

ORDINANCE NO. 24-003

AN ORDINANCE OF THE CITY OF CAMAS, WASHINGTON, GRANTING COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, A NON-EXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR CABLE SYSTEMS IN, ALONG, UNDER, THROUGH AND BELOW PUBLIC RIGHTS-OF-WAY OF THE CITY OF CAMAS, WASHINGTON

WHEREAS, Comcast Cable Communications Management, LLC (“Comcast”) had a franchise agreement with the City of Camas (“City”) and multiple extensions by agreement of both parties that expired on August 5, 2022; and

WHEREAS, Comcast has requested a non-exclusive franchise with the City for a period of ten years for the operation of cable systems within the City Right-of-Way; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public Right-of-Way; and

WHEREAS, RCW 35A.47.040 grants the City broad authority to grant non-exclusive franchises; and

WHEREAS, Comcast wishes to construct, operate and maintain cable systems within the City Right-of-Way; and

WHEREAS, the City and Comcast have negotiated a cable franchise agreement with terms therein acceptable to both parties; and

WHEREAS, the City Council finds that it is in the best interests of the residents of the Camas community to enter into a non-exclusive franchise with Comcast for the operation of cable systems within the City Right-of-Way.

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

Section I

The Franchise as set forth in the Franchise Agreement attached hereto as Exhibit “A” is hereby granted according to its terms.

Section II

The City Clerk is hereby directed to publish this Ordinance in full and forward certified copies of this ordinance to Comcast. Comcast shall have thirty (30) days from receipt of the certified copy of this ordinance to execute this Franchise Agreement. If Comcast fails to execute this Franchise in accordance with the above provisions, this Franchise shall be null and void.

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Section III

This ordinance shall take effect five (5) days after its publication according to law.

PASSED by the Council and APPROVED by the Mayor this ____ day of _____, 2024.

SIGNED: _____

Mayor

ATTEST: _____

Clerk

APPROVED as to form:

City Attorney

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EXHIBIT "A"

**FRANCHISE AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF COMCAST
CABLE SYSTEMS IN THE CITY OF CAMAS, WASHINGTON**

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the City of Camas, a duly organized City under the applicable laws of the State of Washington (the Local Franchising Authority or "LFA") and Comcast Cable Communications Management, LLC (the "Franchisee").

WHEREAS, the LFA wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the LFA is a "franchising authority" in accordance with Title VI of the Communications Act (see 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises;

WHEREAS, Franchisee owns and operates a Cable System in the Franchise Area for the transmission of Cable Services and other services;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's Cable System meets the cable related needs and interests of the LFA and the community, in a full public proceeding affording due process to all parties;

WHEREAS, the LFA has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, the LFA and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the LFA pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

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THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1 Intentionally left blank.

1.2 *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

1.3 *Additional Service Area*: Shall mean any such portion of the Service Area added pursuant to Section 3.1.2 of this Agreement.

1.4 *Basic Service*: Any service tier, which includes the retransmission of local television broadcast signals and other programming provided by Franchisee.

1.5 *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.6 *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7).

1.7 *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4).

1.8 *Communications Act*: The Communications Act of 1934, as amended.

1.9 *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Franchise's affairs.

1.10 Intentionally left blank.

1.11 FCC: The United States Federal Communications Commission or successor governmental entity thereto.

1.12 *Force Majeure* An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work

delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's Cable System is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.13. *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA and such additional areas as may be included in the corporate (territorial) limits of the LFA during the term of this Franchise.

1.14 *Franchisee*: Comcast Cable Communications Management, LLC. and its lawful and permitted successors, assigns and transferees.

1.15 Intentionally left blank.

1.16 *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles ("GAAP"), which is derived by Franchisee from the operation of the Cable System to provide Cable Service in the Service Area, provided, however, that Gross Revenue shall not include:

1.16.1 Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System;

1.16.2 Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.16.3 Refunds, rebates or discounts made to Subscribers or other third parties;

1.16.4 Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders;

1.16.5 Any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, except for sales commissions earned by Franchisee from such cable channels;

1.16.6 The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

1.16.7 Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees);

1.16.8 Any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.16.9 Sales of capital assets or sales of surplus equipment;

1.16.10 Program launch fees;

1.16.11 Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing;

1.16.12 Franchise fees under Section 7.1 and other fees under Section 6 collected from Subscribers.

1.17 *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20).

1.18 *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.19 *Local Franchise Authority (LFA)*: The City of Camas or the lawful successor, transferee, or assignee thereof.

1.20 *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services.

1.21 *Normal Operating Conditions*: Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee 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 Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. § 76.309(c)(4)(ii).

1.22 Intentionally left blank.

1.23 *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.24 Intentionally left blank.

1.25 *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the LFA. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.26 *Service Area*: All portions of the Franchise Area where Franchisee's Cable Service is being offered including any Additional Service areas.

1.27 *Service Interruption*: The loss of picture or sound on one or more cable channels.

1.28 *Subscriber*: A Person within the Service Area who lawfully receives Cable Service over Franchisee's Cable System with Franchisee's express permission.

1.29 *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.30 *Title II*: Title II of the Communications Act.

1.31 *Title VI*: Title VI of the Communications Act.

1.32 *Transfer of the Franchise*:

1.32.1 Any transaction in which:

1.32.1.1 an ownership or other interest in excess of 50% in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or

1.32.1.2 the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

1.32.2 However, notwithstanding Sub-subsections 1.32.1.1 and 1.32.1.2 above, a Transfer of the Franchise shall not include transfer of an ownership or

other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

1.32.3 Video Programming: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20).

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1 *Grant of Authority:* Subject to the terms and conditions of this Agreement and the Communications Act, the LFA hereby grants the Franchisee the right to construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2 *Term:* This Franchise shall become effective on _____ (the Effective Date"). The Initial Term of this Franchise shall be for ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. Following the Initial Term, this Franchise shall automatically be renewed for one (1) additional period of five (5) years followed by negotiations in accordance with Section 626 of the Cable Act, unless LFA or Franchisee provides the other Party notice of its intent not to renew at least ninety (90) days before the expiration of the Initial Term.

2.3 *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and LFA reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System.

2.4 *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.5 *No Waiver:*

2.5.1 The failure of LFA on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable State or Federal law shall not be deemed to constitute a waiver of such right or a

waiver of compliance or performance by the LFA, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.5.2 The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse LFA from performance, unless such right or performance has been specifically waived in writing.

2.6 *Construction of Agreement:*

2.6.1 The provisions of this Franchise shall be liberally construed to effectuate their objectives

2.6.2 Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.6.3 Should any change to state law have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.6.4 Franchisee agrees to comply with the terms of any lawful, generally applicable local ordinance, in effect upon adoption of this Franchise or as enacted or modified thereafter. In the event of a conflict between any ordinance and a specific provision of this Franchise, the Franchise shall control, provided however that Franchisee agrees that it is subject to the lawful exercise of the police power of the LFA.

2.7 *Police Powers:* Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of LFA's police powers. However, if the reasonable, necessary and lawful exercise of LFA's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. PROVISION OF CABLE SERVICE

3.1 *Service Area:*

3.1.1 *Service Area:* Franchisee shall offer Cable Service to Subscribers in residential areas within the Franchise Area, subject to the density requirements set forth below, except: (A) for periods of Force Majeure; (B) for periods of delay caused by LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive agreements with other providers; (E) in areas, developments or buildings where Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirements set forth in Sub-section 3.1.1.1.

3.1.1.1 *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than fifteen (15) occupied residential dwelling units per one-quarter cable mile as measured in strand footage from the nearest technically feasible point on the active Cable System trunk or feeder line. Should, through new construction, an area within the Service Area meet the density requirements after the Effective Date of this Franchise, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from LFA that the density requirements have been met.

3.1.2 *Additional Service Areas:* Except as may be required by Section 3.1.1.1, Franchisee may, but shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If Franchisee desires to add Additional Service Areas within the Franchise Area, Franchisee shall notify LFA in writing of such Additional Service Area at least ten (10) days prior to providing Cable Services in such areas.

3.2 *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee provides Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred twenty five (125) feet of the Cable System trunk or feeder lines. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3 *Cable Service to Public Buildings:* The parties acknowledge that as of the Effective Date of this Franchise Agreement, Franchisee continues to provide Complimentary Services to certain schools, libraries, and public institutions within the Franchise Area, as set forth in Attachment "A". In the event Franchisee elects, to the extent permitted by Applicable

Laws, to invoice the LFA for Complimentary Services, Franchisee agrees that it will do so only after providing LFA, and other entities receiving complimentary connections, with one hundred twenty (120) days' prior written notice.

The LFA shall have the right to discontinue the receipt of all or a portion of the Complimentary Services provided by the Franchisee in the event Franchisee elects to impose a charge against the LFA for the Complimentary Services as set forth in the preceding paragraph.

LFA does not waive any rights it may have now or in the future regarding complimentary service, PEG transport maintenance costs, or other services or infrastructure that the FCC has concluded are in-kind requirements subject to franchise fee offset as of the Effective Date of this Agreement or any other requirements provided for in this Franchise Agreement. If, as the result of future action by the FCC, federal law or through judicial review, such services are no longer considered to be "franchise fees" under 47 USC §542, then the LFA may require Franchisee to provide such services without charge to the complimentary service locations set forth in Attachment "A".

4. SYSTEM OPERATION

4.1 The parties recognize that the jurisdiction of the LFA extends only to the Cable System to the extent used to provide Cable Services within the Franchise Area. The jurisdiction of the LFA over telecommunications and information facilities and services is restricted by federal and state law, and the LFA does not and will not assert jurisdiction over Franchisee's Cable System in contravention of those limitations.

4.2 *Conditions of Street Occupancy.* If the City determines that a public project necessitates the relocation of Franchisee's Cable System, or any part thereof, the City shall:

4.2.1 At least seventy-five (75) days prior to the commencement of such project, provide Franchisee with written notice of known facilities requiring such relocation; and

4.2.2 Provide Franchisee with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for Franchisee's facilities; and

4.2.3 Meet with Franchisee, if requested, within ten (10) business days to discuss the scope, requirements and challenges of the relocation work.

4.3 After receipt of such notice and such plans and specifications and meeting, Franchisee shall complete relocation of its Cable Systems at no charge or expense to the City at least ten (10) days prior to commencement of the City's project or as otherwise agreed to in writing between the City and Franchisee.

4.4 If public funds are available to any other user of the Public Right of Way for the purpose of defraying the cost of any of the foregoing, the LFA shall notify Franchisee of such funding and make available such funds to the Franchisee.

4.5 Failure to complete a relocation requested by the City in accordance with this Section 4.2 by the date included in the notice provided for thereby may subject Franchisee to liquidated damages as provided in Section 13 of this Franchise, except in the event Franchisee suffers a force majeure or other event beyond its reasonable control. Alternatively, should the LFA's Project be delayed as a result of Franchisee's failure to complete a relocation requested in accordance with this Section and provided Franchisee has not suffered a force majeure or other event beyond its reasonable control, then LFA may, at Franchisee's sole expense, have the Cable Systems relocated by LFA's contractor. In such event, Franchisee shall pay the cost of relocation within 30 days of submission of an invoice by the LFA. This Section shall only apply if applied in a non-discriminatory manner and it is necessary for all Cable Systems and appurtenances to be moved in the same location.

4.6 *Relocation at request of Third Party.* The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the LFA to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

4.7 *Excavation and Notice of Entry.* During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Right-of-Way so as to minimize interference with the passage of traffic and the use of adjoining property. Franchisee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the LFA or State law, including RCW 39.04.180, for the construction of trench safety systems.

Whenever Franchisee excavates in any Right-of-Way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the LFA for a permit to do so in accordance with the ordinances and regulations of the LFA requiring permits to operate in the Right-of-Way. In no case shall any work commence within any Right-of-Way without a permit. During the progress of the work, Franchisee shall not unnecessarily obstruct the passage or use of the Right-of-Way, and shall provide the LFA with plans, maps, and information showing the proposed and final location of any Facilities. In the event of an emergency where repairs are necessary to restore franchisee service after hours, Grantee will make best efforts to contact the City's Public Works Department prior to the repair, however, Grantee may initiate such emergency repairs, and shall give notification to the City no later than the next business day. Grantee shall thereafter apply for appropriate permits as deemed necessary by the City.

4.8 *Restoration of Public Rights of Way.* If in connection with permits or approvals from the LFA, or in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Right of Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Right of Way in accordance with any applicable permits or approvals by the LFA. Any such

restorations shall, at a minimum, follow the street surface restoration provisions of the Camas Design Standards Manual or permit issued for the work, provided that all users of the LFA's Public Rights of Way are subject to the same provisions, and the LFA provides Franchisee copies of any applicable updates of the Camas Design Standards Manual.

4.9 *Safety Requirements.* The Franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

4.10 *Trimming of Trees and Shrubbery.* The Franchisee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any damage caused by such trimming.

4.11 *Aerial and Underground Construction.* If all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

4.11.1 *Undergrounding and Beautification Projects.* In the event all users of the Public Rights of Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project provided that such reimbursement is made available to other users of the Public Rights of Way, and provided further that the funding is eligible for such relocation reimbursement, or in the alternative, Franchisee and LFA may negotiate alternative reimbursement options, which may include the LFA's assumption of unreimbursed right of way construction costs.

4.12 *Use of Area within the Right-of-Way.* Franchisee recognizes the need for the LFA to maintain adequate space for installation and maintenance of sanitary sewer, water and storm drainage utilities owned by the LFA and other public utility providers. Thus, the LFA reserves the right to maintain adequate space, or clear zones, within the public right-of-way for installation and maintenance of said utilities. The required space between utilities and/or the required space for future LFA-owned and other public utilities for each Right-of-Way segment shall be noted and conditioned with the issuance of each Right-of-Way permit in accordance with the LFA Engineering Design Standards Manual which identifies spacing requirements for all Franchise Utilities. If adequate space for the franchisee is unable to be achieved on a particular Right-of-Way segment, Franchisee shall locate in an alternate Right-of-Way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing spacing between utilities as required by the LFA.

5. SYSTEM FACILITIES

5.1 *System Characteristics:* The parties acknowledge that Franchisee's Cable System meets or exceeds the following requirements:

5.1.1 The System is designed as an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service.

5.1.2 The System has protection against outages due to power failures, so that back-up power is available at a minimum for at least twenty-four (24) hours at each headend, and conforms to industry standards, and is in no event rated for less than four (4) hours, at each power supply site.

5.1.3 Interconnection. Franchisee shall not be required to Interconnect with any other cable system owned and operated by Franchisee or an affiliate of Franchisee, but will not restrict any other cable system from connecting to a LFA designated point of origin at which PEG programming can be received, if applicable and technically feasible without undue hardship on Franchisee. The other cable system shall bear the reasonable, actual cost of Interconnection.

5.2 *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

6. TECHNOLOGICAL DEVELOPMENT REVIEW

Within sixty (60) days of the fifth anniversary of the effective date of this Franchise, the LFA may, but is not required to, conduct a limited review of the Franchise. The purpose of this public review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in light of new developments in cable technology together with related developments in cable law and regulation, and

community needs and interests, with consideration of all financial, technological, and operational impacts that may affect the Grantee. Both the LFA and Grantee agree to make a full and good faith effort to participate in the review.

If, after completion of the review, the LFA and Grantee agree that the public interest will be served by modifying certain franchise obligations and extending the term of the Franchise, the Franchising Authority, with the expressed agreement of the Grantee, shall modify the obligations and extend the term of the Franchise accordingly.

7. FRANCHISE FEES

7.1 Payment to LFA: Franchisee shall pay to the LFA a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within 90 days following the close of the calendar year for which such payments were applicable.

7.1.1 Any franchise fee payment not received by LFA on or before the due date shall be subject to interest at the then-current rate set forth in RCW 19.52.020, which as of the effective date of this Agreement is twelve percent (12%) per annum from the due date to the date that such payment is made.

7.2 Supporting Information: Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation.

7.3 Limitation on Franchise Fee Actions: The parties agree that the period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.

7.4 Audit of Franchise Fee Payments:

7.4.1 LFA, or its designee, may conduct an audit in relation to payments made by Franchisee no more than once every three (3) years during the Term. The audit period shall not include the year in which the audit commenced. As a part of the audit process, LFA or LFA's designee may inspect Franchisee's books of accounts relative to LFA at any time during regular business hours and after thirty (30) calendar days prior written notice.

7.4.2 All records deemed by LFA or LFA's designee to be reasonably necessary for such audit shall be made available by Franchisee in a mutually agreeable format

and location. Franchisee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. Franchisee may provide such responses within a reasonable time after the expiration of the response period above so long as Franchisee has made a good faith effort to procure any such tardy response.

7.4.3 If the results of any audit indicate that Franchisee (i) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by four percent (4%) or less, then LFA shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the franchise fee by more than four percent (4%), then Franchisee shall pay the reasonable, documented, third-party costs of the audit, which costs shall be limited to Five Thousand Dollars (\$5,000).

7.4.4 If the results of the audit indicate an overpayment or underpayment of franchise fees, the parties agree that such overpayment or underpayment shall be returned or offset against future payments if applicable, to the proper party within sixty (60) days, unless the audit findings are in dispute; provided, however, that Franchisee shall be required to remit underpayments to LFA together with interest at the rate specified in Subsection 7.1.

7.4.5 Any auditor employed by LFA shall not be compensated on a success based formula, e.g., payment based on a percentage on underpayment, if any. Franchisee shall be provided a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to LFA.

7.5 *Bundled Services:* If Cable Services subject to the Franchise fee required under this Article 7 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with generally accepted accounting principles.

7.6 *Total Payment Obligation:* In addition to the franchise fee, or as an alternative to all or any part of the Franchise Fee, the City may impose a utility tax, business and occupation tax or other tax on the Grantee's Gross Revenues and there shall be no offset against Franchise Fees subject to applicable law. In such event, the City agrees that Grantee's total annual payment obligation to the City shall not exceed nine percent (9%) of Grantee's Gross Revenues during the initial Ten (10) year Term of this Agreement. After the initial Term of this agreement, the City may change the Total Payment Obligation requirement to any amount statutorily authorized with 180 days notice to Franchisee.

8. CUSTOMER SERVICE

Customer Service Requirements are set forth in Attachment B, which shall be binding unless amended by written consent of the parties.

9. REPORTS AND RECORDS

9.1 *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a non-disruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years from the date such books and records were created. Notwithstanding anything to the contrary set forth herein, and subject to the LFA's compliance at all times with the public records laws of the State of Washington, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The LFA shall treat any information disclosed by Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof or in compliance with the public records laws of the State of Washington. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

9.2 *Records Required:* Franchisee shall at all times maintain:

9.2.1. Records of all written complaints sent by LFA for a period of ninety (90) days after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, except for selection of programming and related matters, including complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.2.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.2.3. Records of service calls for repair and maintenance for a period of ninety (90) days after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved; and

9.2.4. Records of installation/reconnection and requests for service extension for a period of ninety (90) days after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was

extended.

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10. INSURANCE AND INDEMNIFICATION

10.1 Insurance:

10.1.1 Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1 Commercial General Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

10.1.1.2 Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3 Workers' Compensation Insurance meeting all legal requirements of the State of Washington.

10.1.1.4 Employers' Liability Insurance in the following amounts:

10.1.1.4.1 Bodily Injury by Accident: \$100,000; and

10.1.1.4.2 Bodily Injury by Disease: \$100,000 employee limit; and

10.1.1.4.3 Bodily Injury by Disease: \$1,000,000 policy limit.

10.1.2 The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3 Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.4 Each of the required insurance policies shall be with sureties qualified to do business in the State of Washington, with an A.M. Best Financial Strength rating of A- or better.

10.1.5 Maintain current level of required coverage, and within sixty (60) days of the effective date of this Franchise, Franchisee shall deliver to LFA Certificates of Insurance showing evidence of the required coverage.

10.2 Indemnification:

10.2.1 Franchisee agrees to indemnify, save and hold harmless, and

defend the LFA, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that the LFA shall give Franchisee written notice of its obligation to indemnify the LFA within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA, for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with EAS, or the distribution of any Cable Service over the Cable System.

10.2.2 With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

10.2.3 LFA shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the LFA.

10.2.4 The LFA shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the LFA for which the LFA is legally responsible, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence, on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

11. TRANSFER OF FRANCHISE

Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise for transactions otherwise excluded under Section 1.32 above.

12. RENEWAL OF FRANCHISE

12.1 The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2 In addition to the procedures set forth in said Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. The LFA further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under 47 U.S.C 546 and complete renewal of the Franchise prior to expiration of its term.

12.3 Notwithstanding anything to the contrary set forth herein, Franchisee and the LFA agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the LFA and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the LFA may grant a renewal thereof.

12.4 Franchisee and the LFA consider the terms set forth in this Article 12 to be consistent with the express provisions of 47 U.S.C. 546.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

13.1 *Liquidated Damages.* The LFA and Franchisee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the LFA as a result of Franchisee's breach of certain provisions of this Franchise. Accordingly, instead of requiring such proof, the LFA and Franchisee agree that Franchisee shall pay to the LFA, the sum set forth below for each day or part thereof that Franchisee shall be in breach of specific provisions of this Franchise. Such amount is agreed to by both parties as a reasonable estimate of the actual damages the LFA would suffer in the event of Franchisee's breach of such provisions of this Franchise.

13.1.1 Subject to the provisions below of written notice to Franchisee, a thirty (30) day right to cure period, the LFA may assess against Franchisee liquidated damages at a minimum of two-hundred fifty dollars (\$250.00) per day and a maximum of five hundred dollars (\$500) per day for any material breach of the Franchise, not to exceed a period of 120-days. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Grantee's cure period shall be no less than one such period. Liquidated damages, once they have been paid, shall be the exclusive and sole remedy of the LFA

13.1.2 The LFA shall provide Franchisee a reasonable extension of the thirty (30) day right to cure period described in Section 13.4 of this Franchise if Franchisee, in the sole discretion of the LFA taking into account the materiality of the breach, has commenced work to cure

the violation, is diligently and continuously pursuing the cure to completion and requested such an extension, provided that any such cure is completed within one hundred and twenty (120) days from the written notice of default.

13.1.3 If liquidated damages are assessed by the LFA, Franchisee shall pay any liquidated damages within forty-five (45) days after they are assessed and billed.

13.1.4 In the event Franchisee fails to cure within the specified cure period, or any agreed upon extensions thereof, liquidated damages accrue from the date the LFA notifies Franchisee that there has been a violation. All similar violations or failures resulting from the same factual events affecting multiple Subscribers shall be assessed as a single violation.

13.2 The recovery of amounts under Section 13.1.1 of this Franchise shall not be construed to limit the liability of Franchisee under the Franchise, any bond, or an excuse for unfaithful performance of any obligation of Franchisee. Similarly, the parties agree imposition of liquidated damages are not intended to be punitive, but rather, for LFA cost recovery purposes.

13.3 *Notice of Violation:* If at any time the LFA believes that Franchisee has not complied with the terms of the Franchise, the LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the LFA shall then notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").

13.4 *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate reasonable steps to remedy such noncompliance and notify the LFA of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, LFA shall provide written confirmation that such cure has been effected.

13.5 *Public Hearing.* The LFA shall schedule a public hearing if the LFA seeks to continue its investigation into the alleged noncompliance in the event that: (1) Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (2) in the event that Franchisee has not remedied the alleged noncompliance within thirty (30) days or the date projected pursuant to Section 13.1 above. The LFA shall provide Franchisee at least thirty (30) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

13.6 *Enforcement:* Subject to applicable federal and state law, in the event the LFA, after the public hearing set forth in Section 13.5, determines that Franchisee is in default of any material provision of this Franchise, the LFA may:

13.6.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

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

13.6.3 or In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.7

13.7 *Revocation:* Should the LFA seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 13.3., the LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The LFA shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.7.1 At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

13.7.2 Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the LFA shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The LFA shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to affect any cure. If the LFA determines that the Franchise shall be revoked, the LFA shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate.

13.7.3 The LFA may, at its sole discretion, take any lawful action which it deems appropriate to enforce the LFA's rights under the Franchise in lieu of revocation of the Franchise.

14. MISCELLANEOUS PROVISIONS

14.1 *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or

conditioned.

14.2 *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3 *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the LFA.

14.4 *Force Majeure:* Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

14.4.1 Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to enforcement proceedings including revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the LFA and/or Subscribers.

14.5 *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. General updates may be communicated electronically as appropriate and agreed to by both parties. Each party may change its designee by providing written notice to the other party.

Notices to Franchisee shall be mailed to: Comcast Cable

Attention: Government Affairs
11308 SW 68th Parkway
Tigard, OR 97223

Notices to the LFA shall be mailed to:

Attention: City Administrator
City of Camas
616 NE 4th Avenue
Camas, WA 98607

14.6 *Entire Agreement:* This Franchise and the Attachments hereto constitute the

entire agreement between Franchisee and the LFA, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

14.7 *Amendments*: Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.8 *Captions*: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.9 *Severability*: If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof; such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.10 *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.11 *Modification*: This Franchise shall not be modified except by written instrument executed by both parties.

14.12 *Independent Review*: LFA and Franchisee each acknowledge that they have had the opportunity to receive legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

14.13 *Competitive Equity*

14.13.1 The Grantee acknowledges and agrees that the LFA reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Service Area; provided, the LFA agrees that, within ninety (90) days of the Grantee's request, it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees; insurance; System build-out requirements; security instruments; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial

burdens on each entity are materially equivalent. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

14.13.2 Notwithstanding any provision to the contrary, at any time that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the LFA, then Grantee may seek modification as per Sub-section 14.14.1 above, or in the event the parties are not able to reach agreement to modify the Franchise as per Sub-section 14.14.1 above, then the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date six (6) months from the first day of the month following the date of Grantee's notice.

Signed by the duly authorized representative of the parties as set forth below:

**Comcast Cable Communications
Management, LLC**

City of Camas
a Washington Municipal Corporation

By: _____

Steven C. Hogan, Mayor

Printed Name: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ATTACHMENTS

Attachment A: Cable Service to Public Buildings

Attachment B: Customer Service Standards

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Attachment A

MUNICIPAL BUILDINGS IN CAMAS, WA, CURRENTLY PROVIDED GRATIS BASIC CABLE SERVICE BY COMCAST

CAMAS CITY HALL	616 NE 4TH AVE
CAMAS ANNEX BUILDING	528 NE 4TH AVE
CAMAS FIRE DEPT 42	4321 NW PARKER ST
CAMAS FIRE DEPT 41	323 NE FRANKLIN ST
CAMAS LIBRARY	625 NE 4TH AVE
CAMAS POLICE DEPARTMENT	2100 NE 3RD AVE
CAMAS OPERATIONS CENTER	1620 SE 8TH AVE
CAMAS LACAMAS LAKE LODGE	227 NE LAKE ROAD
PRUNE HILL ELEMENTARY (CAMAS SD)	1601 NW TIDLAND ST
DOROTHY FOX ELEMENTARY (CAMAS SD)	2623 NW SIERRA ST
JD ZELLERBACH ADMIN (CAMAS SD)	841 NE 22 ND AVE
LIFE SKILLS CENTER (CAMAS SD)	612 NE 2ND AVE
LACAMAS LAKE ELEMENTARY (CAMAS SD)	4600 NE GARFIELD ST
HELEN BALLER ELEMENTARY (CAMAS SD)	1950 NE GARFIELD ST
HAYES FREEDOM HIGH SCHOOL (CAMAS SD)	1612 NE GARFIELD ST
CAMAS HIGH SCHOOL (CAMAS SD)	26900 SE 15TH ST
GRASS VALLEY ELEMENTARY (CAMAS SD)	3000 NW GRASS VALLEY DR
WOODBURN ELEMENTARY (CAMAS SD)	2400 NE WOODBURN DR
SKYRIDGE MIDDLE SCHOOL (CAMAS SD)	5220 NW PARKER ST
ODYSSEY MIDDLE SCHOOL (CAMAS SD)	5001 NW NAN HENRIKSEN WAY
LIBERTY MIDDLE SCHOOL (CAMAS SD)	1612 NE GARFIELD ST
DISCOVERY HIGH SCHOOL (CAMAS SD)	5125 NW NAN HENRIKSEN WAY

Attachment B

CUSTOMER SERVICE STANDARDS

These standards shall apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

SECTION 1: DEFINITIONS

A. Respond: Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

B. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

C. Service Call: The action taken by the Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

D. Standard Installation: Installations where the subscriber is within one hundred twenty five (125) feet of trunk or feeder lines.

SECTION 2: TELEPHONE AVAILABILITY

A. The Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Franchisee representatives shall identify themselves by name when answering this number.

B. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first-tier menu of English options. After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. The Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

C. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

D. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

E. At the Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the LFA of such a change at least thirty (30) days in advance of any implementation.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after an order has been placed.

The Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests for connection later than seven (7) days after the order is placed.

At the Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the LFA of such a change at least thirty (30) days in advance of any implementation.

C. The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At the Franchisee's discretion, the Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. The Franchisee shall notify the LFA in the manner identified in Section 14 of the Agreement of any Significant Outage of the Cable Service.

B. The Franchisee shall exercise commercially reasonable efforts to limit any

Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the LFA and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the forgoing, Franchisee may perform modifications, repairs and upgrades to the Cable System between 12.01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual subscriber notice.

C. Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, the Franchisee must Respond to a call from a Subscriber regarding a Service Interruptions or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.

(2) The Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the LFA of a Cable Service problem.

E. Under Normal Operating Conditions, the Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption or circumstances that prevent Franchisee from correcting the Service Interruption within the seventy-two (72) hour period.

F. The Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

At the Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the LFA of such a change at least thirty (30) days in advance of any implementation.

G. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

H. Under Normal Operating Conditions, if a Significant Outage affects all Video

Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue a credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

SECTION 5: CUSTOMER COMPLAINTS

Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by the LFA within five (5) business days. The Franchisee shall notify the LFA of those matters that necessitate an excess of five (5) business days to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The LFA may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items, franchise fees, taxes and/or other governmentally imposed fees. The Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days, or as otherwise provided by Franchisee, from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

- (1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

(4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, the Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee.

G. The Franchisee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the LFA upon request.

H. The Franchisee may provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Franchisee, the payment alternative may be limited.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. The Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to the Franchisee, 3) who rent Subscriber equipment from the Franchisee, or 3) as otherwise reasonably determined by Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Franchisee may charge for Subscriber equipment is the cost of the equipment which the Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. The Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Franchisee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks or credits will be issued

within the next available billing cycle following the resolution of the event giving rise to the refund or credit, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment in full is received by the Franchisee or its' authorized agent. Appropriate time considerations shall be included in the Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

A. The Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Franchisee's equipment (for example, a dog chew).

B. The Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 9: DISCONNECTION /DENIAL OF SERVICE

A. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty- four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of the Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Franchisee's equipment, abusive and/or threatening behavior toward the Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow the Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee shall wear a clearly visible identification card bearing their name and photograph. The Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have the Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

B. All contact with a Subscriber or potential Subscriber by a Person representing the Franchisee shall be conducted in a courteous manner.

C. The Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the LFA.

D. All notices identified in this Section shall be by either:

- (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
- (2) A separate electronic notification.

E. The Franchisee shall provide reasonable notice to Subscribers of any pricing changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be provided to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Franchisee, and the Franchisee shall provide a copy of the notice to the LFA including how and when the notice was or will be given to Subscribers.

F. The Franchisee shall provide information to all Subscribers about the following items, if applicable, at the time of installation of Cable Services, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;
- (3) Installation and maintenance policies including, when applicable,

information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Complaint procedures, including the name, address and telephone number of the LFA, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;
- (7) The availability of a parental control device;
- (8) Franchisee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of the Franchisee's office to which complaints may be reported.

G. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable and possible.

H. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

I. Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and
- (4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.