

ORDINANCE 913

AN ORDINANCE of the City of Tenino, a Washington municipal corporation, granting Comcast Cable Communications, LLC, the successor in interest to Comcast, its successors and assigns, lessees, and agents, the non-exclusive right, privilege, and authority, to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways and easements within the Franchise Area, and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

WHEREAS, the current franchise agreement was duly entered into on February 3, 2011; and

WHEREAS, the City Council of the City of Tenino desires to continue the franchise;

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

Section 1 – Definitions.

For the purpose of this Franchise, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein.

- 1.1 "Cable Services" shall mean (1) the one-way transmission to Customers of (a) video programming, or (b) other programming service, and (2) Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.2 "Cable System" shall mean the Grantee's 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 within the Franchise Area.
- 1.3 "Customer" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.
- 1.4 "Effective Date" means the date on which all persons necessary to sign this Franchise in order for it to be binding on both parties have executed this Franchise as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

- 1.5 "FCC" means the Federal Communications Commission, or successor governmental entity thereto.
- 1.6 "Franchise" shall mean this document and any amendments or modifications hereto.
- 1.7 "Franchise Area" means the area within the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.
- 1.8 "City" means the City of Tenino or the lawful successor, transferee, designee, or assignee thereof.
- 1.9 "Grantee" shall mean Comcast Cable Communications, LLC.
- 1.10 "Gross Revenue" means the revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles, including but not limited to monthly basic, premium and pay-per-view fees, installation fees, and equipment rental fees. Gross Revenue shall not include advertising or home shopping revenue, refundable deposits, bad debt, late fees, investment income, nor any taxes, fees or assessments imposed or assessed by any governmental authority.
- 1.11 "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.
- 1.12 "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Franchise Area, which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, upgrading and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

Section 2 – Grant of Authority.

- 2.1 The City hereby grants to the Grantee under the Cable Act a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways and easements within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.
- 2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Grantee reserves the right to challenge provisions of any ordinance which conflict with its contractual rights, either now or in the future. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the City.
- 2.3 Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise and the Cable Act.
- 2.4 Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.
- 2.5 Reservation of Authority. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.
- 2.6 Grant of Other Franchises.
- 2.6.1 The Grantee acknowledges and agrees that the Grantor reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, the Grantor agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of the Grantee's request, 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; public, education and government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the Grantor which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the Grantor agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by Grantor and Grantee.

- 2.6.2 In the event an application for a new cable television franchise is filed with the Grantor proposing to serve the Franchise Area, in whole or in part, the Grantor shall provide notice of such application.
- 2.6.3 In the event that a wireline multichannel video programming distributor provides video service to the residents of the Grantor under the authority granted by federal or State legislation or other regulatory entity, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Grantor shall not unreasonably withhold consent to the Grantee's petition.
- 2.7 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the City lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.
- 2.8 The Grantee and the City agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall

not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

Section 3 – Construction and Maintenance of the Cable System.

- 3.1 Permits and General Obligations. The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe manner using materials that meet or exceed industry standards. All facilities, poles, conduits, cables, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise shall be located so as to minimize interference with the designated use of the Public Ways at the time of Cable System facilities installation.
- 3.2 Conditions on Occupancy of Public Ways.
 - 3.2.1 Relocation at request of City. Upon thirty (30) days prior written notice to Grantee, City shall have the right to require Grantee to relocate any part of Grantee's Cable System within the Public Ways when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by City, City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by City due to Grantee's delay. If City requires Grantee to relocate its facilities located within the Public Ways, City shall make a reasonable effort to provide Grantee with an alternate location within the Public Ways. This Section does not apply to overhead to underground conversions, see Section 3.2.6 "Aerial and Underground Construction". If public funds are available to any Person using such Public Ways for the purpose of defraying the cost of any of the foregoing, the City shall upon written request of the Grantee make application for such funds on behalf of the Grantee.
 - 3.2.2 Temporary Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its facilities to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its facilities, and such charge may be required to be paid in advance of the movement of its wires or cables; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

- 3.2.3 Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.
- 3.2.4 Safety Requirements. The Grantee 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 accidents that may cause damage or injuries. All work undertaken on the Cable System shall be performed in substantial 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 Public Ways.
- 3.2.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority, after notifying the Public Works Director, to trim trees or other natural growth interfering with, damaging, or restricting access to, any of its Cable System facilities in the Public Ways. All such trimming and the cleanup thereof, shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.
- 3.2.6 Aerial and Underground Construction. If all of the transmission and distribution facilities of all of the respective wireline service providers in any given area within the Franchise Area are underground, the Grantee shall place its Cable Systems' distribution cables underground; provided that such underground locations are actually capable of accommodating the Grantee'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 any of the respective wireline service providers are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. When constructing aerially, Grantee shall use existing poles whenever possible, unless the setting of new poles is necessary for road clearance. In areas where a wireline service providers wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

3.2.6.1 In the event of a City driven facilities relocations project that require conversion of overhead facilities to underground, such as projects that may include, but not be limited to: road widening, surface grade changes, sidewalk installation, or beautification, Grantee agrees to bear the costs of converting Grantee's cable system from an overhead system to an underground system as follows:

- A. Utility Trench and Vault/Pedestal Engineering -- To ensure proper space and availability in the supplied joint trench, Grantee shall only pay for the work hours necessary to complete cable system related engineering coordination with the other utilities involved in the project.
- B. Conduit and Vaults/Pedestals Placement -- Grantee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo cable trench as follows:
 - 1. If the City contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project.
 - 2. If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the City or it's contractor, Grantee shall have the option to hire their own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.
 - 3. If Grantee chooses option (2), the City and it's contractor(s) are responsible to coordinate with Grantee's contractor(s) to provide reasonable notice and time to complete the placement of Grantees conduits and vaults/pedestals in the supplied joint trench.
- C. Within the conversion area, Grantee shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo cable trench. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed in item B above.

- 3.2.6.2 In the event of a Local Improvement District (LID) project that requires relocation of Grantees facilities, Grantee shall be reimbursed by the LID finding for all expenses incurred as a result of the project.
- 3.2.6.3 The Grantee shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided (i) the Grantee may impose a charge for all time and material costs associated with the project on any Person for the relocation of its facilities, and such charge may be required to be paid in advance of the relocation of its wires or cables, and (ii) Grantee is granted a permit for such work by the City.
- 3.2.6.4 In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all the time and material costs associated with the conditioned underground conversion of cable facilities. Comcast and/or its authorized contractor are the only agent allowed to complete the reconnection aspects of the conversion.
- 3.2.6.5 The Grantee shall utilize existing poles and conduit wherever possible.

Section 4 – Service Obligations.

- 4.1 General Service Obligation. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per strand mile in areas served by overhead facilities and sixty (60) dwelling units per strand mile in areas served by underground facilities. Subject to the density requirement, Grantee shall offer Cable Service at standard installation rates to all new homes or previously unserved homes located within one-hundred twenty five (125) aerial feet of the Grantee's aerial distribution cable, or within sixty (60) underground trench feet of either aerial or underground distribution facilities.

The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be that portion of the installation that exceeds the standards set forth above.

- 4.2 Programming. The Grantee shall offer to all Customers a diversity of video programming services.

- 4.3 No Discrimination. Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial, and other business obligations to the Grantee are satisfied. Grantee shall not however be required to continue service to a customer who is verbally or physically abusive, harassing, or threatening to Grantee or any of its employees, agents, representatives, contractors, subcontractors, or consultants. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.
- 4.4 New Developments. The City shall provide the Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within the Franchise Area requiring underground installation and/or conversion of cable facilities as part of the approval condition(s). The City agrees to require the developer, as a condition of issuing land use and building permits, to give the Grantee access to all open trenches for deployment of cable facilities throughout the development and at least ten (10) business days written notice of the date of availability of open trenches. Grantee will complete the required work within a reasonable amount of time, contingent upon applying for and being awarded City permits and easements. Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering and deployment of labor applicable to its installation of cable facilities within the development. For conversion of cable facilities as part of the street improvement condition(s), see Section 3.2.6 "Aerial and Underground Construction."
- 4.5 Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

Section 5 – Fees and Charges to Customers.

- 5.1 All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

Section 6 – Customer Service Standards; Customer Bills; and Privacy Protection.

- 6.1 Customer Service Standards. The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.
- 6.2 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).
- 6.3 Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

Section 7 – Oversight and Regulation by City.

- 7.1 Franchise Fees. The Grantee shall pay to the City a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on quarterly basis and shall be due forty-five (45) days after the close of each quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.
- 7.2 Franchise Fees Subject to Audit.
 - 7.2.1 Upon reasonable prior written notice, during normal business hours, at Grantee's principal business office, the City shall have the right to inspect the Grantee's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the City receives such payment, after which period any such payment shall be considered final.
 - 7.2.2 Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting

the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section (7.2), the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

- 7.2.3 Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Grantee within forty-five (45) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Grantee's books and records.

- 7.3 Oversight of Franchise. In accordance with applicable law, the City shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Public Ways, as necessary to monitor Grantee's compliance with the provisions of this Franchise.

- 7.4 Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The City shall have, upon written request, the right to review tests and records required to be performed pursuant to the FCC's rules.

- 7.5 Maintenance of Books, Records, and Files.
 - 7.5.1 Books and Records. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters

that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years.

7.5.2. File for Public Inspection. Throughout the term of this Franchise, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature unless required by law. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise and who agree to maintain the confidentiality of all such information, to the extent allowed by law. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under a state "sunshine," public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall promptly notify Grantee of such request and provide Grantee with a minimum of 10 business days within which Grantee may seek an injunction to prohibit the City's disclosure of the requested record. It shall not be a violation of this Agreement for the City to disclose Grantee's proprietary or confidential information pursuant to court order or in compliance with time limits prescribed under State law, should Grantee fail to obtain an injunction as described above.

Section 8 – Transfer or Change of Control of Cable System or Franchise.

8.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure

indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

Section 9 – Insurance and Indemnity

- 9.1. Insurance. The Grantee shall obtain at the Grantee's cost and maintain in full force and effect during the term of the contract, insurance to meet the following. All carriers (except Workers Compensation) shall have a minimum A.M. Best rating of 'A -' VII or better (or issued as a surplus line by a Washington Surplus lines broker).
- 9.2 The insurance required shall be issued by an insurance company(s) authorized to do business within the State of Washington. The General Liability and the Automobile Liability coverages shall name the City, its officers and employees, as additional insureds by endorsement or blanket policy language under the insurance policy(s). All policies shall be primary to any other valid and collectable insurance maintained by the City with respect to losses for which Grantee is responsible hereunder. The City does not waive its right to subrogation against the Grantee. The Grantee will give or cause its broker to give the City, 30-days advance notice of any insurance cancellation.
- 9.3 The Grantee shall submit to the City, within 15-days of the contract effective date, a Certificate of Insurance, which outlines the coverage and limits defined in the Insurance section. Grantee shall submit renewal certificates as appropriate during the term of the contract.
- 9.4 If any insurance policy is written on a "Claims Made" form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is Claims Made and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Final Completion or earlier termination of this contract, and the Grantee shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Grantee shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.
- 9.5 The insurance policies shall contain a "cross liability" provision with respect to each additional insured.
- 9.6 SUBCONTRACTORS. The Grantee is responsible for ensuring that each sub-contractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Grantee. Upon request of the City, the Grantee shall provide evidence of such insurance.

9.7 NO LIMITATION. Grantee's maintenance of insurance as required by the agreement shall not be construed to limit or otherwise alter the liability of the Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

9.8 MINIMUM SCOPE OF INSURANCE. The Grantee shall obtain insurance at no cost to the City of the types described below:

9.8.1 Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

9.8.2 Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent Contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. If the Grantee will be conducting excavation or underground operations, then the Commercial General Liability insurance shall be endorsed for the Grantee's liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy, and Umbrella policy, with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage. The Grantee may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement. A statement of additional insured status on an ACORD Certificate of Insurance shall not satisfy this requirement.

9.8.3 Employers Liability coverage to include bodily injury, and bodily injury by disease. Employers Liability coverage may be included in the Grantee's General Liability Coverage or as a stand-alone policy.

9.8.4 Workers' Compensation: The Grantee shall provide or purchase industrial insurance coverage prior to performing work under this contract. The City will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Grantee or any sub-Contractor or employee of the Grantee, which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Grantee; the Grantee shall indemnify the City and guarantee payment of such amounts.

9.9 MINIMUM AMOUNTS OF INSURANCE. Grantee shall maintain at least the following insurance limits:

9.9.1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$2,000,000 per accident.

9.9.2 Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$4,000,000 per project aggregate and a \$2,000,000 products - completed operations aggregate limit.

9.9.3 Industrial Insurance Coverage. : The Grantee shall provide or purchase industrial insurance coverage prior to performing work under this contract, with Washington Stop gap Employer's Liability minimum limits of \$1,000,000 each accident, \$1,000,000 disease - each employee, \$1,000,000 disease - policy limit. The City will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Grantee or any sub-Contractor or employee of the Grantee which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Grantee; the Grantee shall indemnify the City and guarantee payment of such amounts.

9.10 OTHER INSURANCE PROVISIONS . The Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain the following:

9.10.1 The Grantee's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Grantee's insurance and shall not contribute with it with respect to losses for which the Grantee is responsible hereunder.

9.10.2 The Grantee's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice has been given to the City, which may be in the form of an email.

9.10.3 If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

9.11 GRANTEE'S INSURANCE FOR OTHER LOSSES. The Grantee shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Grantee's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Grantee, or the Grantee's agents, suppliers or Contractors as well as to any temporary structures, scaffolding and protective fences.

- 9.12 VERIFICATION OF COVERAGE. The Grantee shall furnish the City with certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Grantee before commencement of the work.
- 9.13. INDEMNIFICATION. The Grantee shall indemnify, and save the City harmless from and against any damage, cost or liability including reasonable attorney fees, for injuries to persons or property that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within fifteen (15) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City. The Grantee will be responsible for any damages sustained by its employees to City equipment and/or fixtures and shall provide all repairs/replacements, as appropriate, at no cost to the City.
- 9.14 INDEPENDENT STATUS: The parties to this contract, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be considered, or construed, to be the employees or agents of the other party for any purpose whatsoever.

Section 10 – System Description and Service

- 10.1. System Capacity. During the term of this Franchise the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming to its customers in the Franchise Area.

Section 11 – Enforcement and Termination of Franchise

- 11.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.
- 11.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.
- 11.3. Public Hearings. In the event the Grantee fails to respond to the City's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City that is scheduled at a time that is no less than ten

(10) business days therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

11.4. Enforcement. Subject to applicable federal and state law, in the event the City, after such public hearing, determines that the Grantee is in default of any provision of the Franchise, the City may:

11.4.1. Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

11.4.2. In the case of a substantial default of a material provision of the Franchise, declare the Franchise to be revoked in accordance with the following:

(i) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.

11.5. Technical Violation. The City agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.5.1. In instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area;
or

11.5.2. Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

Section 12 – Miscellaneous Provisions

12.1. Force Majeure. The Grantee 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 (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

12.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City of Tenino
Attn: City Clerk
149 S Hodgden, PO Box 4019
Tenino, WA 98589-4019

To the Grantee:

Comcast Cable Communications, LLC
Attn: Franchise Department
410 Valley Ave. NW, Ste. 9
Puyallup, WA 98371

with a copy to:

Comcast Cable Communications, LLC
Attention: Franchise Department
15815 25th Avenue West
Lynnwood, WA 98087

- 12.3. Entire Franchise. This Franchise, including all Exhibits, embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.
- 12.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.
- 12.5. Governing Law. This Franchise shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State. Jurisdiction and venue for any legal action filed pursuant to this Agreement shall be the Superior Court in and for Thurston County, or the United States District Court for the Western District of Washington, depending on the nature of the action.
- If both parties agree, however, disputes arising out of this agreement may be submitted to mediation prior to litigation. Mediation terms and conditions will be determined by both parties, and each party will be responsible for their own costs of mediation, including attorney's fees, and share the mediation service fee equally. In the event an agreement is not reached at mediation, either party may bring an action to have the dispute resolved in a court of law.
- 12.6. Modification. No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the

City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

- 12.7. No Third-Party Beneficiaries. Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.
- 12.8. No Waiver of Rights. Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

Signed and approved by the Mayor on this 14th day of July, 2020.

Wayne Fournier, Mayor

ATTEST:

1st Reading: June 23, 2020
2nd Reading: July 14, 2020

John C. Millard, Clerk/Treasurer

APPROVED AS TO FORM:

Richard L. Hughes, City Attorney