grantor owned property or on property held in trust or used by the Grantor.

(B) Grantee must follow Grantor-established written requirements including all Grantor codes, ordinances and other regulations regarding placement of System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event endeavor to install System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. The Grantor may require that 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 in compliance with the requirements established by Grantor, or which 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 may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. Grantee shall assume all Grantee's costs associated with any requirement of Grantor in the exercise of its police powers or in furtherance of any public improvement to move its System located in the Right-of-way.

(C) Grantor and Grantee agree that the Memorandum of Understanding regarding rocksaw construction practices, attached as Exhibit I, and incorporated by this reference, complies with City codes.

(D) Grantor and Grantee agree that notwithstanding any other Franchises between them regarding the provision of electrical and water services to customers within the City, the provisions of this Franchise control as to Facilities used by Grantee for the Cable System.

### **2.3 Duration**

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be ten (10) years from the effective date of this Franchise, or coinciding with other franchised cable operator's expiration date, whichever is later, unless terminated sooner as hereinafter provided.

### **2.4 Effective Date**

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

(B) Within six (6) months after the effective date of the Ordinance granting this Franchise, Grantee shall signify its acceptance of this Franchise by executing a written acceptance of this Franchise. This franchise is void unless accepted in writing by Grantee within this timeframe.

(C) The effective date of this Franchise shall be the date on which it is accepted in writing by Grantee.

### **2.5 Franchise Nonexclusive**

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by Grantor or its predecessors to any Person to use any property, Rights-of-Way, easement, right, interest or license for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional Franchises for Systems as Grantor deems appropriate.

### **2.6 Grant of Other Franchises**

In the event Grantor enters into a franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee, including itself, to enter into the Grantor's Streets or Rights-of-Way for the purpose of constructing or operating a System or providing Cable Service to any part of the Franchise Area in which the Grantee is providing Cable Service under the terms and conditions of this Franchise or is required to extend Cable Service under the provisions of this Franchise, the terms and conditions thereof, taken as a whole, shall be neither more favorable nor less burdensome to such Person or entity than those contained herein in order that one Cable Operator not be granted an unfair competitive advantage over another.

### **2.7 Familiarity with Franchise**

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreement granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all 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 Acts.

### **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) agrees that it will not oppose the Grantor's intervening in any legal or regulatory proceeding affecting the System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) 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.

### **2.9 Police Powers**

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

### **2.10 Franchise Area**

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

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

### **3.1 Franchise Fee**

As compensation for the use of Grantor's Rights-of-Way or Streets, Grantee shall pay as a Franchise Fee to Grantor, throughout the duration of this Franchise, an amount equal to five (5%) percent of Grantee's Gross Revenues associated with Grantee's operation of its System in the Franchise Area. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise. At such time as other franchised cable operator(s) are required to pay higher franchise fees, and upon written notification of such, Grantee shall notify its customers of a franchise fee increase and collect the higher amount and pay as a Franchise Fee to Grantor.

### **3.2 Payments**

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

### **3.3 Acceptance of Payment**

No acceptance of any payment shall be construed as an accord by 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 Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.



### **3.4 Quarterly Franchise Fee Reports**

Each payment shall be accompanied by a written report to Grantor, verified by an officer 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. Such reports shall detail all Gross Revenues of the System and shall be drafted in accordance with generally accepted accounting principles.

### **3.5 Audits**

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

### **3.6 Financial Records**

Grantee agrees to meet with a representative of the Grantor upon written request to review Grantee's method 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 that are relevant to the enforcement of this Franchise.

### **3.7 Interest on Late Payments**

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

### **3.8 Maximum Franchise Fee**

The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide that such excess amount shall be added to the maximum allowed Franchise Fee to be paid by Grantee to Grantor hereunder, provided that all providers of Cable Service in the Franchise Area over which the Grantor has jurisdiction are treated in an equivalent manner, and Grantee has received ninety (90) days prior written notice from Grantor of such amendment.

### **3.9 Additional Commitments Not Franchise Fees**

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to Grantor, nor do they represent an increase in Franchise Fees to be passed through to Subscribers pursuant to any federal law. Access Fees are not to be offset against and are not Franchise Fees.

### **3.10 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, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. Within sixty (60) days of the filing of the certified statement with the Grantor, Grantee shall pay any unpaid amounts as indicated. If the Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the Grantor may do so by utilizing the funds available in a Letter of Credit or other security provided by the Grantee.

### **3.11 Duty to Cooperate and Payment Indemnification**

Grantor agrees to exercise prompt and diligent efforts to verify whether billing addresses are in or outside the Franchise Area upon the written request of Grantee. Grantee agrees to defend, indemnify and hold harmless Grantor and its offices, officials and agents from any claim of any kind brought by any person relating to payments made to Grantor pursuant to this Franchise.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 General Provisions**

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

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

(C) The Grantee and Grantor shall be entitled to all rights and be bound by all changes in local, State and federal law that occur subsequent to the effective date of this Franchise. The Grantee and the Grantor acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes. However, should such changes in law substantially reduce Grantee's obligation to pay or provide Franchise Fees or any other support required in this Franchise, the Grantor and Grantee agree to enter into good faith negotiations for a six (6) month period, at the request of either party, to resolve the issues. If resolution is not reached within the

six (6) month period, and the period has not been extended by mutual agreement, the parties shall commence the renewal process in accordance with the Cable Act.

#### **4.2 Rates and Charges**

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

#### **4.3 Rate Discrimination**

All Grantee rates and charges shall be published (in the form of a publicly-available rate card), made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law. Grantee shall permit Subscribers to make any in-residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged appropriate service charges by Grantee. Nothing herein shall be construed to prohibit:

- (A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
- (B) The offering of reasonable discounts to similarly situated Persons.
- (C) The offering of rate discounts for either Cable Service generally.
- (D) The offering of bulk discounts for Multiple Dwelling Units.

#### **4.4 Filing of Rates and Charges**

(A) Throughout the term of this Franchise, Grantee shall maintain on file with 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) On an annual basis and upon request, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels.

#### **4.5 Late Fees**

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

#### **4.6 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 material breach of this Franchise. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the reasonable control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to Grantor.

#### **4.7 Performance Evaluation (see 4.7 below highlighted in yellow)**

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

(B) All evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area. Grantee shall notify its Subscribers of all evaluation sessions by announcement on at least one Channel of its System between the hours of 7:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

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

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

### **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

#### **5.1 Indemnification**

(A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its officers, officials, boards, commissions, authorized agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and 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 its agents or its employees. Grantee shall consult and cooperate with the Grantor while conducting its defense of the Grantor.

(B) Indemnification for Relocation. Grantee shall indemnify Grantor for any damages, claims, additional costs or expenses assessed against, or payable by, Grantor related to, arising out of, or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of

its facilities in the Streets in a timely manner after request by Grantor in accordance with any relocation required by Grantor.

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

(1) The grant of this Franchise;

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

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

(E) 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 Section.

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

(G) If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the Grantor and the counsel selected by Grantee to represent, the Grantor, Grantee shall pay expenses incurred by the Grantor in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The Grantor's expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Grantor 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 the Grantor by Grantee.

## **5.2 Insurance Requirements**

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

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

(1) Commercial General Liability: Five million dollars (\$5,000,000) aggregate limit per occurrence for bodily injury, personal injury and property damage;

(2) Automobile Liability: Three million dollars (\$3,000,000) combined single limit per accident for bodily injury and property damage; and

(3) Employer's Liability: One million dollars (\$1,000,000).

(4) Worker's compensation per all State and Federal laws.

(C) Endorsements.

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

(a) The Grantor shall be designated as additional insured.

(b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, boards, commissions, employees and duly authorized agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

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

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

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

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

### **5.3 Security**

Upon the effective date of this Franchise, Grantee shall provide a performance bond or other security in accordance with Grantor's applicable ordinances, rules and regulations 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 Grantor Rights-of-Way and other property.

### **5.4 Self Insurance**

As part of the Franchise negotiations Grantee has requested that Grantor waive the insurance provisions of this Franchise. Based on evidence submitted that Grantee has a program of self insurance that will provide Grantor equivalent coverage to that which would be available had Grantee procured the insurance required herein, the waiver is granted. Grantee, through its self insurance program, shall defend and indemnify Grantor in the same amounts and in the same manner as if Grantee had posted certificates of insurance and the other financial securities required herein.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Subscriber Contracts**

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

### **6.2 Subscriber Privacy**

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

### **6.3 Customer Service Center**

Throughout the Franchise term, the Grantee must maintain, at a minimum, one (1) customer service center conveniently located within five (5) miles of the Franchise Area which will be open during Normal Business Hours, to provide Subscribers the opportunity to receive and pick up Subscriber equipment and to make bill payments and complaints.

### **6.4 Customer Service Agreement and Manual**

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

- (1) Grantee's procedure for investigation and resolution of Subscriber service complaints or compliments.
- (2) Services to be provided and rates for such services.
- (3) Billing procedures.
- (4) Service termination procedure.

- (5) A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.
- (6) A complete statement of the Subscriber's right to privacy.
- (7) Converter and cable modem equipment policy.
- (8) The name, address and phone number of the Person identified by the Grantor as responsible for handling cable questions and complaints for the Grantor. This information shall be prominently displayed in the installation packet.

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

## **SECTION 7. REPORTS AND RECORDS**

### **7.1 Open Records**

Grantor shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliated entities, necessary for the enforcement of the terms of this Franchise. Grantee shall not deny Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliated entity or a third party. 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 copy of all reports and records required under this or any other Section shall be furnished to 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 request, in writing within ten (10) days, that Grantor inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to Grantor upon written request as set forth above, and if Grantor determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel and maintenance expenses incurred in making such examination shall be paid by Grantee.

### **7.2 Confidentiality**

Grantee and Grantor acknowledge that each is subject to the Washington State Public Records Act (the "Public Records Act") currently codified in Chapter 42.56 RCW. Grantee further acknowledges that Grantor has no legal authority or obligation to protect Grantee information furnished to Grantor that Grantee deems confidential or proprietary. Grantee shall be responsible for clearly and conspicuously identifying any information provided to Grantor that Grantee claims to be confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. If Grantor receives a request under the Public Records Act for disclosure of any information designated by Grantee as confidential or proprietary, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee within a reasonable time with a copy of any



written request by the party demanding access to such information. This shall be Grantor's sole obligation under this paragraph. If Grantee believes that the disclosure of such documents by Grantor would interfere with Grantee's rights under federal or state law, Grantee shall promptly institute an action in the Pierce County Superior Court to prevent the disclosure by Grantor of such documents. Grantee shall join the Person requesting the documents to such an action. Grantee shall defend, indemnify and hold Grantor harmless from any claim or judgment including, but not limited to, any penalties or costs assessed under the Public Records Act or other Washington State or federal law.

### **7.3 Records Required**

Grantee shall at all times maintain:

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

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

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

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

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

Upon written request, Grantee shall submit to Grantor copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's System within the Franchise Area. Grantee shall submit such documents to Grantor no later than thirty (30) days after receipt of Grantor's request. 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. With respect to all other reports, documents and notifications provided to any federal, State or local regulatory agency as a routine matter in the due course of operating Grantee's System within the Franchise Area, Grantee shall make such documents available to Grantor upon Grantor's written request.

### **7.5 Complaint File and Reports**

Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the System, and Grantee's actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. Those files shall remain open to Grantor during normal business hours and shall be retained for a period of one year. Upon written request, Grantee shall provide an executive summary report to the City or any designated agent in a format substantially similar to the report it provides to the City of Tacoma Franchise Administrator. Upon request, Grantee shall provide a report to the Grantor which can, at Grantor's option, include the following information:

- (A) Nature and type of customer complaints;
- (B) Number, duration, general location and customer impact of unplanned service interruptions;
- (C) Any significant construction activities which affect the quality or otherwise enhance the service of the System;
- (D) Average response time for service calls;
- (E) New areas constructed and available for Cable Service;
- (F) Video programming changes (additions/deletions); and
- (G) Such other information as reasonably requested by Grantor.

### **7.6 Inspection of Facilities**

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

### **7.7 False Statements**

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

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

### **8.1 Grantee Compliance**

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

### **8.2 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) Sports programming;
- (C) General entertainment programming;
- (D) Children's programming;
- (E) Information/news programming;

(F) National and local government programming.

### **8.3 Obscenity**

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

### **8.4 Parental Control Device**

Grantee shall make available cable set-top receivers with the capability of providing parental control to enable a Subscriber to control access to any or all Channels, and shall also make instructions for the use thereof available to Subscribers.

### **8.5 Complementary Cable Service**

Grantee, upon written request, shall provide without charge, a Standard Installation and one outlet of Basic and Expanded Basic Service to those administrative buildings owned and occupied or leased and occupied by the Grantor, fire station(s), police station(s), libraries and K-12 public school(s) that are within 125 feet aerial or 60 feet underground of its cable system. In the case of leased facilities, recipient of service is responsible for securing approval for appropriate right of entry suitable to the Franchisee at its sole discretion. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Grantor shall take reasonable precautions to prevent any use of the Grantee's cable system in any manner that results in the inappropriate use thereof or any loss or damage or interference to the cable system. The Grantor shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Grantor or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of cable service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith. In the event a competing cable system is providing complementary cable TV services, there is no obligation for Grantee to provide like services.

### **8.6 New Developments**

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

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

### **9.1 Future Educational and Governmental Programming**

Grantor agrees Educational and Governmental Access programming provided on Grantee's system adequately meets the needs of the community. Grantor may, during the term of this franchise, conduct a community needs assessment and conclude Fircrest specific Educational and Governmental Access programming is required. Upon receipt of such written notice, the City

and Grantee shall meet to discuss the required programming needs of the City and the ability of Grantee to accommodate them.

## **9.2 Future Capital Fee**

In the event the City and Grantee decide Fircrest specific Educational and Governmental Access programming is required and can be accommodated, and that a capital fee for educational and government access Capital expenditures is also required, Grantee shall collect from Subscribers and pay to Grantor a Capital Fee of up to fifty cents (\$.50) per Subscriber per month. Grantor agrees that 47 C.F.R. 76.922 permits Grantee to collect the Capital Fee from Subscribers. In addition, as permitted in 47 C.F.R. 76.985, all amounts paid as the Capital Fee may be separately stated on Subscriber's bills as a government access capital equipment fee.

## **9.3 Management and Control of Access Channels**

In the event 9.2 is implemented, Grantor may authorize a Designated Access Provider to control, operate, and manage the use of any and all Fircrest specific Access facilities provided by Grantee under this Franchise, including without limitation, the operation of Grantor's Access Channels. The Grantor or its designee may formulate rules for the operation of the Fircrest specific Access Channels, consistent with this Franchise. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider. Grantee shall cooperate with Grantor and Designated Access Providers in the use of the System and Fircrest specific Access facilities for the provision of Access Channels.

## **9.4 Access Reporting**

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

## **9.5 Change In Technology**

In the event Grantee makes any change in the System and related equipment and facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Fircrest specific Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Fircrest specific Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

## **9.6 Access Channels On Lowest Level of Service**

All Fircrest specific Access Channels provided to Subscribers under this Franchise shall be included by Grantee, without limitation, as a part of the Basic Service.

## **9.8 Return Lines**

Upon written notice, Grantee shall activate return line capable of transmitting video programming to enable the distribution of Fircrest specific Access programming to Subscribers on the Fircrest specific Access Channels. The return line shall run from a location to be determined by Grantor to

Grantee's facilities. Grantee shall be responsible for the cost of the constructing the first 125' of the return line, and Grantor shall be responsible for the remaining cost to construct the return line to the Grantee's System.

### **9.9 Technical Quality**

The Grantee shall provide the Fircrest specific Access channels with at least the same transmission quality as required by this Franchise and all other applicable laws, rules and regulations for other Channels and services but shall not be required to be of higher quality than received from Designated Access Provider. The Grantee shall provide routine maintenance and shall repair and replace, if necessary, all Grantee's transmission equipment, including fiber transmitters and receivers, channel modulators, associated cable and equipment, required to carry a quality signal to and from the Grantor's Designated Distributor's facilities (and Designated Access Providers') and the Grantee's facilities for the Fircrest specific Access Channels provided under this Franchise.

### **9.10 Payments to Grantee**

After satisfactory completion of work requested by Grantor for which Grantor is to reimburse the Grantee, and upon submission by Grantee, in such form as may be requested by Grantor, of a proper invoice for payment of the cost reasonably incurred and accompanied by such evidence in support thereof as may be reasonably required by Grantor, Grantor agrees to make payment for the cost reasonably incurred up to the estimated cost for the work; provided, however, that all payments shall be subject to adjustment for any amount found upon audit or otherwise to have been improperly invoiced.

All work shall be performed in a cost-effective manner to minimize the costs to Grantor. Grantee shall permit Grantor to inspect and audit all pertinent books and records of Grantee, and Grantee shall make available for inspection and audit all pertinent books and records of any Person who has performed the work for which costs are being billed to Grantor, so that Grantor may verify the accuracy of costs being billed. Grantee shall supply Grantor with or permit Grantor to make a copy of any books or records, and any portions thereof relating to the cost being billed for such work.

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

### **10.1 Construction**

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

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

(C) Grantee may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Grantee's System. Prior to doing such work, Grantee shall apply for,

and obtain, appropriate permits from Grantor, and give appropriate notices to Grantor. As a condition of any permits so issued, Grantor officials 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, protection of the public and the continuity of pedestrian or vehicular traffic. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or 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 Rights-of-Way cuts within the Franchise Area.

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

(E) Repair and Restoration of Property.

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

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

(F) Movement for Other Permittees.

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

## **10.2 Location of Facilities**

Grantee shall follow current State regulations related to locating underground facilities, after the Grantor or any franchisee, licensee or permittee of the Grantor notifies Grantee of a proposed Right-of-Way excavation. At that time, Grantee shall, at Grantee's expense:

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

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

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

### **10.3 Restoration of Rights-of-Way / Grantor Owned Property**

(A) Whenever Grantee disturbs the surface of any Rights-of-Way or Grantor owned property for any purpose, Grantee shall promptly restore the Rights-of-Way or Grantor owned property to a condition as good or better than its prior condition in Grantor's sole determination. When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way or Grantor owned property, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to Grantor.

(B) If Grantee excavates the surface of any Rights-of-Way or Grantor owned property, Grantee shall be responsible for restoration in accordance with applicable regulations of the Rights-of-Way and its surface within the area affected by the excavation. Grantor may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-Way or on Grantor owned property, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove and repair any work done by Grantee which, in the determination of Grantor, does not conform to applicable code. The cost thereof, including the costs of inspection and supervision shall be paid by Grantee. All excavations made by Grantee in Rights-of-Way or on Grantor owned property shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Franchise, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor.

### **10.4 Maintenance and Workmanship**

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

(B) Grantee shall provide and use any equipment and appliances necessary to control and carry Grantee's signals so as to prevent injury to 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.

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

(D) Grantee may perform routine maintenance of the cable system on non-arterial streets under a blanket permit issued as allowed in conformance with the Fircrest Municipal Code.

### **10.5 Acquisition of Facilities**

Upon Grantee's acquisition of facilities in any Grantor Rights-of-Way, or upon the addition or annexation to the Grantor of any area in which Grantee owns or operates any facility, Grantee shall, at Grantor's request, submit to Grantor a statement describing all 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 facilities shall immediately be subject to the terms of this Franchise.

### **10.6 Relocation of Cable Facilities**

The Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street, any component of its cable TV system when so required by the City by reason of traffic conditions or public safety, widening, relocating or improvement of existing rights-of-way, streets or avenues, or change or establishment of street grade, provided that the Grantee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of system required to be temporarily disconnected or removed. The provisions of this section shall not be applicable if the relocation is due to a private development, use or activity. Provided further that when street widening or improvement is desired by the City, that City will acquire sufficient right-of-way to accommodate all utilities including Grantee's System.

If the City determines that a project (other than a project due to a private development, use or activity) necessitates the relocation of the Grantee's then existing facilities, the City shall:

At least ninety (90) days prior to commencement of construction of such project, provide the Grantee with written notice and plans requiring such relocation, unless another time period for the notice is agreed to by the parties for a particular project.

Provide the Grantee with copies of pertinent portions of the plans and specifications for such project and a proposed location for the Grantee's facilities so that the Grantee may relocate its facilities in other City right-of-way in order to accommodate such project.

After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities at no charge or expense to the City (except as hereinafter provided) so as to accommodate the project construction schedule.

The Grantee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives is suitable to accommodate the work, which would otherwise necessitate relocation of the Grantee's facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration. In the event the City ultimately determines in its sole discretion that there is no other reasonable alternative, the Grantee shall relocate its facilities as otherwise provided in this Section. Provided, however, the parties agree to exercise good faith, reasonable and timely



decision making especially when issues arise in the field pertaining to relocations. The provisions of this Section shall survive the expiration or termination of this franchise.

The provisions of this Section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are due to a private development, use or activity, provided that such arrangements do not unduly delay a City construction project.

The City on occasion will be constructing, reconstructing and/or relocating roads, streets, public ways, areas or facilities within the right-of-way or property which will require Grantee to install and/or relocate part of its system. Grantee will be relying on the alignment, lines and grades as set forth in City's approval plans wherein Grantee thereafter constructs or reconstructs its system in accordance with City's requirements and City public works standards. Therefore, if City thereafter again adjusts and/or revises the alignment, line or grade for a road, street, public way or area, before this part of the Grantee's system has been in place for fifteen (15) years (commencing with the initial City revision), then City agrees to reimburse Grantee a pro rata share of the total relocation costs based on a fifteen (15) year life expectancy for the portion of Grantee's system that is affected by the City revision unless differently agreed to in writing by City and Grantee at the time of the installation or relocation.

#### **10.7 Discontinuing Use of Facilities**

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for 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 Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Rights of Way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. 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 Grantor. Until such time as Grantee removes or modifies the facility as directed by 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 Rights-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, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, Access Channel purposes.

#### **10.8 Hazardous Substances**

(A) Grantee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's System in Rights-of-Way.

(B) Grantee shall maintain and inspect its System located in Rights-of-Way. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to

Grantee's System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

### **10.9 Undergrounding of Cable**

(A) Where electric or telephone utility wiring is installed underground at the time of System construction, or when such wiring is subsequently placed underground, all System lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the Grantor or Subscribers. Related System equipment, such as pedestals, must be placed in accordance with applicable code requirements and rules as interpreted by the Grantor's Director of Public Works. In areas where both electric and telephone utility wiring are 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.

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

(C) 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 the Grantor or any other Person.

(D) The Grantee and the Grantor recognize that situations may occur in the future where the Grantor may desire to place its own cable or conduit for fiber optic cable in trenches or bores opened by the Grantee. In addition, Grantor may wish to avail itself of rights pursuant to RCW 35.99.070. Therefore, if the Grantee upgrades in the future, the Grantee shall submit these plans to the Grantor in accordance with the Grantor's permitting process so that such opportunities may be explored. However, nothing set forth herein shall obligate the Grantee to slow the progress of the upgrade of the System to accommodate the Grantor. In addition, the Grantee agrees to cooperate with the Grantor in any other construction by the Grantee that involves trenching or boring. If sufficient space is reasonably available, the Grantee shall allow the Grantor to lay its cable, conduit and fiber optic cable in the Grantee's trenches and bores, provided the Grantor shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The Grantor shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried in the Grantee's trenches and bores under this paragraph.

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

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

### **10.10 Construction Codes**

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

### **10.11 Construction and Use of Poles**

Whenever feasible, Grantee shall use existing poles when the installation of facilities above-ground is permitted. 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 Streets for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's System. All poles of Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper authorities of Grantor, and each pole shall be set whenever practicable at an extension lot line. Grantor shall have the right to require Grantee to change the location of any pole, conduit, structure or other facility within Rights-of-Way when, in the opinion of Grantor, the public convenience requires such change, and the expense thereof shall be paid by Grantee.

### **10.12 Tree Trimming**

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

### **10.13 Standards**

(A) All work authorized and required hereunder shall be done in a safe, thorough and worker-like manner. The Grantee must 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 System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

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

(C) All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices and of sufficient height to comply with all existing Grantor regulations, ordinances and State laws so as not to interfere in any manner with the right of the public or individual property owner, 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.

(D) In the maintenance and operation of its System in Rights-of-Way, alleys and other public places, and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the Rights-of-Way or other public places made by the Grantee in the course of its operations shall be guarded and protected at all times 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.

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

#### **10.14 Stop Work**

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

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

#### **10.15 Work of Contractors and Subcontractors**

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with Grantor's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and 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. It is Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

#### **10.16 Public Works Standards**

Grantee acknowledges Grantor's Public Work Standards are currently under development. Grantor shall provide notice to and an opportunity for Grantee to provide input during the development process of new standards.

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

#### **11.1 Equal and Uniform Service**

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

## **11.2 Cable System**

Grantee shall construct a Cable System that is based upon a fiber-to-the-node system architecture, with fiber-optic cable deployed from the Headend through a hub to the node and tying into a hybrid fiber-coaxial system serving Subscribers. Active and passive devices must be capable of passing a minimum of 750 MHz, and the Cable System must be capable of delivering high quality signals that meet, or exceed, FCC technical quality standards regardless of a particular manner in which signal is transmitted. During the term of this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications.

## **11.3 Technical Performance**

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

## **11.4 Cable System Performance Testing**

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

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and
- (3) All other tests as otherwise specified in this Franchise.

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

- (1) Cumulative leakage index testing of any new construction;
- (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
- (3) Tests in response to Subscriber complaints;
- (4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and
- (5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(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 Grantor upon request.

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

### **11.5 Additional Tests**

Where there exists other evidence that in the judgment of 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 City 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 which 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
- (D) any other information pertinent to said tests and analysis which may be required.

## **Section 12. INSTITUTIONAL NETWORK**

### **12.1 Option to Provide Institutional Network at Grantor's request**

The Grantor may, during the term of this franchise, require the Grantee to provide a proposal for provision of an Institutional Network. Upon receipt of the notice, the City and the Grantee shall meet to discuss the Institutional Network communications needs of the City and the ability of the Grantee to accommodate them, at the City's expense. I-Net design shall take into account the needs of the City and currently available technology.

### **12.2 Design and Estimation of Cost**

Within sixty (60) days of the determination of the City's I-Net needs, the Grantee shall provide to the City, in writing, a firm estimate of the incremental cost of I-Net construction. Within sixty (60) days of receipt of the cost estimate, the City shall respond to the Grantee with an acceptance or rejection of the I-Net project. If the City accepts the project, the Grantee will proceed with construction. Upon completion of construction, the Grantee will invoice the City for construction costs in an amount not to exceed the estimate and payable within one hundred twenty (120) days.

## **SECTION 13. SERVICE EXTENSION**

### **13.1 Service Availability**

(A) In general, except as otherwise provided herein, Grantee shall provide standard installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area to serve a dwelling or other structure located within 125 feet of the system. 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. Grantee shall provide such service:

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

(2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting to an appropriate exterior location for bonding and grounding of the drop, with additional charges for non-standard installations computed according to a non-discriminatory method for such installations, adopted by Grantee and provided in writing to Grantor.

(3) At non-discriminatory monthly rates for all Subscribers; separate rates may be established for commercial customers and multiple dwelling unit (MDU) bulk customers as allowed by law.

## **SECTION 14. STANDBY POWER AND EMERGENCY ALERT SYSTEM**

### **14.1 Standby Power**

Grantee shall provide standby power generating capacity at the System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks. 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 two (2) hours.

### **14.2 Emergency Alert Capability**

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

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

## **SECTION 15. FRANCHISE BREACHES; TERMINATION OF FRANCHISE**

### **15.1 Informal Dispute Resolution**

Prior to proceeding with the formal Procedure for Remediating of Franchise Violations process as set forth below (in subsection 15.2), Grantor agrees to provide Grantee informal verbal or electronic mail notice of any alleged material violation of this Franchise and allow Grantee a reasonable opportunity to cure the violation. If the alleged violation is investigated by Grantee and determined to be valid, Grantee agrees to exert good faith efforts to immediately resolve the matter. However, if the alleged violation is determined by Grantee to be invalid, or outside of Grantee's legal responsibilities, the Grantee promptly shall so advise Grantor. Grantee agrees to exert good faith efforts to expedite its investigation, determination and communications to Grantor so that the informal resolution process proceeds on an expedited basis. If Grantor believes that Grantee is unreasonably delaying the informal resolution process, it may commence the formal dispute resolution process.

### **15.2 Procedure for Remediating Franchise Violations**

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

(2) Cure the default; or

(3) Notify 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 Grantor in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, Grantor may set a hearing 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. Upon five (5) business days' prior written notice, either Grantor or Grantee may call an informal meeting to discuss the alleged default.

(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 hearing in accordance with subsection (A)(1), or Grantor orders a hearing in accordance with subsection (A)(3), Grantor shall set a public hearing to investigate said issues or the existence of the alleged default. Grantor shall notify Grantee of the hearing in writing and such hearing shall take place no less than seven (7) days after Grantee's receipt of notice of the hearing. At the hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense. At any such hearing, Grantor shall not unreasonably limit



Grantee's opportunity to make a record which may be reviewed should any final decision of Grantor be appealed to a court of competent jurisdiction. The determination as to whether a default or a material breach of this Franchise has occurred shall be within Grantor's sole discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction.

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

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

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

### **15.3 Alternative Remedies**

(A) No provision of this Franchise shall be deemed to bar the right of either party 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 either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

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

### **15.4 Assessment of Monetary Damages**

(A) Upon completion of the procedures set forth above, and from the date of said violation pursuant to the procedures specified in this Franchise, Grantor may assess against and collect from Grantee monetary damages in amounts of up to five hundred dollars (\$500.00) per day or the City's actual damages, whichever is greater, for general construction delays, and up to two hundred dollars (\$200.00) per day for any other material breaches for a maximum of ninety

(90) days or until said breaches have been cured. Grantor may collect the assessment as specified in this Franchise.

(B) Any assessment hereunder shall not constitute a waiver by Grantor of any other right or remedy it may have under this Franchise or applicable law, including its right to recover from Grantee any additional rights or claims Grantor might have to damages, losses, costs and expenses.

(C) The Grantor and the Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Grantor as a result of the Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, the Grantor and the Grantee agree that the Grantee shall pay to the Grantor the sums set forth above for each day that the Grantee shall be in breach of the specific provisions of this Franchise. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the Grantor would suffer in the event of the Grantee's breach of such provisions of this Franchise, and are not intended as a penalty.

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

## **15.5 Revocation**

(A) This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured pursuant to Section 16.1, or in the event that:

- (1) Grantee fails to perform any material obligation under this Franchise;
- (2) Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Grantor or Subscribers;
- (3) Grantee makes a material misrepresentation of fact in the negotiation of this Franchise;
- (4) Grantee or an Affiliate challenges the legality or enforceability of this Franchise in a judicial or administrative (for example, FCC) proceeding;
- (5) Grantee fails to maintain required business offices as provided above;
- (6) Grantee abandons the System, or terminates the System's operations;
- (7) Grantee fails to restore service to the System after three consecutive days of an outage or interruption in service except as provided for in Section 18.16 hereof; or; except when approval of such outage or interruption is obtained from the Grantor, it being the intent that there shall be continuous operation of the System; or

(8) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Grantee's creditors, or all or part of the Grantee's System is sold under an instrument to secure a debt and is not redeemed by Grantee within thirty (30) days from said sale.

(B) Additionally, 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 the Grantee (at the option of the Grantor and subject to applicable law) 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 material terms and provisions of this Franchise, and have remedied all material 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 and provision of this Franchise.

(C) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, 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) 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 Grantor to assume and be bound by all of the terms and provisions of this Franchise.

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

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

## **15.6 Removal**

(A) In the event of termination, expiration or revocation of this Franchise, and after all appeals from any judicial determination are exhausted and final, Grantor may order the removal of the System facilities from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by 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 a condition as that prevailing prior to Grantee's removal of its equipment. Any portion of the Facilities that are covered by this Franchise that are also used as an integral part of Grantee's electrical distribution system may continue to operate notwithstanding the termination, expiration or revocation of this Franchise.

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

## **SECTION 16. ABANDONMENT**

### **16.1 Effect of Abandonment**

If the Grantee abandons its System during the Franchise term, or fails to operate its System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the System or; designate another entity to operate the 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. If the Grantor designates another entity to operate the System, the Grantee shall reimburse the Grantor for all reasonable costs, expenses and damages incurred, including reasonable attorney fees, court expenses and attributed expenses for work conducted by Grantor's staff or agents.

## **SECTION 17. FRANCHISE TRANSFER**

### **17.1 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 City Council, acting by ordinance or resolution.

(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 law and the Grantor.

(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;

(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 requested information. 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. By agreeing to any transfer of ownership, Grantor does not waive any rights in this Franchise.

(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, provided, however, any such terms and

conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

(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 18. MISCELLANEOUS PROVISIONS**

### **18.1 Preferential or Discriminatory Practices Prohibited**

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, ethnic or national origin, religion, age, sex, sexual orientation, or physical or mental disability. 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 rules and regulations relating thereto.

### **18.2 Notices**

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

Grantee's address shall be:

Tacoma Power  
Click! Network  
Tacoma Public Utilities  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409-3192  
Attention: Telecommunications Manager

With a copy to:

Tacoma Public Utilities  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409-3192  
Attention: Legal Department

Grantor's address shall be:

City of Fircrest  
115 Ramsdell Street  
Fircrest, WA 98466-6999  
Attention: City Manager

With copies to:

City Attorney  
c/o City of Fircrest  
115 Ramsdell Street  
Fircrest, WA 98466-6999

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**18.3 Costs to be Borne by Grantee**

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

**18.4 Binding Effect**

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

**18.5 Authority to Amend**

This Franchise may be amended at any time by written agreement between the parties.

**18.6 Venue**

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

**18.7 Governing Law**

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

**18.8 Captions**

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

**18.9 Construction of Franchise**

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

**18.10 No Joint Venture**

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

### **18.11 Waiver**

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

### **18.12 Severability**

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

### **18.13 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 and written agreements between the parties.

### **18.14 Compliance with Federal, State, and Local Laws**

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

### **18.15 Customer Service Standards**

The Grantee shall comply with the customer service standards as established in 47 CFR 76.309.

### **18.16 Force Majeure**

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



IN WITNESS WHEREOF, and pursuant to the vote of approval of the qualified electors (if required) of Fircrest, Washington this Franchise is signed in the name of the City of Fircrest, Washington, a municipal corporation, this 26 day of July, 2016.

**CITY OF FIRCREST**

Rick Rosenblatt  
By: Rick Rosenblatt, City Manager

ATTEST:

Lisa Keely  
Lisa Keely  
City Clerk

APPROVED AS TO FORM

Michael B. Smith  
Michael B. Smith, City Attorney

ACCEPTED this 10th day of November, 2016, subject to applicable federal, state and local law.

**City of Tacoma Department of Public Utilities, Light Division, (dba) Click! Network**

Chris Robinson  
By: Chris Robinson  
Power Superintendent/COO  
Tacoma Power

APPROVED AS TO FORM

William Fosse  
Finance *WF*

William Fosse  
Deputy City Attorney