CITY OF NORMANDY PARK
ORDINANCE NO. 935

AN ORDINANCE OF THE CITY OF NORMANDY PARK, WASHINGTON, GRANTING QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT AND OPERATE A CABLE SYSTEM IN, ALONG, AMONG, UPON, ACROSS, ABOVE, OVER, UNDER, OR IN ANY MANNER CONNECTED WITH RIGHTS-OF-WAY WITHIN THE FRANCHISE AREA; AND ESTABLISHING AN EFFECTIVE DATE.

This Cable Franchise ("Franchise") is entered into in Normandy Park, Washington, this 8th day of March, 2016, by and between the City of Normandy Park, Washington, a municipal corporation, (hereinafter "City") and Qwest Broadband Services, Inc. d/b/a/ CenturyLink ("CenturyLink") (hereinafter "Grantee"). The City and Grantee are sometimes referred to hereinafter collectively as the "parties."

WHEREAS, the City is authorized to grant and renew cable franchises for the installation, operation, and maintenance of cable television systems and otherwise regulate cable communications services within the City boundaries by virtue of federal and state statutes, by the City's police powers, by its authority over its public rights-of-way, and by other City powers and authority; and

WHEREAS, the Grantee, desires to provide competitive cable communications services and to construct, operate and maintain a competitive cable television system within the City; and

WHEREAS, the public has had adequate notice and opportunity to comment on this Franchise during a public proceeding; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of state-of-the-art cable communications service, the high technical capability and reliability of a cable system in the Franchise Area, the availability of local programming and quality customer service; and

WHEREAS, diversity in Cable Service is an important policy goal and the Grantee's Cable System should offer a broad range of programming services; and

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

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

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

SECTION 1. DEFINITIONS

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

1.1 "Access" means the availability for Non-Commercial use by various governmental and educational agencies, institutions and organizations in the community, including the City and its designees, of a particular Channel on the Cable System to distribute programming to Subscribers, as permitted under applicable law and this Franchise.

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

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

1.2 "Access Channel" means a Channel designated for Access purposes or otherwise made available to facilitate or transmit Access programming.

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

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

1.5 "Basic Service" means the lowest Tier of Cable Service that includes, at a minimum, the retransmission of local television Broadcast Signals and Access programming.

1.6 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by an antenna, microwave, satellite dishes or any other means.

1.7 "Cable Act" shall mean the Communications Act of 1934, including the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and any amendments thereto.

1.8 "Cable Operator" means any person or group of persons (A) who provides cable service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

1.9 "Cable Service" (A) the one-way transmission to subscribers of (i) Video Programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

1.10 "Cable System" means the Grantee's facility in the Franchise Area, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that c006Fmplies with 47 U.S.C. 573; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

1.11 "Channel" means a band of frequencies in the electromagnetic spectrum utilizing various means of transmission (including, without limitation, analog and digital or any other means now available or that may become available), which band of frequencies is capable of carrying one (1) or more video signals, audio signals, voice signals or data signals

1.12 "City" means the City of Normandy Park, Washington, a municipal corporation.

1.13 "Complaint" means a Subscriber contact with the Grantee to express a grievance or dissatisfaction concerning Cable Service. Complaints do not include matters not within the regulatory control of the City. A Complaint may be verbal or in writing but need not include initial contacts where an issue is promptly resolved to the Subscriber's satisfaction.

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

1.15 "Expanded Basic Service" means cable programming services not included in the Basic Service and excluding, for example, premium or Pay-Per-View Services.

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

1.17 "Facility" means any distribution component of a Cable System.

1.18 "Franchise" means this document, a contractual agreement, and any amendments and modifications thereto executed between the City and Grantee, containing the specific provisions of the authorization granted to operate a Cable System in the City.

1.19 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.20 "Franchise Fees" means consideration paid by Grantee for the privilege to construct and/or operate a Cable System in the Franchise Area in accordance with Section 622 of the Cable Act.

1.21 "Gross Revenues" means, for the purposes of Franchise Fee calculations, all revenue derived directly or indirectly by the Grantee, or by Grantee's Affiliates, from the operation of Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Service and all other Tiers of Cable Service; Pay-Per-View Service; Cable Service installation, disconnection, change-in-service and reconnection fees; Leased Access Channel fees; late fees; payments received by the Grantee from programmers for carriage of Cable Services on the Cable System and recognized as revenue under generally accepted accounting principles ("GAAP"); revenues from rentals of Cable System equipment such as converters; advertising revenues; advertising sales commissions if recognized as revenue under GAAP; additional outlet fees; Franchise Fees; and revenues from home shopping Channels. Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) the Capital Contribution referenced in subsection 9.4; or (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise Fees are not such a tax and are therefore included in Gross Revenues.

This definition shall be construed so as to include all Gross Revenues to the maximum extent permitted by federal and State law, except to the extent specifically excluded in this section, and encompasses revenues that may develop in the future, whether or not anticipated. If a statutory change in State or federal law or a decision of the FCC or a court of competent jurisdiction expands the categories of revenue available to the City for the Franchise Fee assessment beyond those permitted under this definition as of the Effective Date, that change shall automatically be included in the definition of Gross Revenues under this Franchise, provided that the City imposes the same requirement upon any other similarly situated multichannel video provider over which the City has jurisdiction and authority to impose such fees.

1.22 "Headend" means Grantee's primary facility for signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors and other related equipment.

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

1.24 "Mosaic" or "Mosaic Channel" means a channel which displays miniaturized media screens and related information for a particular group of channels with common themes. The Mosaic Channel serves as a navigation tool for Subscribers, which displays the group of Access Channels on a single channel screen and also provides for easy navigation to a chosen Access Channel.

1.25 "Pay-Per-View Service" means programming offered on a per-program or per-event basis for which a separate fee is charged.

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

1.27 "Right-of-Way" or "Rights-of-Way" means all of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and are located within the city: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property and areas. To the extent that easements are designated for only certain functions or do not permit such Facilities, such easements will not be considered part of the Rights-of-Way.

1.28 "QC" means Qwest Corporation d/b/a CenturyLink ("QC"), an Affiliate of Grantee.

1.29 Qualified Living Unit means a distinct address in the QC network inventory database, including but not limited to single family homes, multi-dwelling units, and business locations, that meets the minimum technical qualifications defined by Grantee for provision of Cable Service.

1.30 "School" means any State accredited public educational institution including, for example, primary and secondary Schools (K-12).

1.31 "State" means the State of Washington.

1.32 "Subscriber" means any Person who lawfully receives Cable Service provided by Grantee by means of the Cable System and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System.

1.33 "Tier" means a group of Channels for which a separate periodic rate is charged.

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

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee 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 Rights-of-Way within the Franchise Area, and for that purpose to install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Right-of-Way such wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment and use existing poles as may be necessary or appurtenant for the deployment of Cable Services over the Cable System. This Franchise shall constitute both a right to provide

the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Grantee, through this Franchise, is granted the right to operate its Cable System using the Rights-of-Way within the Franchise Area. Such use must be in compliance with all lawfully enacted and applicable Normandy Park Municipal Code provisions including but not limited to Chapter 4.08 and 4.16, as the same is now or hereafter amended. Unless otherwise stated in this Franchise, in the event of a conflict between the Municipal Code and this Franchise, this Franchise shall control subject to the City's exercise of the police powers set forth below. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to any ordinance, regulation, resolution or other enactment of the City, except within the lawful exercise of the City's police power Grantee has the right to challenge any City ordinance or regulation that conflicts with its rights under this Franchise. Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such power so long as the same do not unduly discriminate against Grantee.

(C) This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide services other than Cable Service.

(D) Any Affiliate of Grantee directly involved in the offering or delivery of Cable Services in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, shall comply with the obligations of this Franchise. However, the Parties acknowledge that QC, an Affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Service, including Cable Services utilizing QC's Fiber-to-the-Premises Network or Fiber-to-the-node infrastructure. So long as QC does not provide Cable Services to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Rights-of-Way shall otherwise be subject to applicable laws and permit requirements. To the extent Grantee uses any third-parties (whether or not affiliated with Grantee) to fulfill its obligations under this Franchise, Grantee shall ensure such parties comply with the terms and conditions of this Franchise. To the extent Grantee constructs and installs Facilities in the Rights-of-Way, such Facilities will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for compliance with all provisions in this Franchise related to: 1) its offering of Cable Services in the Franchise Area; and 2) the operation of the Cable System regardless of which entity owns or constructs the Facilities used to provide the Cable Service.

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

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

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

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

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

(G) This Franchise expressly authorizes Grantee to provide only Cable Services as allowed by applicable law, and to construct, operate or maintain Cable System facilities in the Franchise Area. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide non-Cable Services or relieve Grantee of its obligation to comply with any such authorization(s) that may be lawfully required.

2.2 Use of Rights-of-Way

Within parameters reasonably related to the City's role in protecting the public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way and may deny access if Grantee is not willing to comply with the City's requirements.

2.3 Duration

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining hereto shall be ten (10) years from the effective date of this Franchise, unless terminated or extended as hereinafter provided.

2.4 Effective Date

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

(B) The effective date of this Franchise shall commence _____, 2016 (the "Effective Date") and run through midnight of _____, 2021. At the expiration of the initial term, the City may offer to extend this Franchise for an additional term of five (5) years by giving written notice to the Grantee, provided that there has not been a change in federal or State law which negatively impacts the City's ability to extend this Franchise. This Franchise may be extended for such additional term of five (5) years, subject to the written agreement of both parties.

2.5 Franchise Nonexclusive

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

2.6 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening, to the extent that the City is legally entitled to do so, in any legal or regulatory proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.7 Grant of Other Franchises

(A) This Franchise is not exclusive. The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City; provided, however, that no such franchise or similar lawful authorization shall contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein. 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 generally equivalent taking into account any difference in the number of Subscribers served, the number of PEG Channels and aggregate support provided, the level of fees and taxes imposed, the term of the Franchise, and all other circumstances affecting the relative burdens. If any such subsequent franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more materially favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee. Grantee shall have one hundred eighty (180) days from the effective date of such competitor's franchise to request modifications pursuant to this subsection 2.7(A).

(B) In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall notify the Grantee of such new cable television franchise application.

(C) Should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a franchise granted by the City, then Grantee shall have all rights which may be available to assert, at Grantee's option; that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

2.8 Relationship to Other Laws

This Franchise is subject to the lawful terms, conditions and provisions of 1) this Franchise; (2) the Normandy Park Municipal Code, as the same is now or hereafter amended by the lawful exercise of the City's police powers, except as provided in Section 10.1; and 3) the Communications Act of 1934, as amended by the Cable Consumer Protection Act of 1984, the Cable Communications Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as the same is now or hereafter amended.

SECTION 3. FRANCHISE FEES AND FINANCIAL CONTROLS

3.1 Franchise Fees

As compensation for the use of the City's Rights-of-Way, Grantee shall pay as a Franchise Fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise Fees shall commence as of the effective date of this Franchise. Grantee shall never be required to pay a Franchise Fee on a percentage basis higher than any other person required to have a cable franchise.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding quarter. Each payment shall be due and payable no later than thirty (30) days after the end of the preceding quarter, after which time interest will accrue. The quarters shall end respectively on the last day of March, June, September and December.

3.3 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Franchise Fee Reports

Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form which includes a breakdown by category of Grantee's Gross Revenues and the computation of the payment amount.

3.5 Audits

(A) Upon forty-five (45) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records necessarily related to the enforcement of this Franchise and to re-compute any amounts determined to be payable under this Franchise. If Grantee cooperates in making all relevant records available to the City, the City will attempt to complete each audit within six (6) months, and the audit period shall be no greater than the previous three (3) years, unless the City has information relating to previous years beyond the three (3) years which raises doubt as to the accuracy of payments made under this or previous franchises, in which case an additional three (3) years may be audited. Any undisputed amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the City, which notice shall include a copy of the audit findings. If the audit shows that Franchise Fees have been underpaid by five percent (5%) or more in any

calendar year, Grantee shall pay for the cost of the audit up to fifteen thousand dollars ($15,000) for the first year of the audit period and seven thousand five hundred dollars ($7,500) for each year thereafter.

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

3.6 Financial Records

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

3.7 Late Payments

In the event any payment due the City is not timely made, Grantee shall pay, in addition to the amount due, interest at the rate of twelve percent (12%) per annum from the payment due date until the City receives the payment.

3.8 Underpayments

If a Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest at the rate of twelve percent (12%) per annum calculated from the date the underpayment was originally due until the date the City receives the payment.

3.9 Maximum Franchise Fees

The parties acknowledge that, at present, applicable federal law limits the City to collecting a Franchise Fee of five percent (5%) of Gross Revenues in a 12-month period. In the event that at any time throughout the term of this Franchise, the City is authorized to collect an amount in excess of or less than five percent (5%) of Gross Revenues, then this Franchise shall be amended by the parties consistent with such change.

3.10 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers. Additionally, any security fund, performance bond or letter of credit shall not be offset against Franchise Fees. Furthermore, the City and Grantee agree that any utility tax, business and occupation tax or similar tax shall be in addition to any Franchise Fees required herein and there shall be no offset against Franchise Fees subject to applicable law. To the extent that any existing franchise awarded to a Cable Operator contains less burdensome Franchise Fee terms, Grantee will only be obligated to remit Franchise Fees consistent with the amounts and terms in such franchise. Following the renewal of any existing

franchise awarded to a Cable Operator or any new franchise awarded to a Cable Operator, Grantee shall follow the procedure described in Section 2.7 if it believes that such terms and conditions in this Franchise are not materially equivalent.

3.11 Compensation for Non-Cable Services

Nothing in this Franchise shall be construed as a limitation or expansion of the City's authority regarding compensation for the use of its Rights-of-Way for the provision of Non-Cable Services to the extent permitted by applicable law.

3.12 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City such compensation as is required by law.

3.13 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) days of the date of the termination, a financial statement, prepared by a certified public accountant, or representative of the Grantee's Controller or Chief Financial Officer, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. Within thirty (30) days of the filing of the statement with the City, Grantee shall pay any unpaid Franchise Fee amounts as indicated. If the Grantee fails to pay its remaining financial obligations as required in this Franchise, the City may satisfy the same by utilizing the funds from any security provided by the Grantee.

3.14 Tax Liability

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

3.15 Bundling of Cable and Non-Cable Services

In no event will the Grantee unlawfully evade or reduce applicable Franchise Fee payments required to be made to the City due to discounted bundled services. Customer billing shall be itemized by service(s), and Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

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

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

4.2 Rate Regulation

Grantee's rates and charges shall be published (in the form of a publicly-available rate card) in accordance with applicable State and Federal law, and shall be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all subscribers receiving similar cable service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability. Nothing herein shall be construed to prohibit:

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

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

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

4.3 Low Income Discount

Grantee shall provide reasonable needs-based discounts on Cable Services of not less than the amount provided by other Cable Operators serving the City as of the Effective Date of this Franchise, at a minimum to Subscribers that qualify for discounts under the Federal Lifeline/Link-up program. This subsection shall not prohibit Grantee from providing a larger discount or offering the discount to other economically or physically challenged Subscribers.

4.4 Performance Evaluations

(A) Upon written notification, the City may hold performance evaluation sessions whenever necessary to ensure proper performance of the provisions of this Franchise.

(B) All evaluation sessions shall be open to the public.

(C) Topics which may be discussed at any evaluation session include, but are not limited to, construction issues, Cable Service rate structures, Franchise Fee payments, liquidated damages, free or discounted Cable Service, application of new technologies, Cable System performance, Cable Services currently provided and programming offered, future plans of Grantee for new services or programs, Subscriber Complaints, privacy, modifications to this Franchise, judicial and FCC rulings, line extension policies and the City's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

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

4.5 Leased Access Channel Rates

Grantee shall offer Leased Access Channel capacity on such terms and conditions and rates as may be negotiated with each lessee, subject to the requirements of Section 612 of the Cable Act. Upon request, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels or portions of such Channels.

4.6 Late Fees

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

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

4.7 Reserved Authority

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

4.8 Time Limits Strictly Construed

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

SECTION 5. INDEMNIFICATION AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) Generally. Grantee, at its sole cost and expense, shall indemnify, defend and hold the City, its officers, officials, boards, commissions, authorized agents, representatives, and employees, harmless from any action or claim for injury, damage, loss, liability, proceeding, judgment, or cost or expense, including court and appeal costs and reasonable attorneys' fees and expenses, arising from any casualty or accident to Person or property, including, all damages in any way arising out of, or by reason of, any construction, excavation, erection, operation, maintenance, repair or reconstruction, or any other act done under this Franchise, by or for Grantee, its authorized agents, by reason of any neglect or omission of Grantee its authorized agents, employees, or authorized contractors. Grantee shall consult and cooperate with the City while conducting its defense of the City. Said indemnification obligations shall extend to any settlement made by Grantee.

(B) Indemnification for Relocation. Grantee shall indemnify, defend and hold the City, its elected officials, officers, authorized agents, boards, and employees, harmless for any damages, claims, additional costs, or expenses payable by, the City related to, arising out of, or

resulting from Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any lawful relocation required by the City. Pursuant to Section 5.1(A), the provisions of this Section 5.1(B) shall specifically include, but are not limited to, claims for delay, damages, costs, and/or time asserted by any contractor performing public work for or on behalf of the City.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost and expense, including court and appeal costs and reasonable attorneys' fees and expenses in any way arising out of any failure by Grantee to secure consents from the owners, authorized distributors or franchisees/licensors of programs to be delivered by the Cable System, provided however, that Grantee will not be required to indemnify the City for any claims arising out of the use of Access Channels by the City and/or its Designated Access Providers or use by the City of the Emergency Alert Cable System.

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall tender the defense of the claim or action to Grantee, which defense shall be at Grantee's expense. Nothing herein shall be deemed to prevent the City from cooperating with Grantee and participating in the defense of any litigation by its own counsel at its own cost and expense, unless and until separate representation is required. If separate representation to fully protect the interests of both parties is or becomes necessary as a result of a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. And, in any event, Grantee may not agree to any settlement of claims financially affecting the City without the City's written approval that shall not be unreasonably withheld.

(E) Duty to Give Notice. The City shall give Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section 5.1. The City's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the obligation and duty to defend any claims arising thereunder, and the City shall cooperate fully therein.

(F) Separate Representation. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall select other counsel without conflict of interest with the City.

(G) Waiver of Title 51 RCW Immunity. In the event that a particular activity conducted under this Franchise is subject to RCW 4.24.115, this Section 5.1(G) shall apply. Grantee's indemnification obligations shall include indemnifying the City for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this

indemnification for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of losses caused by and to the extent of Grantee's acts or omissions. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115; provided however, the forgoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees or other third party. The obligations of Grantee under this Section 5.1(G) have been mutually negotiated by the parties hereto.

(H) Concurrent Negligence. To the extent there is Liability, and the duty to indemnify, for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Grantee and the City, its officers, officials, employees, and volunteers, Grantee's duty to indemnify shall be only to the extent of Grantee's negligence.

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

(J) Notwithstanding the foregoing, Grantee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct, concurrent negligence, or breach of obligation of the City, its officers, committees, commissions, whether elected or appointed, volunteers, authorized agents, employees, attorneys, consultants, or independent contractors.

5.2 Insurance Requirements

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

(1) Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than two million dollars ($2,000,000) per occurrence. The general aggregate limit shall be no less than five million dollars ($5,000,000).

(2) Commercial Automobile Liability Insurance with minimum combined single limits of at least two million dollars ($2,000,000) each occurrence and five million dollars ($5,000,000) aggregate with respect to each of Grantee's owned, hired and non-owned, or any other vehicles assigned to or used in any activities authorized under or used in conjunction with this Franchise.

(3) Workers' Compensation insurance shall be maintained during the life of this Franchise to comply with State law for all employees.

(4) Excess or Umbrella Liability: $5,000,000 each occurrence and $5,000,000 policy limit.

(B) Each insurance policy shall be issued by an insurer rated A: VII or higher in the A.M. Best's Key Rating Guide. Each policy shall provide that the insurance shall not be canceled or terminated so as to be out of compliance with these requirements without forty-five (45) days' written notice first provided to the City via mail, and ten (10) days notice for nonpayment of any premium. If the insurance is canceled or terminated so as to be out of compliance with the requirements of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required under the terms of this Section 5.2 for so long as Grantee utilizes the Rights-of-Way or upon renewal of this Franchise. This obligation is separate and apart from any construction related insurance obligation as required under a construction permit. Any failure of Grantee to comply with the claim reporting provisions of the policy(ies) or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City. However, if coverage is not afforded under these circumstances, Grantee will indemnify the City for losses the City otherwise would have been covered for as an additional insured. All insurance policies, except Workers Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its officers, officials, agents, and employees for any claims arising out of Grantee's work or service. Grantee solely shall be responsible for deductibles and/or self-insured retention, and the City, at its option, may require Grantee to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable letter of credit.

(C) Endorsements. All policies shall contain, or shall be endorsed so that:

(1) The City, and the City's officers, officials, boards, commissions, agents, representatives, and employees are to be covered as, and have the rights of, additional insured's with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law; and

(2) Grantee's insurance coverage shall be primary insurance with respect to the City, the City Council and the City's officers, officials, boards, commissions, agents, and employees. Any insurance or self insurance maintained by the City, the City Council and the City's officers, officials, boards, commissions, agents, representatives, volunteers or employees shall be in excess of Grantee's insurance and shall not contribute to it, provided the occurrence arises out of Grantee's negligence; and

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

(D) Policy Requirements. Grantee's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City from coverage or asserting a claim under Grantee's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Grantee's insurance policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to

the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion.

(E) Verification of Coverage. Grantee shall furnish the City with certificates of insurance and an endorsement reflecting Additional Insured status upon the acceptance of this Franchise pursuant to Section 16.17. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City at the time of acceptance of this Franchise by Grantee with existing insurance coverage to be maintained by Grantee until that date. Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

(F) No Limitation of Liability. Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

5.4 Bonds

(A) Within 30 days after the effective date, Grantee shall provide to the City a faithful performance bond in the amount of one hundred thousand dollars ($100,000) and obtain additional bonds on a project specific basis as required by the Normandy Park Municipal Code or regulations.

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

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Unless otherwise provided for herein, the City and Grantee recognize the importance of customer service in the grant of this Franchise. Grantee shall comply with customer service standards as the same may be adopted and amended from time to time by the City Council, including, but not limited to, Normandy Park Municipal Code Chapter 4.16.140, as the same is now or hereafter amended. Grantee reserves the right to challenge any customer service standard that it believes is inconsistent with its contractual rights granted pursuant to this Franchise or State or federal law.

6.2 Subscriber Privacy

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

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

The City shall have access to, and the right to inspect, any books and records of Grantee and its Affiliates which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise at the Grantee's regional business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. The City may, in writing, request copies of any such records or books that are not identified as proprietary or confidential, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of Grantee. If the requested books and records are too voluminous, or identified as proprietary and confidential, or for security reasons cannot be copied or removed, then the City shall inspect them at Grantee's regional office. If any books or records of Grantee are not kept in a regional office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any Affiliate of Grantee that is not providing Cable Service in the Franchise Area. The City agrees to keep confidential any proprietary or confidential books or records of Grantee to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential or proprietary and how it may be treated as such under State or federal 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 subsection, 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. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the Person demanding access to such information within five (5) business days. While it is not a legal obligation, the City, as a courtesy, will allow Grantee up to ten (10) business days to obtain and serve the City with a court injunction to prevent the City from releasing the Documents. If Grantee fails to obtain a Court order and serve the City within the ten (10) business days, the City may release the Documents. The City will not assert an exemption from disclosure on Grantee's behalf.

7.3 Maps and Records Required

Grantee shall make available to the City upon request:

(A) A route map that depicts the general location of the Facilities placed in the Rights-of-Way shall be available for City review. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Grantee shall also provide, if requested, an electronic format of the aerial/underground Cable System facilities in

relation to the Right-of-Way centerline reference to allow the City to add this information to the City's GIS program;

(B) A copy of all FCC filings which relate to the operation of the Cable System in the Franchise Area; and

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

7.4 Submittal of Documents

Upon written request, Grantee shall submit to the City a copy of any application, notification, communication or document of any kind, submitted by Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other governmental bodies if such document directly relates to the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such documents to the City no later than forty-five (45) days after receipt of the City's request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been treated as confidential or determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.5 Annual Reports

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

(A) The most recently completed annual corporate report;

(B) A Gross Revenue statement for the preceding fiscal year and all deductions and computations for the period, and such statement shall be reviewed by a certified public accountant, who may also be the chief financial officer or controller of Grantee;

(C) A summary of the previous year's activities regarding the development of the Cable System, including, but not limited to, homes passed, beginning and ending plant miles, any technological changes occurring in the Cable System and the number of Subscribers for each class of Cable Service (i.e., Basic, Expanded Basic Service, premium, etc.); and

(D) An executive summary of Subscriber Complaints received in the previous year.

7.6 Regulatory Reports

Grantee shall provide copies to the City of any report, order, consent decree, or other formal determination of any regulatory agency having jurisdiction over Grantee pertaining to any alleged violation by Grantee of any applicable rule or law of the agency regarding Grantee's provision of Cable Services under this Franchise.

7.7 False Statements

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

7.8 Failure to Report

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

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

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

(A) News, weather and information;

(B) Sports;

(C) General entertainment including movies;

(D) Children, family oriented;

(E) Arts, culture and performing arts; and

(F) Science/documentary.

8.2 Deletion of Broad Programming Categories

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

8.3 Ascertainment of Customer Satisfaction

In the event Grantee conducts an ascertainment survey related to Franchise renewal under the guidelines of Section 626 of the Cable Act, Grantee agrees to provide, upon request, the results of said ascertainment survey to the City within thirty (30) days of the completion thereof.

8.4 Parental Control Device

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

SECTION 9. ACCESS

9.1 Access Channel

(A) For the purpose of meeting the community's need for Access programming, the Grantee shall make available one (1) Government Access Channel throughout the term of this Franchise. As of the effective date of this Franchise, the City controls and is operating one (1) Government Access Channel. Within one hundred eighty (180) days of the Effective Date,

unless extended by mutual agreement of the parties, Grantee shall make the City's Access Channel available to all Subscribers. Nothing in this Franchise prevents the City from collaborating with another neighboring community or communities, serviced by the Grantee, to facilitate the City's needs for Access programming. If such an arrangement is developed, the City may request in writing that the Grantee add the other community's Access Channel to the Channel line-up within the City, within one hundred eighty (180) days unless otherwise extended by mutual agreement of the parties. Grantee will use good faith efforts to make available the Government Access Channel in advance of the established timeframes and provide periodic updates on its progress upon request by the City. Grantee may make all Access Channels available on a Mosaic, and the parties shall mutually agree upon the Access Channel location.

(B) The City acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirements listed above. This is accomplished through the inclusion of other regional access programming within the regional channel line-up that services the Franchise Area. The Grantee will endeavor to provide the Subscribers in the Franchise Area with the other regional access channels so long as the programmers offer them for use on the Cable System. Access to other regional programming will be done through the use of a Mosaic Channel.

9.2 Management, Control and Connectivity of Access Channel

(A) The City may authorize Designated Access Providers to control, operate and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of the Access Channel. The City or its designee may formulate rules for the operation of the Access Channel, consistent with this Franchise.

(B) Regarding the City's and Designated Access Providers use of Access facilities and the Access Channel, Grantee shall fully cooperate with requests from the City, and provide all necessary assistance related thereto.

9.3 Location and Quality of Access Channel

(A) The Access Channel provided to Subscribers under this Franchise shall be included by Grantee as a part of the Basic Service Tier or as otherwise provided by federal law.

(B) Grantee shall provide as much notice as possible but not less than sixty (60) days advance written notice to the City prior to any relocation of the Access Channel. In connection with the movement of the Access Channel to another Channel number, Grantee shall provide a bill message on Subscribers' bills.

(C) The Access Channel shall have at least the same transmission quality as is used to carry any of the commercial Channels that deliver programming on the Cable System. The Grantee shall provide Headend and hub equipment and routine maintenance and repair and replace, if necessary, any of Grantee's equipment required to carry the Access signal to and from the City's and any other Access origination point and the Grantee's Headend and hubs for the Access Channel.

(D) If Grantee makes a change in its Cable System and related equipment and facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or method or type of transmission of Access programming or services, Grantee shall take necessary technical steps and provide necessary technical assistance, including the acquisition of all necessary equipment up to the point of demarcation and full training of Access personnel, to ensure that the capabilities of the Access Channel and delivery of Access programming are not diminished or adversely affected by such change. For example, live and taped programming must be cablecast with as good or better signal quality than existed prior to such change.

9.4 Monthly Capital Contribution

Grantee shall collect and remit the $0.25 per Subscriber per month contribution ("PEG Fee") to the City on a quarterly basis at the same time as Franchise Fees are paid. Upon forty-five (45) days written notice, the monthly PEG Fee may be adjusted, upon approval by the City Council up to $0.35. Grantee shall not be responsible for paying the PEG Fee with respect to gratis or Bad Debt accounts. The PEG Fee may be used by the City to support Access Channels in accordance with applicable federal law 47 U.S.C. § 542. Grantee acknowledges and voluntarily agrees that PEG Fees can be used for any capital and operating support or any other Access Channel related purpose. To the extent the City makes Access investments using City funds prior to receiving PEG Fees, the City is entitled to apply the subsequent PEG Fee payments from Grantee toward such City investments. The City agrees that the PEG Fees may be treated as external costs under applicable federal law. Once implemented, the City or its designee shall provide Grantee, on an annual basis, a statement showing the PEG Fee account balance, the amount expended including a detailed list of purchases, and the interest earned. Grantee shall never be required to collect and remit a different monthly per Subscriber amount than being collected from the incumbent cable provider from its subscribers as a PEG Fee.

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

10.1 Agreed Compliance with Municipal Code.

Construction work and maintenance of any and all Facilities within the City's Rights of Way shall be done in accordance with the Normandy Park Municipal Code, as the same is now or hereafter amended by the lawful exercise of the City's police powers. Grantee acknowledges that the City intends to modify Chapter 4.08 and 4.16 of the Normandy Park Municipal Code and hereby agrees to comply with all construction conditions and standards, permitting requirements, and general administration of the Rights-of-Way provisions, excluding those provisions that are specific to obligations within a franchise, including the provisions of Sections 2.1(D) and 12, as the Normandy Park Municipal Code now exists or is hereafter amended.

10.2 Right-of-Way Meetings

Subject to receiving advance notice, Grantee will attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Cable System.

10.3 Compliance with Applicable Codes

(A) City Codes. Grantee shall comply with all applicable City codes, including, without limitation, construction codes, building codes, the Fire Code and zoning codes and regulations.

(B) Regulations and Safety Codes. Grantee shall comply with all applicable federal, State and City safety requirements, rules, regulations, laws and practices. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.4 Reservation of City Use of Right-of-Way

Nothing in this Franchise shall prevent the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

10.5 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's and State's regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them. Grantee agrees to inspect its contractors and subcontractors on a regular basis and ensure that both its personnel, contractors and subcontractors provide clean-up of all workplaces and adhere to industry safety as well as all state and local safety standards.

SECTION 11. CABLE SYSTEM ARCHITECTURE/TECHNICAL STANDARDS

11.1 Subscriber Network

(A) Cable System Functionality. The Cable System shall have a bandwidth capable of providing the equivalent of a typical 750 MHz Cable System. As of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing two different methods. First, using a PON platform, the Grantee provides Cable Service to some Qualified Living Units by connecting fiber directly to the household ("FTTP"). Second, the Grantee provides Cable Service to some Qualified Living Units by deploying fiber further into the neighborhoods and using the existing copper infrastructure to increase broadband speeds ("FTTN"). Generally speaking, when Grantee deploys FTTN, households located within 4,000 cable feet of a remote terminal shall receive broadband speeds capable of providing Cable Service. In both the FTTP and FTTN footprint, a household receiving a minimum of 25Mbps shall be capable of receiving Cable Service after Grantee performs certain network grooming and conditioning. Grantee shall determine in its discretion where to Upgrade its network to convert these households to Qualified Living Units.

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

11.2 Standby Power
Grantee shall provide standby power generating capacity at the Headend and Central Offices of at least twenty-four (24) hours.

11.3 Emergency Alert
The Grantee shall provide an operating Emergency Alert System in accordance with and at the time required by the provisions of State and federal laws, including FCC regulations.

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

11.5 Cable System Performance Testing

(A) Grantee shall perform all technical tests presently or hereafter required by the FCC.

(B) Upon request, all required FCC technical performance tests may be witnessed by representatives of the City.

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

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

11.6 Additional Tests
In addition to the above, and to the extent applicable, where there exists other evidence which in the judgment of the City casts doubt upon the reliability or technical quality of the Cable System, after giving Grantee thirty (30) days prior written notice and a reasonable opportunity to cure, the City may retain an independent consultant to conduct an analysis of the Cable System and its performance. In conjunction with the foregoing notice and cure opportunity, the City shall also have the right and authority to require Grantee to conduct additional tests regarding the performance of the Cable System. Grantee shall fully cooperate with the City and the City's consultant in performing such testing. Following testing, the consultant's report shall include the following information:

(A) the nature of the evidence which precipitated the special tests;

(B) the Cable System component tested;

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

(D) the results of the testing and Cable System evaluation, including a description of any problem(s) found;

(E) the method, if any, in which such problem was resolved; and

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

If the test(s) indicate that the Cable System is not performing in compliance with FCC technical standards, the Grantee shall reimburse the City for all of the City's reasonable costs (including, without limitation, consultant's fees and expenses) with regard to such test(s).

SECTION 12. SERVICE EXTENSION AND SERVICE TO PUBLIC BUILDINGS

12.1 Service Availability

(A) Service Connections. Grantee shall provide Cable Services upon valid request, from any person in the City who resides in a Qualified Living Unit within seven (7) business days. A request shall be deemed placed on the date of signing a service agreement, receipt of funds by Grantee, or receipt by Grantee of a verified verbal or written request. Rates and charges may not exceed the Grantee's published rates.

(B) Grantee shall not deny cable service to any group of subscribers or potential residential subscribers based upon race or the income level of the local area in which such group resides, nor shall a grantee base decisions about construction or maintenance of its cable system or facilities based upon race or the income level of residents of the local area in which such group resides.

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

(D) The Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with this Franchise and applicable laws.

12.2 Permission of Property Owner or Tenant for Installation, and Treatment of Property Owner's Property

(A) If the Facilities pass over or under private or publicly owned property, Grantee is solely responsible for obtaining all necessary permission from the property owner.

(B) Grantee shall not install or attach any of its Facilities to any property without first securing the written permission of the owner or tenant of any property involved, or of such

other person who has the right to approve or disapprove the attachment (authorized party), except if there is an existing utility easement. If such permission or easement is later revoked, Grantee at the request of the authorized party shall promptly remove any of its facilities and promptly restore the property to its original condition at Grantee's expense. Grantee shall perform all such installations and removals in compliance with state and local law and shall be responsible for any damage to residences or other property caused by the installation or the removal. In the event Grantee fails to perform such restoration, the authorized party has the right to do so at the sole expense of Grantee. Demand for payment for such restoration must be submitted by the authorized party in writing to Grantee.

(C) Trees, shrubs, and other landscaping on a Subscriber's property that are damaged by Grantee, or any employee or authorized agent, during installation or construction for the Subscriber or in the process of serving adjacent structures, shall be restored to their prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner of the property on which they are located.

(D) Grantee shall, at its own cost and expense, and in a manner approved by the property owner and the City, restore any property to as good condition as before the work causing such disturbance was initiated. Grantee shall repair or replace any damaged property, or compensate property owners for damage resulting from Grantee's installation, construction, service, or repair activities for a Subscriber.

(E) Except in the case of an emergency involving public safety or a service interruption to a large number of Subscribers, or where Grantee has a legal right of access or entry, Grantee shall give reasonable notice to property owners or legal tenants before entering upon their private property, and the notice shall specify the work to be performed. In the case of construction operations, such notice shall be delivered or provided at least twenty-four (24) hours before entry. In the case of an emergency, Grantee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing in this Section authorizes access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. If damage is caused by Grantee's activity, Grantee shall reimburse the property owner one hundred percent (100%) of the cost of repairing the damage or replacing the damaged property. For the installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail or door hanger notice at least one (1) week in advance.

(F) Grantee shall clean all areas surrounding any work site of debris caused by Grantee's activities and ensure that all materials are disposed of properly.

12.3 Connection of City and Other Public Facilities

Grantee shall, upon request through the designated City representative and without charge, provide a standard installation and a minimum of one outlet of Basic and Expanded Basic Cable Services (and if necessary one (1) set top box) to City administrative buildings as designated by the City (whether they are owned or leased), and fire station(s), police station(s), libraries, Access facilities and K-12 public School(s), provided that such City buildings are designated as Qualified Living Units and no other Cable Operator is providing Cable Services at such location. Grantee acknowledges that the police station shares a common building with City Hall located

at 801 SW 174th Street, Normandy Park, Washington. To the extent City Hall and the Police Station are a Qualified Living Unit and no other Cable Operator is providing Cable Services at such location, Grantee will provide a standard installation and a minimum of one (1) set top box to City Hall and the police station located at 801 SW 174th Street, Normandy Park, Washington. If the City building is designated as a Qualified Living Unit and another Cable Operator is providing Cable Services at such location, and the City building requests that Grantee be its Cable Operator, Grantee shall install and furnish, at its sole cost, Complimentary Cable Service to said building once the other Cable Operator's service is disconnected. A list of City and other public buildings that may qualify for such service is identified on Exhibit A. The recipient of the service will secure any necessary right of entry. The Cable Service will not be used for commercial purposes, and the outlets will not be located in jail cells or areas open to the public, except for one outlet to be located in a public lobby in City Hall that will be used by the public for viewing the Government Access Channel. The City will take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, loss or damage to the Cable System. If additional outlets of Cable Service are needed in such buildings, only the Grantee is authorized to complete the Cable Service expansion to support the outlet installation(s) and the building occupant will pay the standard installation fees, and pay the costs of any additional set top boxes. The costs associated with these services shall not be offset against Franchise Fees, unless another franchised cable provider in the City is permitted to such an offset. To the extent that any existing franchise awarded to a Cable Operator contains less burdensome terms related to complimentary service, Grantee will only be obligated to provide such complimentary service consistent with the amounts in such franchise. Following the renewal of any existing franchise awarded to a Cable Operator or any new franchise awarded to a Cable Operator, Grantee shall follow the procedure described in Section 2.7 if it believes that such terms and conditions in this Franchise are not materially equivalent.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Non-Material Franchise Violations

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

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

(2) cure the default; or

(3) notify the City that Grantee cannot cure the default within thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to

determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or denies the default and requests a meeting in accordance with subsection (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than fifteen (15) business days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or breach within thirty (30) days or within such other reasonable timeframe, beyond thirty (30) days as the City shall determine. In the event Grantee does not cure the default within such time to the City's reasonable satisfaction, the City may:

(1) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or

(2) Pursue any other legal or equitable remedy available under this Franchise or applicable law.

(D) The determination as to whether a non-material violation of this Franchise has occurred shall be within the discretion of the City. Any such determination by the City must be in writing and must be based upon findings that include Grantee's submissions, provided that any such determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

13.2 Material Franchise Violations

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

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

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

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

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

(5) If Grantee fails to provide the insurance or other security required by this Franchise.

(B) Prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation and evidence: (1) that corrective action has been, or is being actively and expeditiously, pursued to remedy the violation or noncompliance; (2) that rebuts the alleged violation or noncompliance; or (3) that it would be in the public interest to impose some penalty or sanction less than revocation. In the event the City has not received a timely and satisfactory response from Grantee, it may then seek a termination of the Franchise in accordance with this subsection.

(C) The City Council, or at the City Council's option the hearing examiner, shall conduct a public hearing to determine if revocation of the Franchise is warranted.

(1) At least thirty (30) days prior to the public hearing, the City Clerk shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City Council, or hearing examiner, shall hear any Persons interested therein; and provide that the Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

(2) A verbatim transcript shall be made by a court reporter of such proceeding and the cost shall be paid by the Grantee.

(3) Within thirty (30) days after the close of the hearing, the City Council shall issue a written decision regarding the revocation and termination of the Franchise. In the alternative, if the hearing examiner conducts a public hearing, then his/her written findings and recommendation regarding the revocation and termination of the Franchise shall be provided to the City Council within thirty (30) days after the close of the hearing. The City Council shall then issue a written decision regarding the revocation and termination of the Franchise within thirty (30) days of receipt of the hearing examiner's written findings and recommendations.

(D) Grantee is responsible to pay all estimated costs associated with a hearing examiner's review in advance of such review. The City shall provide to Grantee the estimated costs for the hearing examiner within fourteen (14) days of the hearing. However, should the City Council issue a decision in favor of Grantee, all pre-paid costs shall be returned to Grantee.

(E) Grantee shall be bound by the City Council's decision to revoke the Franchise unless an appeal to a court of competent jurisdiction is filed within thirty (30) days of the date of the City Council's decision.

(F) Grantee and the City shall be entitled to such relief as the court may deem appropriate.

13.3 Termination

(A) If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(1) Require Grantee to maintain and operate its Cable System on a month-to-month basis until a new cable operator is selected; or

(2) Purchase Grantee's Cable System in accordance with federal law.

(B) The City may order the removal of the above-ground Cable System facilities, used exclusively for the provision of Cable Service, and such underground facilities from the City at Grantee's sole expense within thirty (30) days following notice from the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment and without affecting electrical or telephone wires or attachments. The indemnification, insurance provisions and letter of credit, if any, shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3(B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs and expenses incurred within thirty (30) days after receipt of an itemized list of the costs and expenses, or the City may recover the costs and expenses through the Grantee's security instruments if Grantee has not paid such amount within the foregoing thirty (30) day time period. Any costs and expenses incurred by the City regarding such removal shall be included in the monies due the City from the Grantee, including reasonable attorneys' fees, and costs and expenses for work conducted by the City staff or its agents.

13.4 Receivership

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

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

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

13.5 Alternative Remedies

No provision of this Franchise shall be deemed to bar the City or Grantee from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to

recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law (including, for example, Section 635A of the Cable Act).

13.6 Assessment of Liquidated Damages

(A) Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the City elects to assess liquidated damages as provided in this Franchise, such damages shall be the City's sole and exclusive remedy for such breach or violation and shall not exceed a time period of one hundred eighty (180) days in any calendar year. Nothing in this subsection is intended to preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach.

(B) The City shall not assess any liquidated damages if the Grantee has cured or commenced to and completes the cure pursuant to Section 13.6(G) of this Franchise. In the event Grantee fails to cure, the City may assess liquidated damages and shall inform Grantee in writing of the assessment. Grantee shall have thirty (30) days to pay the damages.

(C) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City.

(D) Grantee may appeal and/or seek injunctive relief (by pursuing judicial relief) of any assessment of liquidated damages within thirty (30) days of such assessment. If a court of competent jurisdiction overturns the City's assessment of liquidated damages, the City shall repay Grantee such liquidated damages promptly, but no later than thirty (30) days from the effective date of such decision.

(E) Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts: one hundred dollars ($100.00) per day for material departure from the FCC technical performance standards; one hundred dollars ($100.00) per day for failure to provide the Access Channel or any equipment related thereto which is required hereunder; one hundred dollars ($100.00) per day for each material violation of the Customer Service Standards; one hundred fifty dollars ($150.00) per day for failure to provide reports or notices as required by this Franchise; two hundred fifty dollars ($250.00) per day for failure to comply with construction, operation, or maintenance standards; and two hundred fifty dollars ($250.00) per day for any material breaches or defaults not previously listed.

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

(G) Procedure for imposing Liquidated Damages.

(1) Whenever the City believes that Grantee has violated one or more terms, conditions or provisions of this Franchise, and liquidated damages will be sought, a written notice shall be given to Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the City may impose Liquidated Damages, unless the violation is of such a nature so as to require more than thirty (30) days and Grantee proceeds diligently within the thirty (30) days to correct the violation.

(2) Grantee may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall specify with particularity the matters disputed by Grantee. The dispute shall then be resolved by appeal to the City Council, or at its option the hearing examiner, as described in Section 13.2(C).

(H) To the extent that any existing franchise awarded to a Cable Operator contains less burdensome liquidated damages amounts or terms, Grantee will only be obligated to remit liquidated damages consistent with the amounts in such franchise. Following the renewal of any existing franchise awarded to a Cable Operator or any new franchise awarded to a Cable Operator, Grantee shall follow the procedure described in Section 2.7 if it believes that such terms and conditions in this Franchise are not materially equivalent.

13.7 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may obtain an injunction, or operate the Cable System, or designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City. If the City operates the Cable System, or designates another entity to operate the Cable System, the Grantee shall reimburse the City or the City's designee, as applicable, for all reasonable costs and expenses incurred. If Grantee permanently abandons its entire Cable System, then, at the City's sole discretion, such Cable System may become the property of the City, and Grantee shall then submit to the City a bill of sale and other conveyance documents, to be approved in advance by the City Attorney, transferring ownership of such property to the City.

SECTION 14. FRANCHISE RENEWAL

Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures or substantive protections set forth therein shall be deemed to be preempted or superseded by the provisions of any subsequent federal or State law.

SECTION 15. FRANCHISE TRANSFER

(A) Except as allowed under subsection (G), the Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person without the prior written consent of the City, which consent shall not be unreasonably withheld.

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

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

(D) The City may condition said sale, transfer or change of control upon such terms and conditions as it deems reasonably appropriate, including, for example, any adequate guarantees or other security, as allowed by applicable law. Additionally, the prospective controlling party or transferee shall effect changes as promptly as practicable in the operation of the Cable System, if any changes are necessary, to cure any violations or defaults presently in effect or ongoing.

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

(F) Within thirty (30) days of any transfer, sale or change of control, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee or new controlling entity. In the event of a sale or transfer of ownership, the transferee shall also file its written acceptance agreeing to be bound by all of the provisions of this Franchise. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise and will not be required to file an additional written acceptance. The approval of any change in control shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise.

(G) Notwithstanding the foregoing, the City's consent shall not be required for a mortgage, hypothecation or an assignment of Grantee's interest in the Franchise in order to secure indebtedness or for a transfer to an intra-company Affiliate, provided that the Grantee must reasonably notify the City within thirty (30) days and the Affiliate must have the requisite legal, financial and technical capability.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Discriminatory Practices Prohibited

Throughout the term of this Franchise, Grantee shall fully comply with all equal employment and nondiscrimination provisions of applicable law.

16.2 Notices

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

Grantee's address shall be:

Qwest Broadband Qwest Broadband Services, Inc., d/b/a CenturyLink
1600 7th Ave
15th Floor
Seattle, WA 98101

With a copy to:

Qwest Broadband Qwest Broadband Services, Inc., d/b/a CenturyLink
1801 California St.
10th Floor
Denver, Colorado 80202-2658

City's address shall be:

City of Normandy Park
801 SW 174th Street
Normandy Park, WA 98166-3661
Attention: City Clerk

16.3 Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City.

16.4 Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

16.5 Binding Effect

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

16.6 Authority to Amend

In addition to police powers this Franchise may also be amended at any time by mutual written agreement between the parties.

16.7 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with federal, State and local laws and any applicable rules, regulations and orders of the FCC (as such now exist, are later amended or subsequently adopted). The venue for any dispute related to this Franchise shall be United States District Court for the Western District of Washington or in King County Superior Court.

16.8 Captions

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

16.9 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other. Further, the Grantee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City.

16.10 Cooperation

The parties recognize that it is in their mutual best interests for the Cable System to be operated as efficiently as possible. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Franchise.

16.11 Waiver

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

16.12 Severability

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

16.13 Entire Agreement

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written negotiations between the parties.

16.14 Force Majeure

(A) The Grantee will not be held in violation under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement relating thereto, where such

noncompliance or alleged violation occurred or was caused by circumstances reasonably beyond the ability of the Grantee to control. This includes war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages or slow downs not attributable to Grantee's employees, strikes, or power outages exceeding backup power supplies, and work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached as well as verifiable unavailability of materials and/or qualified labor to perform the work necessary.

(B) Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City.

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

16.15 Attorneys' Fees

In any action or suit arises in connection with this Franchise (excluding Franchise renewal proceedings), the substantially prevailing party shall be entitled to receive reasonable attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper.

16.16 No Recourse Against the City

Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief, except where the Grantee's claim arises from acts or omissions of the City acting in a proprietary capacity, but only to the extent such relief is not prohibited by federal law. For purposes of this section, the City shall not be considered to be acting in a proprietary capacity in granting, modifying, denying, terminating, or enforcing Franchises.

16.17 Acceptance

Within forty-five (45) days after the passage and approval of this Franchise by Ordinance by the City Council, and receipt of the Franchise by Grantee, this Franchise shall be accepted by Grantee by filing with the City its written acceptance of all of the terms, provisions and conditions of this Franchise. The failure of Grantee to file such an acceptance shall be deemed a rejection by Grantee, and this Franchise shall then be voidable at the discretion of the City.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Normandy Park, Washington, this 8 day of March, 2016.

THE CITY OF NORMANDY PARK

MAYOR, JONATHAN CHICQUETTE

ATTEST/AUTHENTICATED:

THE CITY CLERK, DEBBIE BURKE

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

THE CITY ATTORNEY, JAMES E. HANEY

Vote	Bishoff	Chicquette	Waters	Sipes-Marvin	Munslow	Rankin
Ayes:	✓	✓	✓	✓	✓	✓
Nays:						
Abstentions:						
Absent:						

FILED WITH THE CITY CLERK: March 8, 2016
PASSED BY THE CITY COUNCIL: March 8, 2016
PUBLISHED: March 18, 2016
EFFECTIVE DATE: March 23, 2016
ORDINANCE NO. 935

EXHIBIT A

MUNICIPAL BUILDINGS AND SCHOOLS TO BE PROVIDED FREE CABLE SERVICE

Future Buildings:

Grantee will provide one service outlet (and if necessary one (1) set top box) active for Basic Service and Expanded Basic Service for any new City buildings in the Franchise Area, as identified in Section 12.3, provided that such City buildings are designated as Qualified Living Units and no other Cable Operator is providing Cable Services at such location. If the City building is designated as a Qualified Living Unit and another Cable Operator is providing Cable Services at such location, and the City building requests that Grantee be its Cable Operator, Grantee shall install and furnish, at its sole cost, Complimentary Cable Service as set forth herein to said building once the other Cable Operator's service is disconnected.

EXHIBIT B

STATEMENT OF ACCEPTANCE

Qwest Broadband Services, Inc. d/b/a CenturyLink ("CenturyLink") for itself, its successors and assigns, accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached and incorporated by this reference. CenturyLink declares that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of the Franchise and agrees to abide by such terms and conditions. CenturyLink has relied upon its own investigation of all relevant facts and it has not been induced to accept this Franchise and it accepts all reasonable risks related to the interpretation of this Franchise.

Qwest Broadband Services, Inc. d/b/a CenturyLink

By: _____ Date: 03/18/16
Name: Torry Somers
Title: VP Video

ACKNOWLEDGEMENT

STATE OF NEVADA)
)SS.
COUNTY OF CLARK)

I certify that I know or have satisfactory evidence that Torry Somers is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the VP Video of Qwest Broadband to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 3/18/16.

Notary Seal
CONNIE M. DIKE
Notary Public, State of Nevada
Appointment No. 93-0297-1
My Appt. Expires Nov 9, 2017

Connie M. Dike
(Signature of Notary)

CONNIE M. DIKE
(Legibly Print or Stamp Name of Notary)
My appointment expires: 11/09/17