

**CABLE TELEVISION SYSTEM  
FRANCHISE AGREEMENT**

**Between**

**CITY OF VANCOUVER, WASHINGTON**

**and**

**TCI OF SOUTHERN WASHINGTON**

**As approved 11/17/97 by Ordinance M-3333, incorporating amendments approved 12/15/97 by Ordinance M-3335.**

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## **CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT**

This Cable Television System Franchise Agreement ("Agreement") is entered into in Vancouver, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by and between the **CITY OF VANCOUVER** ("Grantor" or "City"), and **TCI OF SOUTHERN WASHINGTON**, a partnership ("Grantee").

WHEREAS, the Grantor is authorized to grant one or more nonexclusive Franchises to construct, operate and maintain a cable television system within the municipal boundaries of the City; and

WHEREAS, the Grantor has considered the financial condition, technical ability and legal qualifications of Grantee; and

WHEREAS, the Grantor, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the financial, technical and legal qualifications of Grantee to provide cable television service within the City; and

WHEREAS, the Grantee is willing to accept this Agreement subject to such terms and conditions, and to abide by those terms and conditions; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's application to provide cable television service within the City;

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

### **SECTION 1. DEFINITIONS**

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

**1.1** **“Access”** means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video, Cable Service, and signals as permitted under applicable law, including, but not limited to:

(A) **“Public Access”** which means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users;

(B) **“Educational Access”** which means Access where Schools are the primary users of programming and service;

(C) **“Governmental Access”** which means Access where governmental institutions or their designees are the primary users of programming and service; and

(D) **“PEG Access”** which means Public Access, Educational Access, and Governmental Access, collectively.

**1.2 “Access Center”** means a facility or facilities where Public, Educational, or Governmental use signals are managed and delivered to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

**1.3 “Access Channel”** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.

**1.4 “Affiliate”** when used in connection with Grantee means any corporation, Person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

**1.5 “Basic Service”** means any service tier which includes the retransmission of local television broadcast signals and Public, Educational and Governmental Access Channels, or as such service tier may be further defined by federal law.

**1.6 “Cable Acts”** mean the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996, and any future federal cable television legislation.

**1.7 “Cable Operator”** means any Person or groups of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

**1.8 “Cable Service”** means the one-way transmission of video programming or other programming service to Subscribers, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**1.9 “Cable System”** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

**1.10 “Cable TV Commission”** means the Cable Television Commission which advises the City/Clark County on matters pertaining to cable television.

**1.11 “Channel”** means a portion of the electromagnetic spectrum which is used in a Cable System and is capable of delivering a television Channel, as television Channel is defined by the FCC in other applicable regulations.

**1.12 “Designated Access Provider”** means the entity or entities designated by the Grantor to manage or co-manage Public, Educational or Governmental use Channels and facilities. The Grantor may be a Designated Access Provider.

**1.13 “Downstream”** means the transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

**1.14 “FCC”** means the Federal Communications Commission.

**1.15 “Franchise”** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.

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

**1.17 “Gross Revenues”** means all amounts accrued by Grantee in whatever form and from all sources, from the operation of Grantee's Cable System to provide Cable Service within the Franchise Area. "Gross Revenues" shall include, without limitation, all amounts for all Cable

Services, including, but not limited to, Basic, expanded basic, premium, and pay-per-view services, advertising sales and installation fees and charges. "Gross Revenues" shall also include any revenue received by any Affiliate of Grantee where such revenue in the ordinary course of business has been paid or should have been paid to Grantee from the operation of its Cable System to provide Cable Service within the Franchise Area. By way of illustration and not limitation, this definition would include revenue derived from the sale of Cable System advertising time by an Affiliate of Grantee. "Gross Revenues" shall not include bad debt, sales taxes, or other taxes which are collected by Grantee on behalf of, and for payment to, the local, state or federal government.

**1.18** **“Headend”** means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.

**1.19** **“Institutional Network”** or **“I-NET”** means the institutional network connecting public facilities and organizations within the Franchise Area described in greater detail in this Agreement.

**1.20** **“Interconnect”** means the provision by Grantee of technical, engineering, physical, and all other necessary components to maintain a physical linking of Grantee's Cable System and Cable Service or any designated Channel or signal pathway thereof with neighboring Cable Systems, so that Cable Service of technically adequate quality may be sent to, and received from, other systems in accordance with this Agreement.

**1.21** **“Leased Access Channel”** means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public.

**1.22** **“Origination Point”** means a location other than an Access Center, where Public, Educational or Governmental use programming is delivered to the Grantee for Upstream transmission.

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

**1.24** **“School”** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools, and colleges and universities.

**1.25** **“Street”** means each 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 located within the Franchise Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas.

**1.26** “**Subscriber**” means any Person who elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System.

(A) “**Commercial Subscriber**” which means any Subscriber other than Residential Subscriber.

(B) “**Residential Subscriber**” which means any Person who receives Cable Service delivered to single or multiple dwelling units, excluding such multiple dwelling units billed on a bulk-billing basis.

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

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

### **2.1 Grant**

(A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Streets within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing only Cable Services and to provide a related I-NET for voice, video and data, subject to the terms and conditions set forth in this Agreement.

(B) This Agreement is intended to convey limited rights and interests only as to those Streets in which the Grantor has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide the Grantee any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the Grantor's Streets covered by this Agreement, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

(C) This Agreement is subject to the general lawful police power of Grantor affecting matters of municipal concern and not merely existing contractual rights of Grantee. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor.

(D) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6), as amended and to provide a related I-NET for

voice, video, and data as described in Section 11.2. This Agreement shall not be interpreted to prevent the Grantor from imposing additional conditions, including additional compensation conditions for use of the rights-of-way should Grantee provide service other than Cable Service and the I-NET as described herein. However, this Agreement shall not be read as a concession by Grantee that it needs authorization to provide service other than Cable Service and the I-NET described herein.

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

## **2.2 Use of Public Streets and Ways**

Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public Streets, including rights-of-way and public easements within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter, and must obtain any and all necessary permits from the Public Works Department prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement.

## **2.3 Duration**

(A) The term of this Agreement and all rights, privileges, obligations and restrictions pertaining thereto shall be from the effective date of this Agreement through December 31, 2007, unless extended or terminated sooner as hereinafter provided.

(B) If Grantee successfully completes an upgrade of its Subscriber network to 750 MHz before December 31, 2007, or within one (1) year of a 750 MHz upgrade, to any of its Franchise Service Areas within the greater Portland/Vancouver metropolitan area within ownership and management of TCI Cablevision, Inc., of Oregon, as of the effective date of this Agreement, and if such upgrade meets with the reasonable satisfaction of the Grantor, then Grantee shall be entitled to a five (5) year extension of its Franchise term (that is, through

December 31, 2012).

## **2.4 Effective Date**

The effective date of this Agreement shall be November 27, 1997, unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by December 31, 1997, in which event this Agreement shall be null and void, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Agreement are hereby terminated.

## **2.5 Franchise Nonexclusive**

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, right-of-way, easement, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may at any time grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional Franchises for Cable Systems as Grantor deems appropriate, upon such terms and conditions as Grantor deems appropriate.

## **2.6 Grant of Other Franchises**

(A) In the event the Grantor enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Grantor's public ways for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, in which the Grantee is actually providing Cable Service under the terms and conditions of this Agreement or is required to extend Cable Service to under the provisions of Section 13.2 of this Agreement, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

(B) If Grantor grants a Franchise to a third party for service to an area that Grantee is not actually serving or required to extend service to, and which has material provisions that are not reasonably comparable to those contained herein, Grantor shall offer Grantee a Franchise to serve the same area under terms and conditions that are reasonably comparable to those set forth in the Franchise Agreement entered into with the third party.

## **2.7 Police Powers**

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and

enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

## **2.8 Relations to Other Provisions of Law**

This Franchise Agreement and all rights and privileges granted under the Franchise are subject to, and the Grantee must exercise all rights in accordance with, applicable law, including the Cable Ordinance, as amended over the Franchise term. However, this Franchise is a contract, subject only to the Grantor's exercise of its police and other powers and applicable law. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. In the case of any conflict between the express terms of this Franchise Agreement and the express terms of the Cable Ordinance, this Franchise Agreement shall govern, provided that, in cases of conflict between this Franchise Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern. Grantee does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. The Franchise issued and the Franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein.

## **2.9 Effect of Acceptance**

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

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

## **3.1 Franchise Fee**

As compensation for the benefits and privileges granted under this Agreement and in consideration of permission to use Grantor's Streets, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues derived from the operation of the Cable System to provide Cable Service in the Franchise Area. Accrual of such Franchise fees shall commence as of the effective date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes or payments of general applicability that the Grantee may be required to pay under any federal, state or local law. This Agreement and the Franchise fees paid hereunder are

not in lieu of any other generally applicable required permit, authorization, fee, charge or tax.

### **3.2 Payments**

Grantee's Franchise fee payments to Grantor shall be computed quarterly. Each quarterly payment shall be due and payable no later than forty-five (45) days after the last day of the preceding quarter.

### **3.3 Acceptance of Payment and Recomputation**

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

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

Each payment shall be accompanied by a written report to Grantor, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

### **3.5 Annual Franchise Fee Reports**

Grantee shall, no later than one-hundred twenty (120) days after the end of each calendar year, furnish to Grantor a statement stating the total amount of Gross Revenues and all payments, deductions and computations for the period covered by the payments. Such statement shall be reviewed by an independent certified public accountant prior to submission to Grantor.

### **3.6 Audits**

On an annual basis, upon thirty (30) days' prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Agreement, in accordance with generally accepted accounting principles. The Cable TV Commission may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that Franchisee fees have been underpaid by four percent (4%) or more, Grantee shall pay the total cost of the audit.

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

In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the interest rate specified for judgments entered in the Superior Court of the State of Washington.

### **3.8 Alternative Remedies.**

If any Section, subsection, paragraph, term or provision of this Franchise Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term or provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other Section, subsection, paragraph, term or provision hereof. Under such a circumstance, the Grantee shall, upon the Grantor's request, meet and confer with the Grantor to consider amendments to the Franchise Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within sixty (60) days, either party may either (1) resort to litigation to amend the Agreement; or (2) shorten the Agreement to 36 months, at which point either party may invoke the renewal procedures under 47 U.S.C. subsection 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

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

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees to Grantor. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Agreement 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 as defined under any federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

### **3.10 Costs of Publication**

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement and any amendments thereto, as such notice or publication is reasonably required by Grantor or applicable law.

### **3.11 Tax Liability**

Payment of the Franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or

charge on the business, occupation, property or income of Grantee that may be imposed by Grantor.

### **3.12 Payment on Termination**

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a Letter of Credit or other security provided by the Grantee.

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

### **4.1 Authority**

Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.

### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.

### **4.3 Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card), 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, or geographic location in the Franchise Area. Grantee shall provide equivalent Cable Service to all residential Subscribers at similar rates and to commercial Subscribers as authorized by applicable laws. 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 senior citizens or economically disadvantaged citizens;

(C) Grantee from establishing different and nondiscriminatory rates and charges and classes of service for commercial customers, as well as different nondiscriminatory monthly rates for classes of commercial customers as allowable by federal law and regulations; or

(D) Grantee from establishing different and nondiscriminatory rates and charges for residential Subscribers as allowable by federal law and regulations.

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

(A) Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns provided that Grantee shall make reasonable efforts to notify Grantor in writing in advance of such promotions.

(B) Grantee shall provide upon request from Grantor a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels.

#### **4.5 Time Limits Strictly Construed**

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond the reasonable control of Grantee, such as acts of God (for example, floods, tornadoes, earthquakes or unusually severe weather conditions), Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for such obligation which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

#### **4.6 Performance Evaluation Sessions**

(A) Grantor may hold regular performance evaluation sessions annually on the anniversary dates of the effective date of this Agreement. All such evaluation sessions shall be conducted by Grantor.

(B) Special evaluation sessions may be held at any time by Grantor during the term of this Agreement.

(C) All regular evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.

(D) Evaluation sessions shall deal with the Grantee's performance of the terms and conditions of the Franchise and compliance with state and federal laws and regulations.

(E) As part of the annual performance evaluation session, Grantee shall submit to the Grantor a plant survey report, or map, acceptable to the Grantor which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available, including those areas where the system has been upgraded pursuant to Section 11 of this Agreement. Such report shall also include the number of miles and location of overhead and underground cable plant, the number of miles and location of the "B" cable, and the number of miles (overhead and underground) and location of the I-NET as described in Section 11. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, retains the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.

(F) During evaluations under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation.

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

### **5.1 Insurance Requirements**

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

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

(1) Commercial General Liability: Two-million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two-and-one-half million dollars (\$2,500,000)

aggregate limit;

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

(3) Employer's Liability: Two-million dollars (\$2,000,000).

## **5.2 Deductibles and Self-Insured Retentions**

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

### **(A) Endorsements.**

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

(a) The Grantor, its officers, officials, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;

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

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

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

(a) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been given to the City Manager.

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

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

### **5.3 Indemnification**

(A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the grant of this Agreement pursuant to Section 2.9 of this Agreement. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

(1) To Persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees, or agents, or to which the Grantee's negligence shall in any way contribute;

(2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels by Grantor and/or Designated Access Providers;

(3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies; and

(4) Arising from any third party suit, action or litigation, whether brought by

a competitor to Grantee or by any other Person or entity, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.

(B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorneys' fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorneys' fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

#### **5.4 Letter of Credit**

(A) No later than the effective date of this Agreement, Grantee shall establish and provide to Grantor, as security for the faithful performance by Grantee of all provisions of this Agreement, a Letter of Credit in the amount of one-hundred-thousand dollars (\$100,000). The Letter of Credit shall be filed in a form acceptable to the Grantor and issued by a financial institution acceptable to the Grantor, provided the Grantor, in its sole discretion, may direct that the Letter of Credit be issued by a local financial institution.

(B) The Letter of Credit shall be maintained at one-hundred-thousand dollars (\$100,000) throughout the term of this Agreement.

(C) The Letter of Credit may be assessed by Grantor for various purposes including, but not limited to, the following:

(1) Failure of Grantee to pay Grantor sums due under the terms of this Agreement;

(2) Reimbursement of costs borne by Grantor to correct violations of this Agreement not corrected by Grantee;

(3) Liquidated damages assessed against Grantee due to violations of the requirements of this Agreement; and

(4) Failure to comply with the Customer Service Standards.

(D) Grantee agrees that it shall not attempt, through litigation or otherwise, to prevent or inhibit Grantor from drawing on the Letter of Credit. Grantee shall have the right of a de novo court appeal if Grantee believes the Letter of Credit has not been properly drawn in accordance with this Agreement. Any funds Grantor erroneously or wrongfully withdraws from the Letter of Credit shall be returned to Grantee, with interest from the date of withdrawal at a rate equal to the prime rate of interest as quoted by Seafirst Bank, within thirty (30) business days of a final determination that the withdrawal was in error or wrongful.

(E) If Grantee fails within thirty (30) days after the date of written notice to pay to Grantor any franchise fees, assessment or taxes lawfully due which Grantor determines can be remedied by a draw upon the Letter of Credit, Grantor may thereafter withdraw the amount thereof from the Letter of Credit. Upon such withdrawal, Grantor shall notify Grantee of the amount and date thereof. Within seven (7) days following receipt by Grantee of written notice from Grantor that any amount has been withdrawn from the Letter of Credit, Grantee shall restore such Letter of Credit to the amount required under this Agreement. Failure by Grantee to so restore the Letter of Credit shall be considered a material violation of this Agreement.

(F) The Letter of Credit deposited pursuant to this Section shall become the property of Grantor in the event that this Agreement is lawfully terminated or revoked for cause by reason of the violation by Grantee, and Grantee has exhausted all of its remedies relating thereto. Grantee, however, shall be entitled to the return of the Letter of Credit deposited in accordance with this Section, or any portion thereof remaining upon normal expiration of this Agreement.

(G) The rights reserved to Grantor with respect to the Letter of Credit are in addition to all other rights of Grantor whether reserved by this Agreement or authorized by law or equity, and no action, proceeding or exercise of a right with respect to such Letter of Credit shall constitute a waiver of any other right Grantor may have.

(H) A single Letter of Credit for the amount required herein, shall satisfy the requirements of both the City of Vancouver and Clark County as Grantors, pursuant to VMC 5.19 and Clark County Code Chapter 36, respectively.

## **5.5 Performance Bond**

(A) Concurrent with the effective date of this Agreement, Grantee shall post a performance bond in the amount of one-million dollars (\$1,000,000). Upon the successful completion of the system upgrade (which upgrade is described in Section 11), this requirement shall be waived.

(B) A single performance bond, posted under the same terms and conditions as

required herein, shall satisfy requirements of both the City of Vancouver and Clark County as Grantors pursuant to VMC 5.19 and Clark County Code Chapter 36, respectively.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

The Grantee shall meet or exceed any customer service standards adopted by the FCC and, to the extent the same are stricter or address different matters, those adopted now or in the future by the Grantor.

### **6.2 Subscriber Privacy**

Grantee will comply with privacy rights of Subscribers in accordance with federal, state and local law.

### **6.3 Local Office**

Throughout the Agreement term, the Grantee must maintain, at a minimum, one (1) customer service center conveniently located in the City of Vancouver/Clark County Franchise Area which will be open during normal business hours, as defined by the FCC, to provide Subscribers the opportunity for the receipt and pickup of Subscriber equipment and for bill payments and complaints. Grantee shall install telephones and other equipment so that customer complaints and service requests can be received by Grantee on a 24-hour basis at a toll-free telephone number.

### **6.4 Emergency Broadcast**

In accordance with, and at the time required by, the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, as such provisions may from time to time be amended, EAS activation will be accomplished in compliance with the FCC approved Washington State EAS plan and the Local Area EAS plan that applies to Clark County, which has already been submitted for approval to the Washington State Emergency Communications Committee (WSECC).

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

### **7.1 Open Records**

(A) Grantee shall manage all of its operations in accordance with a policy of keeping

its documents and records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliated entities which are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, affiliated entity or a third party. Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that Grantor inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local area office and not made available in copies to Grantor upon written request as set forth above, and if Grantor determines that an examination of such records is necessary or appropriate to the performance of any of Grantor's duties, administration or enforcement of this Agreement, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee. If any books or records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) working days.

(B) Grantee shall at all times maintain and allow Grantor access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium agreed upon by the Grantor and the Grantee.

## **7.2 Confidentiality**

Grantor agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If Grantor believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person.

### **7.3 Copies of Federal and State Documents**

Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such list or documents to Grantor no later than thirty (30) days after filing, mailing or publication thereof. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. Any such confidential material determined to be exempt from public disclosure shall be retained in confidence by Grantor and its authorized agents and shall not be made available for public inspection.

### **7.4 Complaint File and Reports**

(A) Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those files shall remain open to Grantor during normal business hours. Grantee shall provide an executive summary report quarterly (within 45 days of the end of the preceding quarter) to Grantor, which shall include the following information:

- (1) Nature and type of customer complaints;
- (2) Number, duration, general location and customer impact of unplanned service interruptions;
- (3) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System;
- (4) Average response time for service calls;
- (5) Phone activity report;
- (6) New areas constructed and available for Cable Service, including multiple dwelling units;
- (7) Video programming changes (additions/deletions); and
- (8) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.

(B) Grantee shall also provide monthly Subscriber reports to Grantor indicating the total number of Subscribers by service categories in such format as Grantee customarily prepares such reports. Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards, as referenced in Section 6.1. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

## **7.5 Inspection of Facilities**

Grantor may inspect upon request any of Grantee's facilities and equipment to confirm performance under this Agreement at any time upon at least twenty-four (24) hours notice, or, in case of an emergency, upon demand without prior notice.

## **7.6 False Statements**

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

# **SECTION 8. PROGRAMMING**

## **8.1 Broad Programming Categories**

(A) Grantee's cable television system shall provide the widest diversity of programming possible. Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;
- (2) Washington State news and information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children/family-oriented;
- (6) Arts, culture and performing arts;
- (7) Foreign language;

- (8) Science/documentary;
  - (9) Weather information;
  - (10) Programming addressed to diverse ethnic and minority interests in the Franchise Area;
  - (11) National, state, and local government affairs; and
  - (12) Local programming regarding the City/Clark County, as well as regional issues, events and affairs.
- (B) Grantee shall not delete any broad category of programming within its control.

## **8.2 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

## **8.3 Leased Access Channels**

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

## **8.4 Continuity of Service**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the *force majeure* provisions of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.

(B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

## **8.5 Service for the Disabled**

Grantee shall comply with the Americans With Disabilities Act, any amendments thereto and any other applicable federal, state or local laws or regulations.

## **SECTION 9: PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

### **9.1 General Definitions**

With respect to purposes of this section, the following definitions will apply with respect to Public, Educational and Governmental use of the Cable System.

(A) The term “channel”, as used in this Section, referencing access channels, refers to the analog channel capacity set aside for Public, Educational and Governmental (PEG) use. Each channel shall be six (6) MHz and must be capable of transmitting a standard analog video signal. The capacity can be used to transmit signals in any format, and can be used to transmit audio only, video, or other information (including, by way of example and not limitation, secondary audio, text, digital information, high definition signals and compressed signals). A non-standard NTSC use shall be subject to the Grantee’s prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other channels. Such uses must be in furtherance of PEG uses. Additionally, there shall not be any lease of such PEG capacity without the express written permission of the Grantee. Should PEG channel capacity be utilized for the transmission of digital PEG video programming to Subscribers, there shall be a maximum of eighteen (18) PEG continuous, full-motion video programming digital channels similar in format to the channels that are being provided as of the effective date of this Agreement delivered to each Subscriber. The Grantor shall determine the number of such digital channels to be activated pursuant to this Section, not to exceed eighteen (18). Finally, if all such PEG video programming is delivered in a digital format, the bandwidth available for PEG use shall not exceed twice the amount of bandwidth that is necessary to transmit the eighteen (18) PEG video programming digital channels, but the amount available beyond the amount required to transmit the eighteen (18) digital channels shall not be less than twelve (12) MHz in any case. Digital PEG channels shall have the same bandwidth and transmission quality as is used to carry any of the commercial channels that deliver programming to Grantee in a similar format.

(B) The term “Access Center” refers to a facility or facilities listed in Exhibit A where Public, Educational or Governmental use signals are managed and delivered to the Grantee for Downstream transmission to Subscribers, or to other Access Centers via a dedicated connection.

(C) “Designated Access Providers” refers to the entity or entities designated by the Grantor to manage or co-manage Public, Educational and Governmental use channels. The Grantor can be a Designated Access Provider.

(D) The term “Origination Point” refers to a location listed in Exhibit A, other than an Access Center, where Public, Educational and Governmental use programming is delivered to the Grantee for Upstream transmission.

(E) The term “PEG” refers to “Public, Educational and Governmental.”

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

(A) Grantor may authorize Designated Access Providers to control and manage the use of any and all Access Facilities provided by Grantee under this Agreement, including, without limitation, the operation of Access channels. To the extent of such designation by Grantor, as between the Designated Access Provider and Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities. The Grantor or its designee may formulate rules for the operation of the Public Access channel, consistent with this Franchise; such rules shall not be designed to control the content of Public Access programming. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider.

(B) Grantee shall cooperate with Grantor and Designated Access Providers in the use of the Cable System and Access Facilities for the provision of PEG Access. Grantee shall enter into such operating agreements with Designated Access Providers as may be necessary to facilitate and coordinate the provision of PEG Access, provided that such operating agreements shall not be inconsistent with the terms of this Franchise and shall be subject to approval by the Grantor.

(C) Except as provided in this Franchise, the Grantor shall allocate Access resources to Designated Access Providers only. Grantee shall cooperate with the Grantor in such allocations, in such manner as the Grantor shall direct.

## **9.3 Channel Capacity and Use**

(A) Upon effective date of this Agreement, all Access channels provided for herein are administered by the Grantor or designee.

(B) Downstream channels. Grantee shall provide six (6) Downstream channels for distribution of Public, Educational, and Governmental Access programming.

(C) Until the upgrade is completed, Grantee will also continue to provide two (2) discrete channels (channel designations as of the effective date of this Agreement are channels 64 and 65). Upon completion of the upgrade, if economically viable, Grantee will cooperate with Designated Access Providers to migrate the programming currently carried on the closed, discrete channels to the I-NET described in Section 11.2 herein.

(D) Upon completion of the upgrade, as established by the triggers set forth in Section 9.7 of the Franchise Agreement, the Grantor may require Grantee to activate three (3) additional Access channels for a maximum of nine (9) Access channels.

(E) Initially and throughout the term of this Franchise, Grantee shall provide operating Upstream channels sufficient to enable character generated, pre-recorded and live cablecasts from Origination Points as described in Exhibit A(1) and Access Centers listed in Exhibit A(2) to enable the distribution of PEG Access programming to Residential Subscribers on Access channels and to all Interconnection points on the Cable System, identified in Exhibit A(3).

#### **9.4 Relocation of Access Channels**

Grantee shall provide Grantor with a minimum of sixty (60) days' notice, and use its best efforts to provide one-hundred-twenty (120) days notice, prior to the time Public, Educational, and Governmental Access channel designations are changed. Grantee shall consult with Grantor prior to making a final determination regarding any changes in PEG Access channel designations/assignments. Any new channel designations for the Public, Educational and Governmental Access channels provided pursuant to this Agreement shall be in full compliance with FCC signal quality and proof of performance standards.

#### **9.5 Access Interconnections**

(A) Grantee shall continue any and all Interconnections of Access channels in effect on the effective date of this Agreement, as identified in Exhibit A(3), unless otherwise agreed by Grantee and Grantor. Grantor, or its Designated Access Provider, shall have the right to control and schedule the operation of all Interconnected Access channels. In addition, Grantor shall have the right to use, at its sole discretion and at no cost to Grantor, any existing Access channels or any Access channels to be provided under this Agreement for Access Interconnection.

(B) Grantee shall take all necessary technical steps to ensure that technically adequate signal quality and routing/switching systems are initially and continuously provided for all Access Interconnections identified in Exhibit A(3). The cost for any equipment dedicated to future Access Interconnection, not listed in Exhibit A(3), shall be shared on a pro rata basis or as mutually agreed upon among all participating jurisdictions and paid to Grantee.

#### **9.6 Support for Access Capital Costs**

(A) During the term of this Agreement, Grantee shall provide a maximum of one dollar (\$1.00) per month, per Residential Subscriber (the "Capital Contribution") for Public, Educational and Governmental Access capital, or such lesser amount if authorized by Grantor. The Capital Contribution shall be payable by Grantee to Grantor after (1) the approval of Grantor, if required, to the inclusion of the Capital Contribution on the bills of Residential Subscribers, including any requirements for approval pursuant to 47 C.F.R. Section 76.922, (2) notice to Grantee's Residential Subscribers of such inclusion, and (3) the collection of the Capital Contribution from such Residential Subscribers. Grantee shall make such payments quarterly,

following the effective date of this Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Grantor shall have discretion to allocate such payments for Access Costs in accordance with applicable law.

(B) The Grantor shall provide a report annually to the Grantee on the use of the funds provided to the Grantor under Section 9.6(A). The first such report shall be submitted to the Grantee no later than May 1, 1999. Subsequent reports shall be submitted to the Grantee within one-hundred-twenty (120) days of the close of the Grantor's fiscal year. Grantee may review records of the Grantor and Designated Access Providers regarding the use of funds described in such report. Grantor agrees that the report shall document that, for each dollar (\$1.00) spent on PEG Capital support for Access, an equivalent amount will be spent, in aggregate, by Grantor and Designated Access Providers on operating support for PEG Access. In years one through three of the Agreement, no more than 30% of PEG Capital support for PEG, less expenditures for I-NET purposes as specified in Section 11.2 (H), may be carried over from one fiscal year of the Grantor to the next fiscal year. In years four through ten of the Agreement, no more than 20% of PEG Capital support for PEG, less expenditures for I-NET purposes as specified in Section 11.2 (H), may be carried over from one fiscal year of the Grantor to the next fiscal year.

## **9.7 Triggers for Expansion of Access Channels**

(A) Following completion of the upgrade, Grantee shall, if directed by the Grantor, provide additional, activated Downstream channel capacity for PEG Access, to a maximum total of nine (9) Access channels as described in Section 9.3. The Grantor shall give Grantee at least ninety (90) days prior notice of required additional Access channels.

(B) The Grantor may require Grantee to provide additional activated Downstream channel capacity for a particular type of PEG Access under this Section. When a channel for a particular type of PEG Access programming meets the criteria set forth below, Grantor may require Grantee to provide additional activated Downstream channel capacity for that type of PEG Access under this section. Upon Grantee's request a public hearing will be conducted regarding the need for additional capacity, to a maximum total of nine (9) Access channels, as established by the criteria set forth below:

(1) Public Access channels: During any eight (8) consecutive weeks, the Public Access channel is in use for Locally Produced, Locally Scheduled Original Programming 80% of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or,

(2) Educational Access channels: During any eight (8) consecutive weeks, the Educational Access channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block

during the hours from 6:00 a.m. to 11:00 p.m.; or,

(3) Governmental Access channels: During any eight (8) consecutive weeks, the Governmental Access channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.; and,

(4) The applicable PEG Access channel capacity expansion criteria as set forth in Subsections (1), (2) or (3) has been met, or exceeded, by the Grantor or its Designated Access Provider with responsibility for programming the PEG Access channel.

(C) For the purpose of Section 9.7:

(1) **“Locally Produced”** means programming produced in the Portland Vancouver/Clark County metropolitan area; and,

(2) **“Original Programming”** means Programming in its initial cablecast on the System or in its first or second repeat; and,

(3) **“Locally Scheduled”** means that the scheduling, selection and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received from an Interconnection, the provider transmitting the programming over the Interconnection. However, carriage on any Access channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as a part of its basic or expanded basic Cable Services shall not be considered “Locally Scheduled.”

## **9.8 Access Support Not Franchise Fees**

(A) Grantee agrees that financial support for Access Capital Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to Grantor. Grantee agrees that although the sum of Franchise Fees and the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Agreement.

(B) Grantor recognizes franchise fees and certain additional commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Franchise and Grantee has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

## **9.9 Access Channels On Lowest Non-broadcast Tier**

All Access channels provided to Subscribers under this Agreement shall be included by Grantee, without limitation, as a part of each and every tier containing basic Cable Service offered by Grantee on its Cable System.

## **9.10 Change In Technology**

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

## **9.11 Technical Quality**

Grantee shall maintain all Upstream and Downstream Access services, channels and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations for Residential Subscriber channels. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including modulators, associated cable and equipment in use upon the effective date of this Agreement, necessary to carry a quality signal to and from Grantor's facilities.

## **SECTION 10. GENERAL STREET USE AND CONSTRUCTION**

### **10.1 Construction**

(A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within Streets incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.

(B) Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance

with this Agreement and all applicable City Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce as far as possible the number of Street cuts.

## **10.2 Location of Facilities**

Within forty-eight (48) hours after notification of any proposed Street excavation, Grantee shall, at Grantee's expense:

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

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

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

## **10.3 Relocation**

Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Streets, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

## **10.4 Restoration of Streets**

(A) Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to Grantor.

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration in accordance with applicable regulations of the City within the area affected by the excavation. Grantor may, after providing notice to Grantee, refill or repave any opening made

by Grantee in the Street, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove or repair any work done by Grantee which, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor. Prior to making any Street or right-of-way cuts or openings, Grantee shall provide written notice to Grantor.

### **10.5 Maintenance and Workmanship**

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

(B) Grantee shall provide and use any equipment necessary to control and carry Grantee's cable television signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

### **10.6 Reservation of Grantor Street Rights**

Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Street; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Grantee's Cable System shall be removed or replaced in the manner Grantor shall direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System.

Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by Grantor's written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay.

### **10.7 Use of Conduits by Grantor**

Grantor may install or affix and maintain wires and equipment owned by Grantor for municipal purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Streets and other public places without charge to Grantor, to the extent space therein or thereon is reasonably available, and pursuant to all applicable City Ordinances and Codes. For the purposes of this Subsection 10.7, "municipal purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor.

### **10.8 Street Vacation**

If any Street or portion thereof used by Grantee is vacated by Grantor during the term of this Agreement, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to Grantor, remove its facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by Grantor. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Street, Grantor may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by Grantor, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Agreement.

### **10.9 Discontinuing Use of Facilities**

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

### **10.10 Hazardous Substances**

(A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Streets.

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

### **10.11 Undergrounding of Cable**

(A) Wiring.

(1) Where electric and telephone utility wiring is installed underground at the time of Cable System construction, or when such wiring is subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other wire line service at no additional expense to the Grantor or Subscribers. Related Cable System equipment such as pedestals must be placed in accordance with applicable Code requirements and underground utility rules as interpreted by the Grantor's Director of Public Works. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

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

(3) This Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the County or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the Grantor upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

(B) Repair and Restoration of Property.

(1) The Grantee shall protect public and private property from damage. If damage occurs the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(2) If public or private property is disturbed or damaged, the Grantee shall restore the property to its former condition, normal wear and tear excepted. Public right-of-way or other Grantor property shall be restored, in a manner and within a timeframe approved by the

Grantor's Director of Public Works. If restoration of public right-of-way or other property of the Grantor is not satisfactorily performed within a reasonable time, the Director of Public Works may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. If suit is brought upon Grantee's failure to pay for repair or restoration, and if judgment in such a suit is entered in favor of the Grantor, then the Grantee shall pay all of the Grantor's actual costs and expenses resulting from the non-payment, including damages, interest from the date the bill was presented, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than seventy-two (72) hours.

(3) Prior to entering onto private property to construct, operate or repair its Cable System, Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.

(C) Movement of Cable System For and By Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the public right-of-way or on any other property of the Grantor in the case of fire, disaster, or other emergency, or when a project or activity of the Grantor's makes the removal, replacement, modification or disconnection necessary or less expensive for the Grantor. Except during an emergency, the Grantor shall attempt to provide reasonable notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action. Following notice by the Grantor, Grantee shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other property of the Grantor, except that the Grantor shall provide at least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the Grantor's satisfaction, the Grantor may cause such work to be done and bill the cost of the work to the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Grantor.

(D) Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the

responsible entity. Those Persons shall determine how costs associated with the removal or relocation shall be allocated.

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

(F) Tree Trimming. Subject to acquiring prior written permission of the County, the Grantee shall have the authority to trim trees that overhang a public right-of-way of the County so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

## **10.12 Codes**

Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question.

## **10.13 Standards**

(A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

(B) Grantee shall ensure that the drops are properly bonded to the electrical power ground at the home, consistent with the requirements of the National Electric Code and the National Electrical Safety Code. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

## **SECTION 11. SYSTEM DESIGN**

### **11.1 Subscriber Network**

(A) Design

(1) Grantee has determined that an appropriate design plan for System upgrade in the Franchise Area will include the following requirements, which Grantee will provide and construct:

(a) The System will use a fiber to the neighborhood node architecture. This will involve deployment of fiber optic cable throughout those portions of the System to be upgraded. The upgraded plant will tie into a hybrid fiber/coaxial Cable System already serving Subscribers.

(b) The System will serve no more than 1,500 customers per fiber node.

(c) All active electronics will be 550 MHz capable equipment, or equipment of higher bandwidth.

(d) The upgraded Cable System shall be two-way capable and able to support two-way high speed Internet Access via the Cable System.

(e) Passive devices will pass a minimum bandwidth of 550MHz.

(f) The upgrade of the Cable System will be conducted in phases. Grantor will authorize Grantee to activate the System as nodes are constructed or upgraded.

(g) Upon completion of the upgrade, the Cable System shall be capable of delivering at least seventy-seven (77) Channels of video programming services to Subscribers.

(2) As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet, or exceed, FCC technical quality standards regardless of the particular manner in which the signal is transmitted. The upgrade shall commence within six (6) months of the effective date of this Agreement and be completed on or before December 1, 2000. The upgraded Cable System will be capable of supporting addressable equipment throughout the System and shall enable the provision of digitally compressed video services. Grantee's upgraded Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

(B) System Functionality

(1) It is the intent of the parties to provide for a process that provides the Grantor with an opportunity to review the system design plan and construction progress to

ensure that the Cable System meets or exceeds the specifications described herein. Grantee agrees that it shall provide Grantor with reasonable notice of its intent to test the performance of the upgraded Cable System so that Grantor can witness such testing.

(2) At least sixty (60) days before the upgrade of the Cable System begins, Grantee shall provide the Grantor with a proposed timeline for the upgrade and an opportunity to review the proposed system design plan consistent with Grantee's obligations as described in Section 11.1. The Grantor shall indicate to Grantee, within thirty (30) days of the receipt and review of materials, as to any aspects of the timeline and/or design plan Grantor believes are inconsistent with the requirements set forth herein in Section 11.1. Grantee shall respond within thirty (30) days to the Grantor to resolve any inconsistencies.

(3) Construction of fiber to the nodes shall begin no later than July 1, 1998, and shall be completed no later than December 1, 2000.

(4) The upgrade must be completed in its entirety by December 1, 2000.

(5) Within thirty (30) days of the effective date of this Agreement, and every month thereafter, at the request of the Grantor, Grantee and Grantor will meet to discuss the progress of the upgrade and work cooperatively to speed the construction process (by e.g. discussing any problems in obtaining permits) and to minimize the impact upon Subscribers. At each meeting, Grantee will provide a progress report on the upgrade detailing its progress in satisfying the requirements of this Section.

(6) 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.

(C) Timing of Construction

Grantee's decisions on constructing plant for service from each hub or node shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of the Franchise Area.

## **11.2 Institutional Network**

(A) Upon completion of the upgrade of the Cable System, Grantee will offer an Institutional Network (I-NET) to the Grantor according to the following terms and conditions:

(1) Grantee shall operate an Institutional Network (I-NET), independent of, or in conjunction with, the residential Subscriber network for the purpose of providing institutional services to publicly funded institutional Subscribers (Institutional Subscribers). The network will be an optical fiber based I-NET that is managed by the Grantee. Grantee shall not be prohibited

from serving commercial institutional Subscribers (Commercial Institutional Subscribers) on the I-NET. Grantee shall have no obligation to construct or operate an I-NET to provide institutional services, beyond installation of fiber capacity to the service node, unless and until Institutional Subscribers contract with Grantee to provide services, providing the Grantee with a reasonable return on investment. Grantee shall charge Institutional Subscribers the lowest competitive prices for hardware and services delivered as compared to other telecommunications providers.

(2) The parties recognize that the timely activation of and completion of the I-NET is of great importance to the Grantor. So long as both parties agree that the I-NET is economically feasible, Grantee agrees that it will complete and activate the I-NET at the same time as Grantee completes the upgrade of the Cable System. Grantee may offer I-NET services earlier than the completion of the upgrade. The parties agree that:

(a) The System's B cable is currently used for certain applications. Grantee agrees that the B cable shall be maintained and operable during and after the upgrade of the Cable System so long as a reasonable number of B cable users remain active. So long as it is economically feasible, Grantee agrees to work with the Grantor to migrate existing functions from the B cable to the I-NET described herein, so long as B cable users are willing to enter into contract agreements with Grantee for use of the I-NET provided for under this Franchise.

(b) By February 1, 1998, the Grantor, on behalf of Institutional Subscribers, will provide Grantee with a preliminary list of Sites interested in being Institutional Subscribers. The list will include the Institutional Subscriber's name, address, a Site Coordinator and phone number for each Site Coordinator. Each Site shall have a designated interior point of demarcation for the I-NET within the building (interior hub site).

(c) Grantee will include each Site in the preliminary design plan for the Cable System upgrade.

(d) Grantee will consult with each Site's Coordinator. Grantee will assess the I-NET requirements for hardware and signal transport capacity for each Site provided under Section 11.2 (A) to determine minimum and maximum capacity requirements for each Site.

(e) Grantee will provide two cost estimates for each Site to the Grantor by April 15, 1998. The two estimates will provide the following:

(i) The Hardware estimate will detail the costs for Site hardware purchase, installation, hardware maintenance and interior Site wiring, taking into consideration existing interior Site wiring and equipment already owned by the Site that the Site wants to incorporate into its use of the I-NET. Grantee will make a good faith effort to

incorporate such wiring and equipment provided that Grantee will not warranty performance of such existing equipment or wiring. Costs associated with this Section will be the responsibility of the Institutional Subscriber and may be paid for with PEG Capital support provided for in Section 9.6 of this Franchise.

(ii) The Signal Transport estimate will provide monthly costs for the Site, providing for capacity use on the distribution network, distribution network hardware, ongoing network maintenance and construction. The estimates provided under this Section shall be in the form of contract options for each Institutional Subscriber based on three (3) year, five (5) year and ten (10) year agreements for signal transport services. The monthly fee within the contract proposal will cover costs associated with the distribution network, distribution network hardware, network management and maintenance of the I-NET for the term of the contract. Costs associated with this Section will be the responsibility of the Institutional Subscriber and may be paid for with PEG capital support provided for in Section 9.6 of this Franchise.

(f) The Grantor will identify what Sites shall be initially included on the I-NET by June 1, 1998. The economic feasibility of the I-NET shall be based on the number of Sites willing to contract with Grantee for provision of I-NET services. Grantee, in consultation with the Grantor, shall determine the economic feasibility of constructing the I-NET and equipping the Sites as provided for herein. If it is determined that construction of the I-NET is not economically feasible, the Grantor and Grantee shall reassess the community's need for an I-NET every two (2) years.

(g) If it is determined that construction of the I-NET is economically feasible, Institutional Subscribers shall enter into contract agreements to cover costs identified in Section 11.2 (A)(2)(e) by July 31, 1998.

(h) Grantee agrees that PEG capital support provided for under this Franchise can be used for the purchase of hardware and payment of monthly fees for signal transport associated with each Site's use of the I-NET.

(i) The Grantor may identify certain Sites as future Institutional Subscribers to the I-NET that will not be activated at the time the System upgrade is completed. So long as such Sites are provided by February 1, 1998, and are located on those portions of Grantee's distribution system that will be upgraded with fiber, Grantee agrees to include splice points and splice point housings on those portions of the distribution plant where additional fiber will be deployed as part of the upgrade agreed to in Section 11.1. Upon notification from the Grantor, Grantee will provide cost estimates described in Section 11.2 (A)(2)(e) within ninety (90) days of a request by the Grantor for service to the Site.

(j) The Grantor may identify Sites as Institutional Subscribers following completion of the System upgrade. Estimated costs for serving those Sites will be

provided within ninety (90) days of receipt of notification by the Grantor. If an extension of the Cable System is required to serve the Site, Grantee will make the I-NET available within one-hundred twenty (120) days from the date the Institutional Subscriber contracts for services.

(k) Ownership of the I-NET distribution system facilities will remain with Grantee. Pursuant to the terms and conditions of this Franchise, so long as it is economically feasible, Grantee agrees to provide a managed I-NET for as long as Grantee is a provider of franchised cable television services or similar services in the Franchise Service area. Except for trouble calls and malfunctions determined to have been caused by the Grantor or Institutional Subscribers, including but not limited to trouble calls related to equipment incompatibility, Grantee will be responsible for maintenance, repair and management of the I-NET. If the Grantor so directs, the I-NET facilities may be augmented, rearranged or upgraded by Grantee after installation, in which case the Grantor or Institutional Subscribers will compensate Grantee at its then prevailing rate.

(l) The I-NET is a private communications network governed by this Franchise Agreement and the Cable Act. The Grantor and Institutional Subscribers will use the I-NET solely for non-commercial applications. Institutional Subscribers will not attach any equipment or otherwise use the I-NET in any way that will interfere with the signal quality and the normal operation of Grantee's Cable System in conformity with this Franchise or FCC regulations, including but not limited to regulations pertaining to signal leakage. The Grantor and Institutional Subscribers will not resell access to the I-NET.

(m) Grantee shall charge Institutional Subscribers the lowest competitive prices for services delivered when compared to other telecommunications providers.

## **SECTION 12. Test and Compliance Procedures**

Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Tests may be witnessed by representatives of Grantor, and written test reports may be made available to Grantor upon request.

As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor summary written reports of the results of such tests.

## **SECTION 13. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION**

### **13.1 Equivalent Service**

It is Grantee's general policy that all residential dwelling units in the Franchise Area

have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area, provided that Grantee is authorized to activate the upgraded system node by node.

### **13.2 Service Availability**

(A) New Construction. Grantee shall provide Cable Service within sixty (60) days in newly constructed areas. For purposes of this section, a request shall be deemed made on the date of signing a service Agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

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

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

(3) At nondiscriminatory monthly rates for residential Subscribers.

(B) Required Extensions of Service. The Cable System, as constructed as of the date of the passage and final adoption of this Franchise, substantially complies with the material provisions hereof. Whenever the Grantee shall receive a request for service from at least fifteen (15) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Customers at no cost to said Customers for Cable System extension, other than the usual connection fees for all Customers within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided under Section 2.6 of this Franchise.

(C) Customer Charges for Extensions of Service. No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as a Customer's request to locate his cable drop underground, existence of more than one-hundred twenty-five (125) feet of distance from distribution cable to connection of service to Customers, or a density of less than fifteen (15) residences per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable and whose denominator equals fifteen (15) residences. Customers who request service hereunder will bear

the remainder of the construction and other costs on a *pro rata* basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

### **13.3 Connection of Public Facilities**

Grantee shall, at no cost to Grantor, provide at least one (1) outlet of Basic and expanded basic programming to all City/Clark County buildings, as designated by the Grantor, and all libraries and Schools. In addition, Grantee shall provide, at no cost to the building owner, one (1) outlet of Basic and expanded basic programming to all such future public buildings if the drop line to such building does not exceed one-hundred twenty-five (125) cable feet or if Grantor or other agency agrees to pay the incremental cost of such drop line in excess of one-hundred twenty-five (125) cable feet, including the cost of such excess labor and materials. Outlets of Basic and expanded basic programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained.

## **SECTION 14. STANDBY POWER**

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks. In addition, throughout the term of this Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to Grantor no later than ninety (90) days following the effective date of this Agreement.

## **SECTION 15. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE**

### **15.1 Procedure for Remediating Franchise Violations**

(A) If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation. Grantee shall have thirty (30) days from the date of receipt of such notice to:

(1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection C below; or

(2) Cure the violation; or

(3) Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, because of the nature of the violation and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (B) below.

(B) In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor or its designee shall set a public hearing within thirty (30) days of Grantor's receipt of such notice to review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found to be reasonable, the same shall be approved by the Grantor, who may waive all or part of the liquidated damages for such extended cure period in accordance with the criteria set forth in subsection (E) of this section.

(C) In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor or designee pursuant to subsection (B), the Grantor or designee shall set a public hearing to determine what sanctions shall be applied. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (A)(1) above, the Grantor or designee shall set a public hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what sanctions shall be applied.

(D) In the case of any hearing pursuant to this section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Grantor shall also hear any other Person interested therein.

(E) The liquidated damages set forth in Section 15.3 of this Agreement may be reduced at the discretion of the Grantor or designee, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (1) Whether the violation was unintentional;
- (2) Whether substantial harm resulted;
- (3) Whether there is a history of prior violations of the same or other

requirements;

- (4) Whether there is a history of overall compliance; and/or
- (5) Whether the violation was voluntarily disclosed, admitted or cured.

(F) If, after the public hearing, Grantor or designee determines that a violation exists, Grantor or designee may utilize one or more of the following remedies:

(1) Order Grantee to correct or remedy the violation within a reasonable timeframe as Grantor or designee shall determine;

(2) Establish the amount of liquidated damages set forth in Section 15.3, taking into consideration the criteria provided for in subsection (E) of this Section; provided that amounts in excess of fifty thousand dollars (\$50,000) shall be subject to Subsection (G) of this Section;

(3) Revoke this Agreement, subject to subsection (G) of this Section; and/or

(4) Pursue any other legal or equitable remedy available under this Agreement or any applicable law.

(G) This Agreement shall not be revoked nor shall liquidated damages in an amount in excess of fifty thousand dollars (\$50,000) be imposed except by City Council after notice and hearing as set forth in this Section.

(H) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law.

## **15.2 Revocation**

(A) In addition to all other rights and powers retained by the Grantor under this Franchise or otherwise, the Grantor reserves the right to forfeit and terminate this Franchise and all rights and privileges of the Grantee hereunder, in whole or in part, in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to, the following:

(1) Violation of any material provision of this Franchise or any other Agreement between Grantor and Grantee, or any material rule, order, regulation or determination of the Grantor or authorized agent made pursuant to this Franchise or other Agreement;

(2) Attempt to evade any material provision of this Franchise or to practice

any fraud or deceit upon the Grantor or its Subscribers or customers;

(3) Failure to begin or complete the system upgrade or system extension as provided in Section 11;

(4) Failure to restore service after forty-eight (48) consecutive hours of interrupted service system-wide, except when approval of such interruption is obtained from the Grantor or designee;

(5) Material misrepresentation of fact in the application for or negotiation of this Franchise; or

(6) If Grantee becomes insolvent, or the subject of a bankruptcy proceeding.

### **15.3 Liquidated Damages**

(A) Amounts. Because the Grantee's failure to comply with provisions of the Agreement will result in injury to the Grantor, and because it will be difficult to estimate the extent of such injury in certain instances, the Grantor and the Grantee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury.

(1) For failure to extend Cable Service within the Franchise Area as required: two-hundred fifty dollars (\$250) per day, per affected potential Subscriber.

(2) For failure to provide any capability for Public, Educational, and Governmental use of the system required in this Agreement: five-hundred dollars (\$500) for each violation per day.

(3) For violation of applicable customer service standards: twenty-five dollars (\$25) per violation per day multiplied by the number of affected Subscribers, which after recovery of costs and fees, shall be used by Grantor to provide refunds to such Subscribers.

(4) For failure to upgrade the Cable System as provided herein, in Section 11: one-thousand dollars (\$1,000) per day.

(5) For all other material violations of this Agreement, other than those specified in this section, for which actual damages may not be ascertainable: two-hundred fifty dollars (\$250) per day for each provision of this Agreement that is violated.

(B) Date of Violation, Notice and Opportunity to Cure. The date of violation will be the date of the event and not the date the Grantee receives notice of the violation, provided, if

Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation. The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall decide whether to accept or reject the remedial plan presented by the Grantee. Liquidated damages occur only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the plan. The procedures provided in Section 15, shall be utilized to impose any liquidated damages.

(C) Collection of Liquidated Damages. The collection of liquidated damages by the Grantor shall in no respect affect:

- (1) Compensation owed to Subscribers; or
- (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or
- (3) Other remedies available to the Grantor.

#### **15.4 Removal**

(A) In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Street-use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Streets, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.

(B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs or Grantor may recover the costs through the Letter of Credit provided by Grantee.

#### **15.5 Receivership and Foreclosure**

(A) At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:

(1) The receivership or trusteeship is vacated within one-hundred twenty (120) days of appointment; or

(2) The receiver(s) or trustee(s) have, within one-hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement, and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

(1) Grantor has approved the transfer of the Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and

(2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

#### **15.6 No Recourse Against Grantor**

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under federal, state or local law.

#### **15.7 Nonenforcement by Grantor**

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

## **15.8 Relationship of Remedies**

The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the Grantor at law or equity.

## **SECTION 16. ABANDONMENT**

### **16.1 Effect of Abandonment**

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

### **16.2 What Constitutes Abandonment**

The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:

(A) The Grantee fails to provide Cable Service in accordance with this Agreement over a substantial portion of the Franchise Area for forty-eight (48) consecutive hours, unless the Grantor authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

## **SECTION 17. FRANCHISE RENEWAL AND TRANSFER**

### **17.1 Renewal**

(A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Acts, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

(B) In addition to the procedures set forth in said Section 626(a), the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Acts.

## **17.2 Transfer of Ownership or Control**

(A) The Cable System and this Agreement 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, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.

(B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Grantor shall have consented thereto.

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

(D) The Grantor shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one-hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

(E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, Agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.

(F) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.

(G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

(H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement.

## **SECTION 18. SEVERABILITY**

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

## **SECTION 19. MISCELLANEOUS PROVISIONS**

### **19.1 Preferential or Discriminatory Practices Prohibited**

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

### **19.2 Notices**

Throughout the term of the Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from

Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such addresses shall be:

- (1) TCI of Southern Washington  
\_Attn : Legal Department  
P.O. Box 91220  
Bellevue, WA 98009
  
- (2) TCI of Southern Washington  
6916 N.E. 40<sup>th</sup> Street  
Vancouver, WA 98661

All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such address shall be:

City of Vancouver  
Cable TV Office  
P.O. Box 1995  
Vancouver, WA 98668

### **19.3 Binding Effect**

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

### **19.4 Authority to Amend**

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

### **19.5 Governing Law**

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

### **19.6 Guarantee**

The performance of the Grantee shall be guaranteed in all respects by TCI West, Inc.. A signed guarantee, in a form acceptable to the Grantor, shall be filed with the Grantor prior to the effective date hereof.

**19.7 Captions**

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

**19.8 Construction of Agreement**

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

AGREED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 1997.

TCI OF SOUTHERN WASHINGTON

CITY OF VANCOUVER

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Ted H. Gathe  
City Attorney