ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LANGLEY, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO COMCAST OF WASHINGTON IV, INC. FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A CABLE SYSTEM WITHIN THE CITY LIMITS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Langley is authorized to grant nonexclusive franchises for the operation of cable systems within the City rights-of-way; and

WHEREAS, Comcast of Washington has applied for such a franchise to construct, operate, and maintain a cable system within the jurisdictional boundaries of Langley; and

WHEREAS, the City’s legislative body has considered the franchise at regular public meetings conducted in accordance with RCW 35A.47.040 Franchises and permits - Streets and public ways, during which any and all interested parties were allowed to provide statements regarding the grant of the franchise rights contained herein; and

WHEREAS, the terms, conditions, and obligations provided herein are necessary to protect the safety and welfare of the citizens of Langley and provide for the cable service needs of the community;

NOW, THEREFORE, the City Council of the City of Langley, does hereby ordain as follows:

SECTION 1 -- That a non-exclusive Franchise, which constitutes an agreement between the City of Langley and Comcast of Washington IV, Inc., (hereinafter the "Operator"). The Operator agrees to construct, maintain, and operate a cable television system for the distribution of television and other electronic signals pursuant to the terms of the Franchise attached hereto and identified as Exhibit "A". The City agrees to grant the Operator all necessary rights and privileges to use public rights of way necessary for a cable television system pursuant to the terms of the Franchise attached hereto. This agreement shall, as of its effective date, supersede and replace all existing franchises previously granted by the City of Langley to the Operator or any of its predecessors, subsidiaries or affiliated companies.

SECTION 2 - Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

SECTION 3 - Effective Date. This Ordinance will be in full force and effect five days after publication of an approved summary thereof consisting of the title.
PASSED by the City Council and APPROVED by the Mayor on the __, day of September, 2012.

______________________________
Larry Kwarsick, Mayor

Debbie L. Mahler, Director of Finance/Clerk

APPROVED AS TO FORM:

______________________________
Michael R. Kenyon, City Attorney

Published: South Whidbey Record _____ 2012
Exhibit A Comcast/Langley Franchise Agreement

Ordinance No. ___ 2
FRANCHISE

Between

LANGLEY, WASHINGTON

And

COMCAST OF WASHINGTON IV, INC.
Franchise

This Franchise (hereinafter, the “Franchise”) is between City of Langley (hereinafter, “City”) and Comcast of Washington IV, Inc. (hereinafter, “Grantee”).

The City, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.
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SECTION 1 - Definition of Terms

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

1.1. "Basic" or "Basic Service" means cable service as defined by the FCC as basic service tier.

1.2. "Cable Service(s)" shall mean (1) the one-way transmission to Subscriber/Customers of (a) video programming, or (b) other programming service, and (2) Subscriber/Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.3. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided within the Franchise Area.

1.4. "Customer" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.

1.5. "Effective Date" means the date on which all persons necessary to sign this Franchise in order for it to be binding on both parties have executed this Franchise as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

1.6. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.

1.7. "Franchise" shall mean this document and any amendments or modifications hereto.

1.8. "Franchise Area" means the area within the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.9. "City" means City of Langley or the lawful successor, transferee, designee, or assignee thereof.

1.10. "Grantee" shall mean Comcast of Washington IV, Inc.

1.11. "Gross Revenue" means the revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles, including but not
limited to monthly basic, premium and pay-per-view fees, installation fees, and
equipment rental fees. Gross Revenue shall not include advertising or home shopping
revenue, refundable deposits, bad debt, late fees, investment income, nor any taxes, fees
or assessments imposed or assessed by any governmental authority.

1.12. “Person” means any natural person or any association, firm, partnership,
joint venture, corporation, or other legally recognized entity, whether for-profit or not-for
profit, but shall not mean the City.

1.13. “Public Way” shall mean the surface of, and the space above and below,
any public street, highway, freeway, bridge, sidewalk, or other public right-of-way,
including, but not limited to, utility easements, dedicated utility strips, or rights-of-way
dedicated for compatible uses and any temporary or permanent fixtures or improvements
located thereon now or hereafter held by the City in the Franchise Area, which shall
entitle the City and the Grantee to the use thereof for the purpose of installing, operating,
repairing, upgrading and maintaining the Cable System over poles, wires, cables,
conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and
other property as may be ordinarily necessary and pertinent to the Cable System.
SECTION 2 - Grant of Authority

2.1. Grant. The City hereby grants to the Grantee under the Cable Act a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways and easements within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

2.2. Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Grantee reserves the right to challenge provisions of any ordinance which conflict with its contractual rights, either now or in the future. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Grantor.

2.3. Term of Franchise. The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be for five (5) years from the effective date of this Franchise, then at any time during the three (3) year Franchise renewal period, Grantee may request an extension of the Franchise for an additional five (5) years, unless extended or terminated sooner as hereinafter provided. To exercise the option, the Grantee shall give the City such written notice at least six (6) months prior to the fifth year anniversary date of the Franchise term.

2.4. Effective Date. The effective date of this Franchise shall be the date of Grantees signed acceptance following the adoption of this Franchise by the City, unless Grantee fails to file with the City an unconditional written acceptance of this Franchise and post the security required hereunder within one-hundred twenty (120) days of the date of adoption of this Franchise by the City’s City Council, in which event this Franchise shall be voidable at the option of the City, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Franchise may be terminated.

2.4. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.
2.6. **Reservation of Authority.** Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.7. **Competitive Equity.**

2.7.1. The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided the City agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of the Grantee’s request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. “Material terms and conditions” include, but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; Access Channel and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.

2.7.2. In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon the Grantee by registered or certified mail or via nationally recognized overnight courier service.

2.7.3. In the event that a wireline multichannel video programming distributor provides video service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Grantee’s belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The City shall not unreasonably withhold consent to the Grantee’s petition.

2.8. **Conditions of Sale.**

2.8.1. If a renewal or extension of the Grantee’s Franchise is denied or the Franchise is lawfully terminated, and the Grantor lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable
System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

2.8.2. The Grantee and the Grantor agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Grantor, the Grantee and the Grantor may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee’s continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Grantor or the Grantee.
SECTION 3 – Construction and Maintenance of the Cable System

3.1. Where electric wiring is installed underground at the time of Cable System construction, or when such electric wiring was placed underground subsequent to the construction of the Cable System, 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 City or Subscribers.

3.2. Permits and General Obligations.

A. The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe manner using materials that meet or exceed industry standards. All facilities, poles, conduits, cables, and equipment shall be maintained in good and safe condition. The location of all facilities, poles, conduits, cables, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise shall be approved by the City of Langley and shall be located so as to minimize interference with the designated use of the Public Ways at the time of Cable System facilities installation. If the facilities, poles, conduits, cables and equipment will be installed along a substandard or under developed roadway then the location shall conform to the approved road standard for the designated use of the Public Way.

B. Grantee’s contractors and subcontractors shall be licensed and bonded in accordance with the City’s and State’s regulations and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee’s responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee’s behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

C. Grantee agrees to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. Except in the case of an emergency involving public safety,

D. Grantee shall give reasonable advance notice to private property owners or tenants of major construction work on or adjacent to such private property.
3.3. Conditions on Occupancy of Public Ways.

A. Nothing in this Franchise shall prevent the City or utilities owned, maintained or operated by public entities other than City, 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 and in the sole discretion of the City, 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 to the location the City shall direct. Except in an emergency, the City shall provide a minimum of sixty (60) days written notice to Grantee of any planned projects as defined below. Should Grantee fail to remove, adjust or relocate its facilities by the date established by City's written notice to Grantee, City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by City due to Grantee's delay.

B. This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person without their permission.

3.3.1. Emergency Work.

A. The City may remove, replace, modify, or disconnect Grantee's facilities and equipment located in the Streets or on any other property in the case of fire, disaster, or other emergency. The City shall attempt to provide notice to Grantee prior to taking action and shall, when feasible, provide Grantee with the opportunity to perform such action.

B. In the event that emergency repairs are necessary by Grantee, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within seventy-two (72) hours after discovery of the emergency.

3.3.2. Relocation at request of City. Upon thirty (30) days prior written notice to Grantee, City shall have the right to require Grantee to relocate any part of Grantee's Cable System within the Public Ways when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by City, City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by City due to Grantee's delay. If City requires Grantee to relocate its facilities located within the Public Ways, City shall make a reasonable effort to provide Grantee with an alternate location within the Public Ways.
3.3.3. Temporary Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its facilities to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its facilities, and such charge may be required to be paid in advance of the movement of its wires or cables; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.3.4. Restoration of Public Ways

A. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall refill within forty-eight (48) hours the opening and restore the surface to a condition satisfactory to the City. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee’s work under this Franchise, shall be done in strict compliance with all rules, regulations and ordinances of the City.

B. The city may, if restoration is not satisfactorily and timely performed by the Grantee, and after providing notice to Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable 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 City.

C. The Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year, unless a longer period is required by the Langley Municipal Code or any generally applicable ordinance or resolution of the City.

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

3.3.6. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth interfering with, damaging, or restricting access to, any of its Cable System facilities in the Public Ways. All such trimming shall be at the Grantee’s sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming. Except in Emergency situations, Grantee shall give reasonable advance notice to City.
3.3.7. **New Construction or Relocation**

A. All new construction of Cable Systems by the Grantee shall be placed in accordance with Langley Municipal Code; provided that such locations are actually capable of accommodating the Grantee’s cable and other equipment without technical degradation of the Cable System’s signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of any of the respective wireline service providers are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. In areas where a wireline service providers wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

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

1. **Utility Trench and Vault/Pedestal Engineering** -- To ensure proper space and availability in the supplied joint trench, Grantee shall only pay for the work hours necessary to complete cable system related engineering coordination with the other utilities involved in the project.

2. **Conduit and Vaults/Pedestals Placement** -- Grantee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo cable trench as follows:

   a. If the City contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project.

   b. If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the City or its contractor, Grantee shall have the option to hire their own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.

   c. If Grantee chooses option (2), the Grantee and its contractor(s) are responsible to coordinate with City and it’s contractor(s) to allow reasonable notice and time to complete the placement of Grantees
conduits and vaults/pedestals in the supplied joint trench. Grantee and its contractor(s) shall meet all agreed upon timelines for placement of Grantees conduits and vaults/pedestals to facilitate the construction schedule.

(3) Within the conversion area, Grantee shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo cable trench. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed in item (2) above.

C. In the event of a Local Improvement District (LID) project that requires relocation of Grantees facilities, Grantee shall be reimbursed by the LID funding for all expenses incurred as a result of the project.

D. The Grantee shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided (i) the Grantee may impose a charge for all time and material costs associated with the project on any Person for the relocation of its facilities, and such charge may be required to be paid in advance of the relocation of its wires or cables, and (ii) Grantee is granted a permit for such work by the City.

E. In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for the all time and material costs associated with the conditioned underground conversion of cable facilities. The City shall not be liable for time and material costs related to requirements on subdivisions or planned unit developments. Grantee and/or its authorized contractor are the only agent allowed to complete the reconnection aspects of the conversion.

3.4 Public Way Vacation. If any Public Way or portion thereof used by the Grantee is vacated by the City during the term of this Franchise, the City shall endeavor to specifically reserve the continued use of the Public Way by Grantee. Unless the City specifically reserves to Grantee the right to continue the use of vacated Public Way, Grantee shall, without delay or expense to the City, remove its facilities from such Public Way and restore, repair or reconstruct the Public Way where such removal has occurred. In the event of failure, neglect or refusal of Grantee to restore, repair or reconstruct such Public Way after ninety (90) days written notice from the City, the City may do such work or cause it to be done, and the reasonable cost thereof shall be paid by Grantee within forty-five (45) days of receipt of an invoice and documentation.
3.5 Discontinuing Use of Facilities. Whenever the Grantee intends to discontinue using any facility within the Streets, the Grantee shall submit for the City’s approval a complete description of the facility and the date on which the Grantee intends to discontinue using the facility. The Grantee may remove the facility or request that the City allow it to remain in place. Notwithstanding the Grantee’s request that any such facility remain in place, the City may require the 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. The City may require the Grantee to perform a combination of modification and removal of the facility. The Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as the Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, the 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 the Grantee shall retain all liability for such facility. If the Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental, or educational purposes.

3.6 Correction of Nonconforming Conditions.

3.6.1 In the event the City determines that the Grantee has taken any action, or caused any condition, within the Franchise Area that is in violation of the Langley Municipal Code or other applicable City regulations, the results of which is an unsafe or unauthorized condition, then the City may order the correction or discontinuance of such condition or any activity causing such condition.

(A) On receipt of a stop work order from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, ordinances, or standards, the Grantee shall immediately stop such work.

(B) The stop work order shall:

(1) Be in writing;
(2) Be given to the Person doing the work, or posted on the work site;
(3) Be sent to Grantee by overnight delivery at the address given herein;
(4) Indicate the nature of the alleged violation or unsafe condition; and
(5) Establish conditions under which work may be resumed.
3.7. **Cable System Mapping.** Within 60 days of the date of execution of this agreement and upon request thereafter the Grantee shall provide in a digital format, a map of those basic portions of the cable system that are located within the public right of way.
SECTION 4 - Service Obligations

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

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

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

4.3. **No Discrimination.** Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person’s financial, and other business obligations to the Grantee are satisfied. Grantee shall not however be required to continue service to a customer who is verbally or physically abusive, harassing, or threatening to Grantee or any of its employees, agents, representatives, contractors, subcontractors, or consultants. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4. **New Developments.** The City shall provide the Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within the Franchise Area requiring underground installation and/or conversion of cable facilities as part of the approval condition(s). The City agrees to require the developer, as a condition of issuing land use and building permits, to give the Grantee access to all open trenches for deployment of cable facilities throughout the development and at least ten (10) business days written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering and deployment of labor applicable to its installation of cable facilities within the development. For conversion of cable facilities as part of the street improvement condition(s), see Section 3.2.6 “New Construction and Relocation.”
4.5. **Prohibition Against Reselling Service.** No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.
SECTION 5 - Fees and Charges to Customers

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

5.2. Low Income Discount. The Grantee shall offer a discount to those low income (as determined by the Grantee) individuals permanently disabled or sixty-five years of age or older who are the legal owners or lessee/tenants of their residence. Such discounts will consist of thirty percent (30%) off of Basic Service or the Basic Service portion of expanded basic service when not discounted by inclusion in other promotional or programming package rates at which time the promotional or programming package rate will apply.
SECTION 6 - Customer Service

6.1. Customer Service Standards. The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC’s rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3. Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

6.4. Customer Survey. Upon request, and within ninety 90 days, Grantee shall conduct a survey of the customer’s views regarding adequacy of Grantee’s services within the City. City may request said survey one time during the initial 5 year term of the Franchise, and again in the second 5 year term in the event the Franchise is extended as provided for herein. Grantee shall provide a copy of the survey to the City for their use in determining grantee’s compliance with the Franchise and future cable related needs and interests.
SECTION 7 Oversight, Regulation and Fees

7.1. Franchise Fee.

7.1.1. The Grantee shall pay to the City a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. For each franchise fee payment there shall be a report submitted by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period. 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 Franchise and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge or tax.

7.1.2. The parties acknowledge that, at present, applicable federal law limits City to collection of a maximum Franchise Fee of five percent (5%) of Gross Subscriber Revenues in any twelve (12) month period. In the event that at any time during the duration of this Franchise applicable federal law changes the maximum allowable Franchise Fee, to be collected in any twelve (12) month period, then this Franchise shall be amended by the parties within sixty (60) days written notice by either party to the other party. The City agrees that all Cable operators in the Franchise Area over which the City has jurisdiction will be treated in an equivalent manner.

7.1.3. The parties acknowledge that, at present, applicable federal law limits the City to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time throughout the term of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues as described in preceding subsection in any twelve (12) month period, the parties hereby agree to amend the Franchise after written notice to Grantee, and a public meeting to discuss same, provided that all wire line cable systems in the Franchise Area over which the City has jurisdiction are treated in an equivalent manner. In the event that at any time throughout the term of the Franchise, the City is limited by federal law to collecting an amount which is less than five percent (5%) of Gross Revenues in any twelve (12) month period, Grantee may reduce the Franchise Fee payments to the City in accordance with federal law and the parties hereby agree to amend the Franchise unless the City would be covered under grandfathered provisions under federal law to keep the Franchise Fee at five percent (5%) of Gross Revenues.

7.1.4. If Grantee offers bundled Cable Service and non-Cable Service to Subscribers, Grantee shall fairly and reasonably allocate revenue with regard to Cable Service. If a dispute arises between the parties regarding this matter, the City and Grantee will meet and discuss such matters in good faith in an attempt to resolve the dispute.
7.2. **Tax Liability.** Payment of the Franchise fees under this Franchise 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 City. The Grantee is subject to the City's utility tax set forth in Chapter 3.16 of the Langley Municipal Code.

7.3. **Late Charges and Interest.** In the event any payment due quarterly is not received within thirty (30) days from the end of the preceding quarter, Grantee shall pay interest on the amount due at the prime rate as listed in the Wall Street Journal on the date the payment was due, compounded daily, until the date the City receives the payment. Payment of such late charge shall in no event excuse or cure any default under or breach of this Agreement by Grantee.

7.4. **Franchise Fee Audit.**

7.4.1. Upon reasonable prior written notice, during normal business hours, at Grantee’s principal business office, the City shall have the right to inspect the Grantee’s financial records used to calculate the City’s franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the City receives such payment, after which period any such payment shall be considered final.

7.4.2. Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City’s findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a “Finally Settled Amount.” For purposes of this Section (7.2), the term “Finally Settled Amount(s)” shall mean the agreed upon underpayment, if any, to the City by the Grantee as a result of any such audit. If the parties cannot agree on a “Final Settlement Amount,” either party may bring an action to have the disputed amount determined by a court of law.

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

7.4.4. In the event of the “Finally Settled Amount(s)” being an overpayment by Grantee, the City shall have the option of reimbursing Grantee within forty-five (45) days or of requesting in writing within forty-five (45) days that Grantee
withhold fifty percent (50%) of each future Franchise Fee payment until such time as said overpayment is recovered and thereafter remitting the full amounts to the City.

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

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

7.7. **Maintenance of Books, Records, and Files.**

7.7.1. **Books and Records.** Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee’s books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee’s compliance with the provisions of this Franchise at the Grantee’s business office, during normal business hours, and without unreasonably interfering with Grantee’s business operations. Such books and records shall include any records required to be kept in a public file by the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years.

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

7.7.3. **Proprietary Information.** Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing
plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under a state "sunshine," public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request.
SECTION 8 – Transfer or Change of Control

8.1. Transfer of Change of Control

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined as an acquisition of 50% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on the Grantee’s request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.
SECTION 9 - Insurance and Indemnity

9.1. Insurnace. The Grantee shall be insured by companies authorized to do business under the laws of the State of Washington. All insurance required by this Franchise to be maintained by the Grantee shall specifically include the City as an "Additional Insured" and shall not be canceled or reduced below the amounts required by this Franchise without sixty (60) days prior written notice to the City. The insurance requirements set forth herein may be satisfied by Grantee through a program of self-insurance acceptable to the City.

9.1.1. The Grantee shall maintain, during the life of this Franchise, commercial General Liability Insurance in the amount of not less than $1,000,000 per occurrence and aggregate, insuring Grantee against claims for damages for bodily injury, including wrongful death, as well as against claims for property damage, which may arise from any operations under this Franchise, whether such operations are by Grantee or by anyone directly employed by or contracting with Grantee.

9.1.2. The Grantee shall maintain, during the life of the Franchise, Business Automobile Liability Insurance in the amount of not less than $1,000,000 combined single limit for bodily injury and property damage liability, insuring Grantee against claims for damages for bodily injury, including death, as well as against claims for property damage, which may arise from the ownership, use or maintenance of owned and non-owned automobiles, including rented automobiles, whether such ownership, use or maintenance be by Grantee or anyone directly employed by Grantee.

9.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee’s construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys’ fees and costs, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within ten (10) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.
SECTION 10 - System Description and Complimentary Service

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

10.2. **Service to School Buildings.** Upon request and as a voluntary initiative, in participation with the "Cable In the Classroom" program the Grantee may provide free Cable Service and free installation (within the installation guidelines described in Section 4.1 of this Franchise) at one outlet to each State accredited public and private K-12 school, not including "home schools," or incarceration facilities, located in the Franchise Area. In the event that there is another wireline service provider (or providers) providing Cable Service within the City, the decision of which service provider will provide the complimentary service shall be decided on a case by case basis in an effort to maintain equitable burdens on each provider.

10.3. **Service to Governmental and Institutional Facilities.** As a voluntary initiative the Grantee upon request may provide free “Basic” tier Cable Service and free installation (within the installation guidelines described in Section 4.1 of this Franchise) at one outlet to each municipal building and institutional facility located in the Franchise Area. Additional outlets or services will be installed by Grantee at the normal non-discriminatory commercial rate and billed for on a monthly basis at the normal commercial rate as determined by the Grantee’s commercial accounts guidelines. “Municipal buildings” are those buildings owned or leased and occupied by the City for government administrative purposes. “Institutional Facilities” are libraries, police stations (not including incarceration facilities) and fire stations but shall not include buildings or sites owned by City such as storage facilities, golf courses, utility offices or other facilities not used for administrative purposes, or those buildings owned by the City but leased to third parties at which government administrative employees are not regularly stationed. In instances wherein the City is leasing and occupying the building, the City shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building’s owner. The Cable Service provided shall not be used for commercial purposes. The intent of the preceding provision is to ensure availability of local news, weather, and government programming for the benefit of the City administrative staff. For new hookups, the Grantee shall not provide an outlet to such buildings where a non-standard installation (as described in Section 4.1 above) is required, unless the City or building owner/occupant agrees to pay the fully allocated cost of any necessary Cable System extension and/or non-standard installation. If additional outlets of Cable Service or additional services are provided to such buildings beyond those defined herein, the building owner/occupant shall pay the fully allocated costs associated with installation and the service fees, if any, associated therewith. In the event that there is another wireline service provider (or providers) providing Cable Service within the City, the decision of which service provider will provide the complimentary service shall be decided on a case by case basis in an effort to maintain equitable burdens on each provider.
SECTION 11 - Educational and Governmental Access

11.1. **E.G. Channel** Throughout the term hereof, Grantee shall make available, for the City's use, one (1) Education and Government ("EG") Access Channel for EG programming purposes. The provision of the Access Channel via digital or compressed video technology will not reduce or increase the total number of Access Channels required herein. Upon request and within 180 days, Grantee shall provide a link to one mutually agreed upon City origination site for transport of City EG programming to Grantee facilities for distribution.

11.2. **Channel Location** The Franchisee specifically reserves the right to make or change channel assignments in its sole discretion.
SECTION 12 - Enforcement and Termination of Franchise

12.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

12.2. Grantee’s Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the City’s written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

12.3. Public Hearings. In the event the Grantee fails to respond to the City’s notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City that is scheduled at a time that is no less than ten (10) business days therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

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

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

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

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

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

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

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

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

12.6. **Performance Bond.**

A. Grantee shall provide to the City a faithful performance bond in the amount of fifty thousand dollars ($50,000) and obtain additional bonds on a project specific basis as required by the Municipal Code or regulations. Grantee’s maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Grantee, or limit the liability of Grantee to the amount of the bond(s), or otherwise limit the City’s recourse to any other remedy available at law or in equity.

B. If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a local financial institution satisfactory to the City in the amount of fifteen thousand dollars ($15,000). If a letter of credit is furnished pursuant to this subsection, the letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise. After the giving of notice to Grantee and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

1. Failure of Grantee to pay the City sums due under the terms of this Franchise;

2. Reimbursement of costs and expenses borne by the City to correct Franchise violations not corrected by Grantee; and
(3) Monetary remedies or damages assessed against Grantee as provided in this Franchise.

Within ten (10) days following notice that a withdrawal from the letter of credit has occurred, Grantee shall restore the letter of credit to the full amount required herein. Grantee’s maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the letter of credit or otherwise limit the City’s recourse to any other remedy available at law or in equity. Grantee shall first appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Thereafter, Grantee shall have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise.

12.7. Indemnification.

12.7.1. The Grantee shall indemnify and save harmless and defend the City, its appointed and elected officers and employees from and against any and all claims, liability, losses, costs (including attorney’s fees), and/or causes of action, which may arise from and to the extent of any negligent act or omission of the Grantee, its agents, subcontractors, servants or employees in the performance of services under this Franchise. The Grantee further agrees to indemnify, save harmless and defend the City, its agents, servants, and employees from and against any claim, demand or cause of action, in connection with or incident to the work performed under this Franchise, of whatsoever kind or nature arising out of and to the extent of any negligent conduct or misconduct of the Grantee, its agents, subcontractors, servants or employees for which the City, its appointed officers, or elected officers, or employees are alleged to be liable. Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Grantee, its agents, subcontractors, servants or employees and (b) the City, its appointed or elected officers or employees, this indemnity provision, with respect to claims or suits based upon such negligence, shall be valid and enforceable only to the extent of the Grantee’s negligence or the negligence of the contractor’s agents, subcontractors, servants or employees. This requirement of the Grantee to indemnify and defend the City, its appointed and elected officers and employees shall not apply when the damages are caused by or result from the sole negligence of the City, its appointed or elected officers or employees. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney’s fees shall be allowed to the prevailing party.

12.7.2. Neither the application by the Grantee for any permit or authorization pertaining to the use or occupancy by the Grantee of any City road or other City right-of-way or pertaining to the performance on any City road or other City right-of-way of any work by the Grantee or by any of its agents, subcontractors, servants or employees, nor the acceptance by the Grantee of any such permit or authorization, nor the performance of any activity by the Grantee or any of its agents, subcontractors, servants or employees pursuant to any such permit or authorization, nor the acceptance or enjoyment by the Grantee of any benefit or privilege arising under any such permit or authorization shall be effective to enlarge or diminish the Grantee’s obligation or liability.
to indemnify or hold harmless the City or any of its appointed or elected officers and employees.
SECTION 13 - Miscellaneous Provisions

13.1. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee’s ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee’s cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

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

To the City:

City of Langley  
112 2nd Street  
PO Box 366  
Langley, WA 98260  
City Finance Director

To the Grantee:

Comcast of Washington IV, Inc.  
15815 25th Ave. W.  
Lynnwood, WA 98087  
Attn: Government Affairs Dept.

with a copy to:

Comcast Cable  
1525 75th St. S.W.  
Everett, WA 98203  
Attn.: Government Affairs Dept.

13.3. **Entire Franchise.** This Franchise, including all Exhibits, embodies the entire understanding and agreement of the City and the Grantee with respect to the
subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

13.4. **Severability.** If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.5. **Governing Law and Venue.** This Franchise shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State. The venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or the Island County Superior Court.

13.6. **Modification and Amendment.**
13.6.1. This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of Washington State.

13.6.2. If, during the term of this Franchise, there becomes effective any change in federal or state law which:

A. affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or

B. pre-empts or otherwise renders null and void any term or condition of this Franchise which has theretofore been negotiated in good faith; then, in such event, either party may, within one hundred and eighty (180) days of the effective date of such change, notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific terms or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiations on any other term or condition of this Franchise. Within thirty (30) days from then, in such event, and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by the City Council and accepted by the Grantee, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, the Franchise shall remain in full force and effect.
13.7. **No Third-Party Beneficiaries.** Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

13.8. **Waiver of Rights.** Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein. The failure of either party at any time to require performance by the other of any provision herein shall in no way affect the right of the other party hereafter to enforce such provision, nor shall the waiver by either party of any breach of any provision of this Franchise be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

13.9. **Cumulative Rights Subject to Applicable Law.** All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

13.10. **Counterparts.** This Franchise Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.
IN WITNESS WHEREOF, this Franchise has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest:  

City:

______________

By: ________________

Name:

Title:

Attest: Comcast of Washington IV, Inc.

______________

By: ________________

Name:

Title: