

September 20, 1994

INTRODUCED BY KENT PULLEN

PROPOSED NO. 94-708

ORDINANCE NO. 11680

AN ORDINANCE relating to cable communications, granting a renewal of franchises to Tele-Vue Systems, Inc. d/b/a Viacom Cable for a ten-year term.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings of Fact: A. King County (the county) previously granted Tele-Vue Systems, Inc., doing business as Viacom Cable (Viacom), franchises to provide cable television service within certain unincorporated areas of the county. Those franchises have expired or are scheduled to expire shortly.

B. The county commenced a proceeding which afforded the public in the franchise area and Viacom appropriate notice and participation for the purpose of (i) identifying the future cable-related community needs and interests, and (ii) reviewing Viacom's performance under its franchises during the then current terms.

C. Viacom submitted a proposal to construct, operate, maintain and reconstruct a cable communications system and for renewal of its franchises under the informal renewal procedures of federal and county law. The area which Viacom seeks to serve under the proposed franchise, which is described in attached Appendix A, is the same as the area of its current franchises.

D. The county has provided prompt public notice of Viacom's proposal and has solicited public comment on the proposal.

E. The county has concluded it is appropriate to renew Viacom's authority to provide cable television service in the county subject to the terms and condition contained in this ordinance, the proposed franchise agreement which is attached as Appendix B, the proposed construction agreement which is attached as Appendix C, and applicable law.

1 F. The council has determined that it is in the best
2 interests of the citizens of King County to grant Viacom a new
3 franchise to serve the areas of the county Viacom has historically
4 served.

5 SECTION 2. The council hereby grants Tele-Vue Systems,
6 Inc. d/b/a Viacom Cable (Viacom) a franchise to construct, operate,
7 maintain and reconstruct a cable communications system, including
8 the renewal of cable television franchise numbers 548, 549, 550,
9 560, 561, 569, 614, 5175 and 5311, within those unincorporated
10 areas of King County described in Appendix A which is attached to
11 and a part of this ordinance. The new franchise shall be for a
12 term of ten years and shall expire at noon ten years from the date
13 this ordinance is signed into law.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

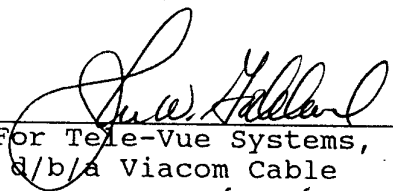
11680

Letter of Understanding

This letter expresses the intention of Tele-Vue Systems, Inc., d/b/a Viacom Cable (Viacom), and King County, Washington (the County) with respect to the provision of C-SPAN Channels:

Having received from King County, Washington a cable television franchise dated 3/9, 1995, and other valuable consideration, Viacom promises and agrees to provide at least one channel of C-SPAN programming as part of its basic services to King County system subscribers. Viacom will provide this programming to each subscriber as soon as feasible, but in no event later than the time that subscriber receives service by way of a rebuilt subscriber network providing 750MHz of transmission capability to the subscriber's premises.

Viacom acknowledges that C-SPAN is a "broad category of programming" as that term is used in 47 U.S.C. 544(b)(2)(B). The County may enforce this promise under terms of Viacom's franchise, and Viacom waives any claim to the contrary.



For Tele-Vue Systems, Inc.
d/b/a Viacom Cable

Date: 2/27/95



For King County, Washington

Date: 3/10/95

11680

Appendix B

FRANCHISE AGREEMENT
BETWEEN
TELE-VUE SYSTEMS, INC. D/B/A VIACOM CABLE
AND
KING COUNTY, WASHINGTON
1995

CABLE SYSTEMS

FRANCHISE NO. _____

In the matter of the application of Tele-Vue Systems, Inc. d/b/a Viacom Cable for a Franchise to construct, operate and repair a Cable System in, over, along and under County streets, alleys, roads and compatible utility easement rights-of-way in King County, Washington for the purpose of transmitting video, data and voice signals.

Tele-Vue Systems, Inc. d/b/a Viacom Cable filed an Application for a Franchise to construct, operate and repair a Cable System in, over, along and under County roads and appropriate right-of-way within the unincorporated portion of the area described in Appendix A for the purpose of transmitting video, data and voice signals. The King County Council held a public hearing on the Application on the 6 day of Feb, 1995.

Legal notice of the Application and of the hearing were given as required by law.

The King County Council having considered the interests proposed and advanced, has found that the grant of a Franchise, subject to conditions, is in the public interest. It hereby ORDERS, pursuant to Ordinance No. 11680, that a Cable System Franchise is granted to Tele-Vue Systems, Inc. d/b/a Viacom Cable, subject to the conditions set forth in the Franchise Agreement attached as Appendix B hereto, this Franchise and Ordinance No. 11680. This Franchise grants the right, subject to conditions, to construct, operate and repair a Cable System in, over, along and under County roads and appropriate right-of-way within the unincorporated portions of the area described in Appendix A for the purpose of transmitting video, data and voice signals commencing on the effective date of the Franchise through and including Feb 16, 2005. The Franchise shall become effective when the Franchisee has:

- A. Signed the Franchise Agreement attached as Appendix B;
- B. Signed the Construction Agreement Filed attached as Appendix C;
- C. Signed an unconditional acceptance of this Franchise attached as Appendix D; and

11680

- D. Made all payments, posted all securities and supplied all information that it is required to supply prior to or upon the effective date of the Franchise.

Provided that, all these actions must be completed within 30 days of the effective date of Ordinance No. 11680, or the Franchise shall be null and void and without effect.

Tele-Vue Systems, Inc.
d/b/a Viacom Cable

King County, Washington

By: *J. W. Adlard*
Its: President
Date: 2/27/95

By: *Gary Locke* FOR
Its: GARY LOCKE
KING COUNTY EXECUTIVE
Date: 3/10/95

11680

Appendix A

Those portions of the following described area located within the unincorporated portions of King County, Washington:

[LEGAL DESCRIPTION OF FRANCHISE AREA]

ATTACHMENT TO FRANCHISE AGREEMENT

BETWEEN

KING COUNTY, WASHINGTON

AND

VIACOM CABLE

Those portions of unincorporated King County, Washington, described as follows:

PARCEL ONE
(Formerly Franchise No. 548)

Beginning at the N.E. $\frac{1}{4}$ corner of Section 10, Twp. 26 N., R. 5, E.W.M.; thence southerly along the east line of Section 10, Twp. 26 N., R. 5, E.W.M. to the S.E. $\frac{1}{4}$ corner of said section; thence southerly along the east line of Section 15, Twp. 26 N., R. 5, E.W.M. to the S.E. $\frac{1}{4}$ corner of said section; thence southerly along the east line of Section 22, Twp. 26, N., R. 5, E.W.M. to the S.E. $\frac{1}{4}$ corner of said section; thence southerly along the east line of Section 27, Twp. 26 N., R. 5, E.W.M. to the S.E. $\frac{1}{4}$ corner of said section; thence southerly along the east line of Section 34, Twp. 26 N., R. 5, E.W.M. to the S.E. $\frac{1}{4}$ corner of said section; thence westerly along the south line of Section 34, Twp. 26 N., R. 5, E.W.M. to the intersection with the centerline of 132nd Ave. N.E.; thence southerly along the centerline of 132nd Ave. N.E. to the east $\frac{1}{4}$ corner of Section 9, Twp. 25 N., R. 5, E.W.M.; thence westerly along the east-west centerline of Section 9, Twp. 25 N., R. 5, E.W.M. to the intersection with the centerline of N.E. 72nd Pl.; thence northwesterly along the centerline of N.E. 72nd Pl. to the intersection with the west line of Section 9, Twp. 25 N., R. 5, E.W.M.; thence northerly along the west line of Section 9, Twp. 25 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 4, Twp. 25 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 33, Twp. 26 N., R. 5, E.W.M. to the intersection with the centerline of N.E. 112th St.; thence westerly along the centerline of N.E. 112th St. to the S.W. corner of the N.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of Section 32, Twp. 26 N., R. 5, E.W.M.; thence westerly along the south line of the N.E. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of Section 31, Twp. 26 N., R. 5, E.W.M. to the intersection with the east shoreline of Lake Washington; thence northwesterly along the east shoreline of Lake Washington in Section 31, Twp. 26 N., R. 5, E.W.M. to the intersection with the west line of said section; thence northwesterly along the east shoreline of Lake Washington in Section 36, Twp. 26 N., R. 4, E.W.M. to the intersection with the north line of said section; thence northwesterly along the east

shoreline of Lake Washington in Section 25, Twp. 26 N., R. 4, E.W.M. to the intersection with the west line of said section; thence northwesterly along the east shoreline of Lake Washington in Section 26, Twp. 26 N., R. 4, E.W.M. to the intersection with the north line of said section; thence northwesterly along the east shoreline of Lake Washington in Section 23, Twp. 26 N., R. 4, E.W.M. to the intersection with the north line of said section; thence northwesterly along the east shoreline of Lake Washington in Section 14, Twp. 26 N., R. 4, E.W.M. to the intersection with the north line of said section; thence easterly along the north line of Section 14, Twp. 26 N., R. 4, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Section 13, Twp. 26 N., R. 4, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section; thence southerly along the east line of Section 13, Twp. 26 N., R. 4, E.W.M. to the S.E. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Section 19, Twp. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 17, Twp. 26 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Section 17, Twp. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Section 16, Twp. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 10, Twp. 26 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Section 10, Twp. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section and the true point of beginning.

Less any portion lying within an incorporated area.

PARCEL TWO
(Formerly Franchise No. 549)

Beginning at a point on the centerline of the Bellevue-Redmond road at the intersection with the north line of Section 24, Twp. 25, R. 5, E.W.M.; thence east along said north line of Section 24 to the centerline of 172nd Ave. N.E.; thence south along said centerline of 172nd Ave. N.E. and the southerly extension thereof to the S.E. corner of the N.E. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of Section 25, Twp. 25 N., R. 5, E.W.M.; thence east to a point on the west shore of Lake Sammamish; thence southerly along said west shore of Lake Sammamish to its intersection with the North line of Section 13, Twp. 24 N., R. 5, E.W.M.; thence east across Lake Sammamish to a point on the east shore of the Lake which is also on the north line of Section 17, Twp. 24 N., R. 6, E.W.M.; thence continuing east along said north line of Section 17 and Section 16 to the northeast corner thereof; thence south along the east line of said Section 16 and Section 21, Twp. 24 N., R. 6, E.W.M., to the southeast corner thereof; thence west along the south line of said Section 21, and continuing west along the south lines of Section 20, 19, and 24 to the southwest corner thereof; thence north along the west line of said Section 24 to northwest corner thereof; thence west along the south line of Section 14, Twp. 24 N., R. 5, E.W.M. to the southwest corner of said Section 14; thence north along the west lines of Sections 14 and 11 to the northwest corner of said Section 11; thence west three fourths of a mile along the north line of Section 10 to a point; thence north along the centerline of the west half of Section 3, Twp. 24 N., R. 5, E.W.M. to a point on the north line of said Section 3; thence west along the north line of said Section 3 and continuing west along the north line of Section 4 to a point which is on the centerline of the west half of Section 33, Twp. 25 N., R. 5, E.W.M.; thence north along said centerline of the west half of Section 33 to a point on the north line of said Section; thence east along the north line of said Section 33 and continuing east along the north lines of Sections 34 and 35 to the northeast corner of said Section 35; thence north along the east line of Section 26, and continuing north along the east line of Section 23 to a point on the centerline of the Bellevue-Redmond Road; thence northeasterly along the centerline of said Bellevue-Redmond Road to the point of beginning.

Also beginning at the southeast corner of Section 32, Twp. 24 N., R. 6, E.W.M.; thence north along the east line of Section 32 to the northeast corner; thence east to the west city limits of Issaquah; thence northerly along said city limits to north line of Section 29, Twp. 24 N., R. 6; thence west along the north lines of Sections 29 and 30 to the northwest corner of Section 30; thence south along said west line to the southwest corner of Section 30; thence west along the north line of Sections 36, 35, 34 and 33, Twp. 24, R. 5, E.W.M. to the northwest corner of said Section 33; thence south to the southwest corner of Section 33; thence east along the south lines of Sections 33, 34, 35 and 36, Twp. 24, R. 5, E.W.M. and Sections 31 and 32, Twp. 24, R. 6, E.W.M. to the point of beginning.

Less any portion lying within an incorporated area.

PARCEL THREE
(Formerly Franchise No. 550)

Beginning at the northeast corner of Twp. 26 N., R. 6, E.W.M.; thence southerly along the east line of Twp. 26 N., R. 6, E.W.M. to the southeast corner of said township; thence southerly along the east line of Twp. 25 N., R. 6, E.W.M. to the southeast corner of said township; thence southerly along the east line of Twp. 24 N., R. 6, E.W.M. to the southeast $\frac{1}{4}$ corner of Sec. 24, Twp. 24 N., R. 6, E.W.M.; thence westerly along the south line of Section 24, Twp. 24 N., R. 6, E.W.M. to the southwest $\frac{1}{4}$ corner of said section; thence westerly along the south line of Section 23, Twp. 24 N., R. 6, E.W.M. to the southwest $\frac{1}{4}$ corner of said section; thence westerly along the south line of Section 22, Twp. 24 N., R. 6, E.W.M. to the southwest $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 22, Twp. 24 N., R. 6, E.W.M. to the northwest $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 15, Twp. 24 N., R. 6, E.W.M. to the northwest $\frac{1}{4}$ corner of said section; thence southwesterly along a straight line from the northwest $\frac{1}{4}$ corner of Section 15, Twp. 24 N., R. 6, E.W.M. to the intersection of the centerline of East Lake Sammamish Road and S.E. 42nd Pl.; thence northwesterly along the centerline of East Lake Sammamish Road to the intersection with the south line of the N.E. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of Section 18, Twp. 25 N., R. 6, E.W.M.; thence westerly along the south line of the N.E. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of Section 18, Twp. 25 N., R. 6, E.W.M. to the southwest corner of the N.E. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of said section; thence westerly along the south line of the N.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of Section 18, Twp. 25 N., R. 6, E.W.M. to the southwest corner of the N.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of said section; thence northerly along the west line of Section 18, Twp. 25 N., R. 6, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 7, Twp. 25 N., R. 6, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 6, Twp. 25 N., R. 6, E.W.M. to the intersection with the centerline of the Union Hill Road; thence southwesterly along the centerline of the Union Hill Road to the intersection with the centerline of the Avondale Road; thence northeasterly along the centerline of the Avondale Road to the intersection with the east-west centerline of Section 31, Twp. 26 N., R. 6, E.W.M.; thence westerly along the east-west centerline of Section 31, Twp. 26 N., R. 6, E.W.M. to the west $\frac{1}{4}$ corner of said section; thence westerly along the east-west centerline of Section 36, Twp. 26 N., R. 5, E.W.M. to the west $\frac{1}{4}$ corner of said section; thence westerly along the east-west centerline of Section 35, Twp. 26 N., R. 5, E.W.M. to the west $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 35, Twp. 26 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 26, Twp. 26 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 23, Twp. 26 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 14, Twp. 26 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 11, Twp. 26 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of

11680

said section; thence northerly along the west line of Section 2, Twp. 26 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Twp. 26 N., R. 5, E.W.M. to the northeast corner of said township; thence easterly along the north line of Twp. 26 N., R. 6, E.W.M. to the northeast corner of said township and the true point of beginning.

Less any portion lying within an incorporated area.

11680

PARCEL FOUR
(Formerly Franchise No. 560)

Area bounded as follows:

North - North line Township 21 N.

South - Southerly Boundary of King County

East - East lines Sec. 4-9-16-21-28 Twp. 21 N., R. 5, E.W.M.

West - Puget Sound Shoreline

Less any portion lying within an incorporated area.

PARCEL FIVE
(Formerly Franchise No. 561)

11680

Those portions of Section 11, of the west half of Section 13, and of Section 14 lying southerly of the Sunset Highway (US 90); also the east half of the N.E. $\frac{1}{4}$ of Section 22; the north half of Section 23; and the N.W. $\frac{1}{4}$ of Section 24; all in Twp. 24 N., R. 5, E.W.M., in King County, Washington.

EXCEPTING any portion thereof lying within the presently existing boundaries of Franchise #561; and

EXCEPTING any portion thereof lying within the corporate limits of the City of Bellevue.

ALSO the area bounded as follows:

North - S.E. 24th Street

South - S.E. 48th Street

East - Bellevue City Limits to Intersection with West line of Section 11, Twp. 24 N., R. 5, E.W.M., thence South along the West line of Sections 11 and 14 to S.E. 48th.

West - City Limits of Bellevue

Less any portion lying within an incorporated area.

11680

PARCEL SIX
(Formerly Franchise No. 569)

Beginning at Intersection of Lake Washington Shoreline and North Line of Section 20, Twp. 24 N., R. 5, E.W.M.;
thence east along north line of Sections 20, 21, 22 & 23, Twp. 24 N., R. 5, E.W.M. to Northeast corner of Section 23;
thence south along east line said Section 23 to northwest corner of Section 25;
thence east along north line of said Section 25 to northeast corner of said Section 25;
thence south along east line of said Section 25 to southeast corner;
thence west along south lines of Sections 25, 26, 27, 28, 29, Twp. 24 N., R. 5, E.W.M. to shoreline of Lake Washington;
thence northerly along said shoreline to beginning.

Less any portion lying within an incorporated area.

11680

PARCEL SEVEN
(Formerly Franchise No. 5175 (and 5311))

That area of unincorporated King County which includes all of Vashon Island and all of Maury Island.

11680

PARCEL EIGHT
(Formerly Franchise No. 614)

Beginning at the N.E. $\frac{1}{4}$ of Section 3, T. 26 N., R. 5, E.W.M.; thence southerly along the east line of Section 3, T. 26 N., R. 5, E.W.M. to the southeast corner of said section; thence westerly along the south line of Section 3, T. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ corner of Section 9, T. 26 N., R. 5, E.W.M.; thence southerly along the east line of Section 9, T. 26 N., R. 5, E.W.M.; to the S.E. $\frac{1}{4}$ corner of said section; thence westerly along the south line of Section 9, T. 26 N., R. 5, E.W.M. to the S.W. $\frac{1}{4}$ corner of said section which point is the S.E. $\frac{1}{4}$ of Section 8; thence westerly along the south line of Section 8, T. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ of Section 18, T. 26 N., R. 5, E.W.M.; thence southerly to the east line of said section to the S.E. $\frac{1}{4}$ of Section 18, T. 26 N., R. 5, E.W.M.; thence westerly along the south line of said section to the S.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of said section to the N.W. $\frac{1}{4}$ corner; thence northerly along the west line of Section 7, T. 26 N., R. 5, E.W.M. to the N.W. $\frac{1}{4}$ corner of said section; thence northerly along the west line of Section 6, T. 26 N., R. 5, E.W.M.; to the N.W. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Section 6, T. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Section 5, T. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Section 4, T. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section; thence easterly along the north line of Section 3, T. 26 N., R. 5, E.W.M. to the N.E. $\frac{1}{4}$ corner of said section and the true point of beginning exclusive of the incorporated area of the City of Bothell, Washington.

Less any portion lying within an incorporated area.

11680

CABLE TELEVISION FRANCHISE AGREEMENT

BETWEEN KING COUNTY, WASHINGTON

AND

TELE-VUE SYSTEMS, INC. d/b/a VIACOM CABLE FOR

FRANCHISE 11680

WHEREAS, Tele-Vue Systems, Inc. d/b/a Viacom Cable, a Washington State Corporation, has asked King County, Washington to renew the nonexclusive Franchise it holds to provide cable television and other services within the unincorporated part of the County; and

WHEREAS, the County has conducted proceedings in which Tele-Vue Systems, Inc. d/b/a Viacom Cable has participated, to identify the future cable-related needs and interests of the community; to consider the financial, technical, and legal qualifications of Tele-Vue Systems, Inc. d/b/a Viacom Cable; to review the past performance of Tele-Vue Systems, Inc. d/b/a Viacom Cable; and to determine whether Tele-Vue Systems, Inc. d/b/a Viacom Cable's plans for constructing and operating its System are reasonable; and

WHEREAS, based in part upon Tele-Vue Systems, Inc. d/b/a Viacom Cable's representations and information, the County has determined that, subject to the terms and conditions set forth herein, renewal of Tele-Vue Systems, Inc. d/b/a Viacom Cable's nonexclusive Franchise is consistent with the public interest; and

WHEREAS, the County is willing to issue such a Franchise, conditioned on Tele-Vue Systems, Inc. d/b/a Viacom Cable's acceptance of the terms and conditions thereof; and

WHEREAS, Tele-Vue Systems, Inc. d/b/a Viacom Cable is willing to accept the Franchise subject to such terms and conditions, and to abide by those terms and conditions:

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 SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. Definitions.

Except as otherwise provided herein, the definitions and provisions governing the interpretation of terms set forth in King County Code ("K.C.C."), Section 6.27A.010 shall govern this Franchise Agreement. References to any County official or office also refer to any official or office that succeeds to any or all of the responsibilities of the named official or office.

References to laws or "applicable laws" include federal, state and local laws and regulations adopted pursuant to those laws; unless otherwise stated, references to laws includes laws now in effect, as the same may be amended from time to time, and new laws. In addition, the following definitions shall apply:

(a) Cable Ordinance. Chapter 6.27A of the King County Code, as amended from time to time.

(b) Franchise Agreement. This contract and any amendments, exhibits, or appendices hereto.

(c) Franchisee. Refers to Tele-View Systems, Inc. d/b/a Viacom Cable, and its lawful and permitted successors and assigns.

(d) Books and Records. Means any recorded information relating to the Cable System or its management, including but not limited to information regarding its construction, operation or repair, in whatever form stored, including, but not limited to computerized records and programs, paper records, and video or audio-taped records.

(e) Cable System. Is defined as in the Cable Ordinance,

except that as used herein, it specifically refers to the Franchisee's Cable System. The term is used to refer to the Cable System as a whole, or to any part of the Cable System, including equipment or facilities appurtenant thereto.

(f) Construction, Operation or Repair. These and similar formulations of those terms refer to the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and tree trimming.

(g) Rights-of-way. The term "right(s)-of-way" refers to County streets, alleys, roads and compatible utility easements. It does not include recreational and nature trails.

2. Grant of Authority; Limits and Reservations.

(a) Grant of Authority. The Franchisee is hereby granted, subject to the terms and conditions of this Franchise Agreement, the right, privilege, and authority to construct, operate, maintain, and reconstruct a cable communications system within the franchise territory defined in this Agreement. The Franchise issued to the Franchisee is subject to the terms and conditions of this Agreement. It shall remain in effect for a period of ten (10) years from the effective date of this grant, unless otherwise terminated by action of the County.

(b) Scope of Franchise.

(1) The Franchise is intended to convey limited rights and interests only as to those County streets, alleys, roads and

compatible utility easement rights-of-way in which the County has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide the Franchisee 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 or as mandated by federal, state, or local law. The Franchise does not deprive the County 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 County's right-of-way covered by the Franchise, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including by constructing, altering, renewing, paving, widening, grading, blasting or excavating. When practical, the County will give the Franchisee forty-eight (48) hours notice of any blasting or excavating which is likely to damage the Franchisee's lines and appurtenances so that the Franchisee may protect its lines and appurtenances from any County work.

(2) Whenever any of the County right-of-way as designated in this Franchise, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within town or city limits, this Franchise shall continue in full force and effect until such time as the incorporation and/or annexation is complete according to applicable state law, after which time the County shall no longer have any responsibility for maintenance of such roads, right-of-

way or other County property within the area of the annexation and/or incorporation.

(3) Nothing in this Franchise shall obligate the Franchisee to operate as a common carrier and no application of Franchisee's facilities as utilized by the County will place the Franchisee within the regulation of a public utility by reason of such use.

(c) Exercise of Authority under Franchise. Franchisee may engage in cable service and any other lawful activity related to the operation of a cable system. At the time this Franchise was granted, the Franchisee was only providing cable service pursuant to its Franchise. Because the types of services the Franchisee may choose to offer in the future is uncertain, and their effect on the public interest cannot be fully anticipated, the County reserves the right to impose appropriate additional conditions on the offering of new services. The County agrees to impose similar conditions on all similarly situated companies offering the same service to the extent such companies are subject to the County's legal authority.

(d) Activities of Affiliates. Franchisee promises and guarantees, as a condition of exercising the privileges granted by this franchise, that any Affiliate or joint venture or partner of the Franchisee involved in the management or operation of the Cable System in the County will comply with the terms and conditions of this franchise.

(e) Franchise Not Exclusive. The right to use and occupy

the public right-of-way is not exclusive and does not explicitly or implicitly preclude the issuance of other Franchises to construct, operate or repair Cable Systems within the County; or affect the County's right to use or authorize the use of any of its public right-of-way or other property by other persons as it determines appropriate.

(f) Relation to Other Cable Franchises. This Agreement and all rights and privileges granted under the Franchise are binding on the parties to this Agreement without reference to any other action or franchise grant by the County. Notwithstanding, Section 16(b) shall be modified if the Franchisee requests that it be modified and shows that (1) the County has voluntarily granted a renewal franchise to an unrelated Franchisee which serves more subscribers in the County than Franchisee; and (2) the second agreement is substantially less burdensome than Franchisee's Agreement. In this paragraph, "substantially less burdensome" means: the dollar equivalent expenditure by the second Franchisee for access and Institutional network equipment, facilities and grants over the life of the franchise is a substantial percentage less than the dollar expenditure imposed on Franchisee by Section 16 when computed on the basis of dollars to be expended per subscriber per month over the life of the franchise. "Voluntarily granted" means any renewal franchise that is granted prior to an adjudicative decision pursuant to a proceeding under K.C.C. Section 6.27A.060(B)(4) (administrative hearing).

(g) Construction of Agreement. The provisions of this Agreement shall be liberally construed to promote the public interest.

(h) Relation to Cable Ordinance. The provisions of the Cable Ordinance as amended over the term of this franchise shall apply to the Franchise Agreement as if fully set forth in the Franchise Agreement, and the express terms of the Cable Ordinance will prevail over conflicting or inconsistent provisions in the Franchise Agreement unless the Franchise Agreement expresses an explicit intent to waive a requirement of the Cable Ordinance. However, the express provisions of this Agreement constitute a valid and enforceable contract between the parties. Neither party may take any unilateral action which materially changes the explicit performance promised in this Agreement. Although the rights hereunder are subject to the Cable Ordinance and Cable Rules, neither the Cable Ordinance nor the Cable Rules is a contract with the Franchisee.

(i) Relation to Other Provisions of Law. This Agreement and all rights and privileges granted under the Franchise are subject to the County's police and other powers and other applicable law. 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.

(j) Relation to Prior Franchise. As of the effective date of this Franchise, the Franchise previously held by the

Franchisee is superseded and of no further force and effect.

Franchisee promises to pay all amounts owed the County and subscribers under its prior franchise for which claims are made within three years of the effective date of this Franchise.

Franchisee hereby indemnifies and insures the County against Franchisee acts and omissions which occurred when the prior Franchise was effective to the extent any claims related to such acts and omissions are not barred by the statute of limitations.

(k) Effect of Grant. By granting this Franchise, the County acknowledges and agrees that it has the authority to issue this Franchise and did so pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

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

(m) Franchisee Bears Its Own Costs. Unless otherwise expressly provided in this Agreement, all acts that the Franchisee is required to perform must be performed at the Franchisee's own expense.

(n) No Waiver. The failure of the County or the Franchisee on one or more occasions to exercise a right or to require compliance or performance under this Agreement, the Cable Ordinance, or any other 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 breach is not a waiver of any other breach, whether similar or different from that waived.

(o) No Recourse. To the extent permitted by law, the Franchisee shall have no recourse whatsoever against the County or its officials, boards, commissions, agents or employees for any loss, costs, expenses, or damages arising out of any provision or requirement of the Franchise, Franchise Agreement, or Cable Ordinance because of the enforcement of the Franchise, Franchise Agreement or Cable Ordinance, except if such loss, costs, expenses, or damages are the result of the sole negligence or misconduct on the part of the County or its agents. The rights of the County under this provision are in addition to, and shall not be read to limit, any immunities the County may enjoy or rights which the Franchisee may enjoy under federal or state law.

(p) External Costs. During the first five years of the term of this franchise, the Franchisee may treat franchise fees and the capital grant under Section 16 as external costs to the extent consistent with FCC rules. After five years, both parties will apply the law as it may evolve to determine what constitutes

external costs. The Franchisee promises not to itemize any external costs on subscriber bills in such a way as to have the effect of drawing particular attention to those costs in relationship to other costs. Notices of price changes caused by external costs shall be in accordance with federal rules.

3. Effect of Changes in Law.

(a) Severability. In the event that a court or agency or legislature of competent jurisdiction acts or declares any nonmaterial provision of this Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court or agency or legislature of competent and controlling jurisdiction acts or declares any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore to the injured party the benefits or equivalent consideration which the injured party agrees is a reasonable substitute for the benefits the injured party expected to receive from the provision which was declared unenforceable. If the parties are unable to agree to a modification to this Agreement within sixty days of the date the decree became final, the injured party may at any time thereafter request compulsory arbitration under the rules of the American

Arbitration Association. The parties agree the arbitrator shall modify the terms of this Agreement in a manner which is equitable to both parties with respect to the full value of the consideration promised in this Agreement. The decision of the arbitrator shall be final and fully enforceable in any court of competent jurisdiction. By way of illustration and not limitation, the following provisions shall be considered material: Sections 2(h) (Relation to Cable Ordinance); 2(i) (Relation to other Provisions of Law); 5 (Franchise Fee); 15 (System Facilities, Equipment and Services); 16 (Channels, Facilities, Equipment and Services for Public, Educational, and Governmental Use); and 18 (Conditions on Use of Rights-of-Way).

(b) Effect of Change in Law. In the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, subject to the parties' rights under Section 3(a) of this section, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, voided, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of either party.

4. Transfers.

All rights granted under the Franchise are for personal services. Therefore, the rights granted under the Franchise may not be transferred, assigned, sublet or subdivided in any way or through any mechanism, including a sale or lease of the Cable System or a sale or change in the control of the Franchisee (all referred to below as "transfers") without the express prior permission of the County by Ordinance, except as otherwise provided under the Cable Ordinance or federal law.

(a) Control. The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. A change in control includes any of the following:

(1) If Franchisee is a publicly traded partnership or corporation, the sale or transfer of five percent (5%) of the Franchisee's stock or general partnership interest;

(2) If Franchisee is a closely held partnership or corporation or an individual, transfer of twenty-five (25%) of the ownership interest or the voting stock interest in Franchisee or transfer of 50% or more of the ownership interest or the voting stock interest in any legal parent or entity directly or indirectly controlling or managing Franchisee;

(3) Any other transaction which has the practical consequence of transferring to a new entity or legal person the actual working control of the Franchisee or the cable system.

(b) Application for Transfer. An entity which seeks

approval of a proposed transfer (hereafter, the "Applicant") shall file an application for approval of that transfer no later than one hundred twenty (120) days prior to the proposed effective date of the transfer. The application shall meet the requirements of the Cable Ordinance and applicable law.

(c) Notice of Transfer. The Franchisee shall notify the Cable Office in writing as soon as any agreement or contract is executed for a transfer that is subject to the approval of the County.

(d) Review of Transfer. In determining whether to grant an application submitted under this Section 4, the County shall apply the standards set forth in the Cable Ordinance. As it determines necessary in evaluating the application, the County may require the Franchisee and Applicant to submit information in addition to that provided as part of the application.

(e) Mandatory Conditions.

(1) No application shall be granted unless the Applicant agrees in writing that it will:

(i) Abide by and accept the terms of the Cable Ordinance, this Agreement and any additional terms and conditions that the County reasonably determines are needed to protect the public interest or to meet the community's current or future cable-related needs and interests; however, except as the County reasonably determines the proposed transfer increases the risk of nonperformance or partial performance of any franchise obligation, the County agrees that it will not seek modifications

to the terms of this Agreement as a condition of approval of a transfer which occurs within two (2) years of the effective date of this Agreement;

(ii) Assume and be responsible for the obligations and liabilities of the Franchisee, known and unknown, under this Agreement and applicable law; and

(iii) Provide performance guarantees to the County that the County considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations by the Franchisee.

(2) No application shall be granted unless the Applicant agrees that approval by the County of the transfer shall not constitute a waiver or release of any rights of the County under this Franchise Agreement or applicable law, whether arising before or after the effective date of the transfer.

(3) No application shall be granted unless the Applicant posts all required bonds, securities, and the like in its own name at least thirty (30) days prior to the effective date of the transfer.

(f) Limitation on Transfer. Except as provided by law, no successor Franchisee may transfer a Cable System within three (3) years following either the acquisition or initial construction of such system by the Franchisee.

(g) Other Changes in Ownership. Franchisee shall notify

the County of any substantial changes in ownership in Franchisee or in any entity which directly or indirectly controls Franchisee at least one hundred twenty (120) days prior to the proposed effective date of the change. If the County concludes the proposed change is a transfer as defined in this Agreement, Franchisee shall immediately comply with the requirements of this Section 4 and agrees not to complete the proposed change without prior County approval. This provision shall not apply to publicly traded stock transactions of which the Securities and Exchange Commission does not require notice.

5. **Franchise Fee.**

(a) Payment to County. As compensation for use of public right-of-way, the Franchisee and its affiliates shall pay the County a Franchise fee in an amount equal to five (5) percent of the Gross Revenues as that term is defined in the Cable Ordinance, as amended, derived from the operation of the cable system. Notwithstanding, any portion of franchise fees and the Capital Grant in Section 16(b) which Franchisee passes through to subscribers as external costs, as that term is defined by the FCC at 47 C.F.R. Section 922(d)(3), as amended, shall not be included in the term Gross Revenues.

(b) Not in Lieu of Any Other Assessments, Tax or Fee. The Franchise fee is in addition to all other fees, assessments, taxes or payments that the Franchisee may be required to pay under any federal, state, or local law, subject to any

limitations set forth in 47 U.S.C. § 542.

(c) Payments. Franchise fees shall be paid in accordance with the schedule set forth in the Cable Ordinance. In the event that a franchise fee payment or other sum due is not received by the Cable Office on or before the date due, or is underpaid, the Franchisee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the maximum rate permitted under Washington State law, compounded daily.

(d) No Accord or Satisfaction. No acceptance of any payment by the County shall be construed as a release or an accord and satisfaction of any claim the County may have for further or additional sums payable as a Franchise fee under the Cable Ordinance or for the performance of any other obligation of the Franchisee. The Franchisee shall be released of further responsibility for any unclaimed past or overdue Franchise fees for a particular calendar year six (6) months following the resolution of a County financial audit or financial review of Franchisee's books and records related to payments for that year or years.

(e) Payment on Termination. If the Franchise terminates for any reason, the Franchisee shall file, following a financial audit by an independent certified public accountant, with the Cable Office 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 Franchisee since the end of the previous fiscal year. The

County reserves the right to satisfy any remaining financial obligations of the Franchisee to the County by utilizing the funds available in a security fund, letter of credit, and/or other security provided by the Franchisee.

(f) New Business Holiday. If the Franchisee offers its subscribers any services in new lines of business which it has not offered during its previous franchise term, it may qualify for a one year, one-time exemption from the franchise fee for such new service. Gross Revenues from any such new service shall not be subject to franchise fees for a period beginning on the date the Franchisee notifies the County it wishes the new service to be exempt from the franchise fee. New lines of business exempted from fees by this provision shall include, but not be limited to services such as downloading games, and real time shopping applications which utilize new technology enabled by the rebuild of the cable system, alternate long distance and local telephone access, wireline and wireless telephony, data and personal communications services. New lines of business do not include pay-per-view television or additional or different channels of traditional one-way service.

(g) Limit on Certain Payments.

(i) Any franchise fee payment under this Section 5 attributable to gross revenues derived from any interactive or two-way services in new lines of business, as defined in Section 5(f) above, including but not limited to interactive and two-way services, and expressed as a percentage of those gross revenues

shall not exceed the percentage of gross revenues collected by the County on the same services offered by any similar provider subject to the County's jurisdiction and control.

(ii) In the event that any communications provider competes with the Franchisee in any of its current lines of business and

(A) such communications provider is subject to the County's jurisdiction and control, the obligations imposed upon such provider by the County shall not be substantially less burdensome than those imposed upon the Franchisee;

(B) such communications provider is not subject to the County's jurisdiction and control, the County shall have no obligation to equalize burdens imposed upon such provider and the Franchisee;

(C) such communications provider is partially subject to the County's jurisdiction and control, or the County's jurisdiction and control is unclear, the County shall use best efforts to impose obligations upon such provider which are not substantially less burdensome than those imposed upon the Franchisee. Notwithstanding, the County has no obligation to undertake any action which could be challenged as unlawful or *ultra vires*, unless Franchisee agrees in writing to indemnify the County against all costs and liability claims related to such actions.

(h) Utility Tax Offset. If and when the County receives legal authority to impose a utility tax on Gross Revenues of

franchises operating within the County, and the County does impose such a tax on Franchisee, the franchise fee amount paid and the capital grant amount paid pursuant to Section 16(b) in a tax year will create credit against the utility tax due that same tax year of \$.50 for each \$1 paid on the franchise fee and capital grant, up to but not exceeding the total annual amount of the utility tax.

6. Notices.

All notices to Franchisee shall be mailed to:

Viacom Cable
900 - 132nd Street SW
Everett, WA 98204

until Franchisee changes that address by making an appropriate filing with the Cable Office, as contemplated by K.C.C. §6.27A.070. A notice may be "mailed" to Franchisee by depositing it in the U.S. Mail, first class postage prepaid, or by providing the notice to Franchisee by overnight delivery service. Notwithstanding any other provision of the Cable Ordinance, notice also may be provided to the Franchisee by facsimile at the following number: (206) 745-8360. The Franchisee may change this number by providing written notice of a substitute number to the Cable Office.

7. Insurance Requirements.

(a) General Requirement. Franchisee must have adequate insurance during the entire term of the Franchise against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the holding of the Franchise by the Franchisee, its agents, representatives, contractors, subcontractors and employees. As of the effective date of the Franchise, the Franchisee must have insurance coverage in place in the amounts and the form specified in (b) - (e); it shall maintain at least that coverage throughout the Franchise term.

(b) Scope of Insurance. Franchisee must keep insurance in effect in accordance with the minimum insurance scope the County Risk Manager may set from time to time after consulting with the Cable Officer. The initial minimum insurance coverage shall be at least as broad as:

(1) Insurance Services Office form number CG-00-01 (Ed. 11-88) covering commercial general liability;

(2) Insurance Services Office form number CA-00-01 (Ed. 12-90), covering automobile liability symbol (1), "any auto"; and

(3) Industrial insurance as required by applicable federal, state, and local laws, and stop gap or employer's liability insurance.

(c) Initial Insurance Limits. Franchisee must keep insurance in effect in accordance with the minimum insurance

limits the County Risk Manager may set from time to time. The franchisee shall obtain policies for the following initial minimum insurance limits:

(1) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$2,000,000 aggregate limit;

(2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

(3) Stop Gap or Employer's Liability: \$1,000,000.

(d) Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County Risk Manager. The deductible and/or self-insured retentions of the policies shall not in any way limit or apply to the Franchisee's liability to the County and shall be the sole responsibility of the Franchisee.

(e) Endorsements.

(1) General liability and automobile liability policies shall contain, or shall be endorsed to contain, the following provisions:

(i) King County, 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 Franchisee under this Agreement or applicable law, or in the operation and ownership of its Cable System;

(ii) To the extent of Franchisee's negligence, the Franchisee's insurance coverage shall be primary insurance with respect to the County, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the County, its officers, officials, employees, and agents shall be in excess of the Franchisee's insurance and shall not contribute with it;

(iii) Franchisee'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 to contain, the following provision:

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) calendar days prior written notice, return receipt requested, has been given to King County's Office of Cable Communications and Office of Risk Management.

(f) Acceptability of Insurers. The insurance obtained by Franchisee shall be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated by Bests', with surpluses equivalent to Bests' A:VIII rating.

(g) Verification of Coverage. The Franchisee shall furnish the County with certificates of insurance and endorsements required by this Agreement. 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 forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Franchise. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise Agreement and County law.

8. Indemnification.

(a) Scope of Indemnity. To the extent permitted by law, and except for matters arising out of the County's sole negligence, Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, 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, repair, maintenance or operation of its Cable System, or in any way arising out of the Franchisee's enjoyment or exercise of its Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the Cable Ordinance or this Agreement. Without limiting in any way the Franchisee's obligation to indemnify the County and its officers, boards, commissions, agents, and employees as set forth above, this indemnity provision applies to, but is not limited to, expenses for reasonable legal fees and for disbursements incurred by the County and liabilities as follows:

(1) To persons or property, in any way arising out of or through the acts or omissions of the Franchisee, its officers, employees, or agents, or to which the Franchisee'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 Franchisee 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, excluding claims arising out of or relating to programming provided by the County; and

(3) Arising out of Franchisee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Franchisee with respect to any aspect of its business to which the Cable Ordinance and/or this Agreement apply.

(b) Duty to Give Notice and Tender Defense. The County shall give the Franchisee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section 8. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to the Franchisee and the Franchisee shall have the right to defend, settle or compromise any claims arising hereunder and the County shall cooperate fully

therein.

(c) Exception to Duty to Tender Defense. Notwithstanding the above, the County shall have no obligation to tender a defense as a condition of the indemnity where there is a material conflict between the interests of the Franchisee and the County.

(d) The County may require Franchisee to execute specific and additional indemnifications in connection with issuing any permits related to performance under this agreement.

9. **Security Fund, Performance Bond and Letter of Credit.**

(a) Amount. Within thirty days (30) of the County's execution of this Agreement, Franchisee shall establish and provide to the County a security fund, as security for the faithful performance by the Franchisee of certain material provisions of this Agreement. The security fund shall be in the amount of fifty thousand dollars (\$50,000) and will be in the form of an irrevocable letter of credit.

(b) Use. The County may draw on the Security Fund to ensure the Franchisee's faithful performance of and compliance with this Agreement, applicable law, and all orders and permits of the County. This may include, without limitation, if Franchisee fails to pay the County any fees or taxes due, liquidated damages, damages, costs or expenses incurred by the County by reason of any act or default of the Franchisee, or if Franchisee fails to comply with any provisions of this Franchise Agreement, applicable law or with any order or permit of the

County, which failure the County determines can be remedied by an expenditure from the Security Fund. The County shall notify the Franchisee of the amount and date of the withdrawal. The County shall comply with Section 6.27A.230 of the Cable Ordinance, as amended. Franchisee's recourse, in the event Franchisee believes any taking of security funds is improper, shall be through legal action after the security has been drawn upon. If County's action or taking is found to be improper by any court or agency of competent jurisdiction, Franchisee shall be entitled to a refund of the funds plus interest and/or any other specific performance which such court or agency shall order.

(c) Restoration of Fund. Within thirty (30) calendar days after the County gives Franchisee written notice that an amount has been withdrawn from the Security Fund, the Franchisee must deposit a sum of money sufficient to restore the security fund to the original amount.

(d) Effect of Assessment Exhausting Fund. If the security fund is assessed by County for an amount exceeding Fifty Thousand Dollars (\$50,000) for violations relating to the Liquidated Damages provision of this Agreement, and Franchisee believes that such assessment is improper, County and Franchisee may mutually agree that the assessment shall be subject to binding arbitration, in accordance with the laws of the State of Washington. If either party does not agree to arbitration, either party may pursue any legal remedies otherwise available.

(e) Return of Fund. If the Franchise terminates for any

reason, and the Franchisee has ceased to provide service in the County, the balance of the Security Fund that remains following termination of the Franchise and satisfaction of all of its obligations which are secured by the Fund shall be returned to the Franchisee. Funds shall not be returned until the County has determined that the Franchisee does not owe funds to the County and is not in default.

(f) Performance Bond. Within thirty (30) days of the effective date of this Agreement, Franchisee shall post a performance bond in connection with its system upgrade or rebuild in the amount of eight hundred thousand dollars (\$800,000). Upon acceptance by the County of satisfactory completion of the upgrade or rebuild, the bond shall be reduced to one hundred thousand dollars (\$100,000). The bond shall be maintained at the one hundred thousand dollar (\$100,000) level throughout the term of this Agreement.

(g) Letter of Credit. Any letter of credit used to satisfy any portion of the Security Fund requirement must:

- (1) Be issued by a bank licensed to do and doing business in Washington State;
- (2) Be irrevocable;
- (3) Provide for automatic renewal of the letter unless the bank has given the Cable Office written notice by certified mail at least thirty (30) days prior to expiration of the letter;
- (4) Provide that the County may draw against the

letter for any reason and at any time prior to expiration of the letter;

(5) Provide that the County may draw against the letter and hold the funds in escrow after termination of the Franchise:

(i) If the County has filed an action;

(ii) If the County has issued a notice and order or sought to draw against the letter prior to termination and Franchisee has contested the action or appealed the notice and order; or

(iii) If the bank or the Franchisee has challenged or appealed the draw; and

(6) Be in a form acceptable to the County.

10. Liquidated Damages.

(a) Amounts. Because the Franchisee's failure to comply with provisions of the Agreement will result in injury to the County, and because it will be difficult to estimate the extent of such injury, the County and the Franchisee 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. The liquidated damage amounts are in 1993 dollars and shall be increased periodically twenty (20) percent whenever a cumulative increase in the U.S. Consumer Price Index totals twenty (20) percent.

(1) For failure to complete construction in accordance

with the Franchise : \$1/day for each affected subscriber for each day the violation continues;

(2) For failure to extend a service line as required: \$ 1.50/day for each affected subscriber for each day the violation continues;

(3) For failure to provide any transmission pathway or capability for public, educational, and governmental use of the system required in this franchise: \$50 for each violation for each day the violation continues;

(4) Except as provided in (5) - (6) below, for violation of applicable customer service standards: \$50 per violation per affected subscriber;

(5) For failure to maintain a local office: \$200 per subscriber per month;

(6) For violating any performance standard where, after receiving a consumer complaint or notice from the Cable Office and an initial reasonable opportunity to cure, the Franchisee fails to meet such performance standard, which affects the lesser of ten (10) percent of the subscribers served from the same fiber optic node or fifty (50) subscribers on the same distribution line simultaneously: \$2,000 per violation; if the Franchisee later violates the same standard, \$4,000 for the second violation, \$6,000 for the third, and \$10,000 for the fourth and each subsequent violation during the term of this Agreement.

(7) For failure to comply with Section 12(c), as

provided in that Section; and

(8) For all other material violations of this Agreement for which actual damages may not be ascertainable: \$1/day for each affected subscriber for each violation for each day the violation continues after receiving a consumer complaint or notice from the Cable Office and an initial reasonable opportunity to cure.

(b) Effect on Duty to Comply. The collection of liquidated damages by the County shall in no respect affect:

- (1) Compensation owed to subscribers; or
- (2) The Franchisee's obligation to comply with the provisions of this Agreement or applicable law.

(c) Accrual. Liquidated damages accrue from the later of the date the violation occurs or the date the Franchisee establishes it had actual or constructive knowledge of the violation, and not from the date the County determines there has been a violation.

11. Relationship of Remedies.

(a) Remedies are Non-exclusive. The remedies provided for in this Agreement and the Cable Ordinance are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the County at law or equity, provided however, cumulative remedies may not exceed the total wrong involved.

(b) No Election of Remedies. Without limitation, the

withdrawal of amounts from the Security Fund, or the recovery of amounts under the insurance, indemnity or liquidated damages provisions of this Agreement shall not be construed as the following: an election of remedies; a limit on the liability of the Franchisee under the Franchise for damages or otherwise; or to excuse faithful performance by the Franchisee.

12. Non-discrimination.

(a) No Discrimination.

(1) The Franchisee must comply with all applicable local, state and federal laws and regulations prohibiting discrimination, including without limitation, laws and regulations prohibiting discrimination in the provision of cable service or employment.

(2) The Franchisee is specifically prohibited from discriminating among persons or taking any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, nor may the Franchisee require a person to waive such rights as a condition of taking service.

(3) The Franchisee is specifically prohibited from denying access or levying different rates and charges on any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(4) To the extent the County may enforce such a

requirement, the Franchisee is specifically prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers. The Franchisee may, however, offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers throughout the County; and the Franchisee shall offer special discounted rates for the basic and other regulated service tiers to economically disadvantaged subscribers who receive federal SSI assistance, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner.

(5) The Franchisee may request in writing, and the County may grant, temporary authority to the Franchisee for periods not to exceed twenty-four (24) months to offer specifically identified services, packages and combinations of services to selected groups of subscribers at terms and conditions not generally available to all subscribers. The County may refuse to grant this waiver unless it is persuaded upon sufficient showing by the Franchisee that the temporary authority will be used solely to offer services on an experimental or test market basis, and that the services will either be withdrawn at the conclusion of the test or will be made generally available to all subscribers in a uniform, consistent and nondiscriminatory manner.

(b) Equal Employment Plan. The Franchisee must adopt and follow an equal employment opportunity plan that complies with all applicable provisions of federal, state and local laws and regulations (which requirement includes the obligation to amend that plan to bring it into compliance with those laws and regulations, as hereafter amended or interpreted). A plan must be submitted to the County on the effective date of the Franchise for the County's review and approval.

(c) Minority/Women's Business Procurement Program.

(1) The provisions of K.C.C. Section 4.18, as it may be amended from time to time, are incorporated by reference as if fully set forth herein.

(2) The Franchisee shall:

(i) Develop and apply a minority/women's business procurement plan that satisfies the requirements of this Section 12 as well as the requirements of K.C.C. Section 4.18. A proposed plan must be submitted for approval to the Office of Civil Rights Compliance ("OCRC") within thirty (30) days of the effective date of the Franchise, which plan shall be effective immediately upon approval by the OCRC. The OCRC may exercise any remedies it may exercise under K.C.C. Section 4.18 if the Franchisee fails to submit an appropriate plan; in addition, the County may exercise any other remedies it has under this Agreement or applicable law.

(ii) Any purchases undertaken for the Cable System prior to the approval of the OCRC plan are subject to the

requirements of K.C.C. Section 4.18.

(3) The purpose of the County's minority/women's business ordinance is to provide a prompt remedy for the effects of past discrimination. The County in general, and this program in particular, are damaged when a contract, or portion of a contract, to be performed by a minority/women's business is not actually performed by a minority/women's business enterprise in compliance with K.C.C. Section 4.18. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the following fairly estimate the amount required to compensate the County for resulting delays in carrying out the purpose of the program, the costs of meeting utilization goals through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation:

(i) The dollar value of the minority/women's business utilization contemplated in the Franchisee's approved minority/women's business utilization plan; or

(ii) If the Franchisee, by virtue of a failure to submit an appropriate plan, has been found to have violated K.C.C. Section 4.18 in accordance with the procedures set forth in that section, ten (10) per cent of the total value of the contracts subject to this Section that are let in the year the violation occurs.

(d) Annual reports. In addition to its other obligations to submit reports and records to the County the Franchisee shall

submit an annual report to the Office of Civil Rights and Compliance listing: all purchases during the preceding year made by it or by others for it or on its behalf; the amounts of such purchases; and the persons from whom such purchases were made, including whether each person is a minority and/or women's business enterprise. The report also shall include projections for purchases to be made over the next year, and a description of how the Franchisee plans to comply with the requirements of this Section 12 over the next year. The first report must be submitted within thirty (30) days of the effective date of the Franchise, showing purchases made for calendar 1993 and actual purchases (to the extent that information is available), purchase projections and purchase plans for calendar 1994. The annual report shall be filed on February 1 of each succeeding year.

13. Rates.

(a) Rates and Charges Regulated. The County may regulate the Franchisee's rates and charges except to the extent it is prohibited from doing so by applicable law. The term "regulate" means the County may take any step it is not prohibited from taking under applicable law in order to protect the public from unreasonable or discriminatory rates and charges, including but not limited to ordering refunds for overcharges and adopting regulations as appropriate to further implement its authority to regulate rates.

(b) Manner of Regulation. Without limiting the foregoing,

and except as inconsistent with applicable law:

(1) The County may require the Franchisee to submit to the County for review and approval the rates in effect on the date the Franchise issued.

(2) The Franchisee may not change a rate or charge that is subject to the County's regulation without the County's prior approval, except as federal law otherwise provides.

(c) Rate Schedules. The Franchisee must provide a complete list of all its rates and charges (including bulk rates and charges and unregulated rates and charges) to the Cable Office on the effective date of the Franchise. The Franchisee must update that list so that the schedule of rates and charges is current. The Franchisee must give a minimum of thirty (30) calendar days prior notice before changing any rate or charge.

13(d). Experimental Services. Subject to Section 12(a)(5), the Franchisee may conduct experimental services and service offerings to particular regions of the County without making the service generally available throughout the County. The Franchisee must pay franchise fees on any revenues received.

14. Customer service.

The Franchisee shall meet or exceed any customer service standards adopted by the Federal Communications Commission, and, to the extent the same are stricter or address different matters, the customer service standards set forth in the Cable Ordinance. Nothing in this Agreement limits any rights the County may have

under 47 U.S.C. § 552.

15. System Facilities, Equipment and Services.

(a) System Upgrade. The Franchisee's Cable System shall be upgraded within four (4) years of the effective date of this Agreement so that, at all times thereafter, the System meets or exceeds the following requirements:

(1) The System shall have a rating of at least 750 MHz on all active components and at least 1 GHz for all passive components, and shall be activated for and carry at least 70 6-Mhz analog channels, downstream to all Subscribers.

(2) The rebuilt system will have at least eight (8) optical fibers to each node. Additional fibers will be provided at certain nodes based on County Institutional Network and Franchisee subscriber system designs. No node will serve distribution cable which passes more than 1000 homes or serve more that 700 subscribers. The system will have the capability of reaching nodes of 250 homes each.

(3) There shall be no more than eight (8) active components in a cascade beyond any node and no more than ten (10) active components in a cascade measured from the headend.

(4) Each fiber optic node shall be located and designed to allow adequate space for several fiber receivers and transmitters, and standby power.

(5) The System shall be capable of continuous twenty-four (24) hour daily operation without severe material

degradation of signal except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components.

(6) The System shall be capable of operating over an outdoor temperature range of -20 degrees F to +120 degrees F and over variation in supply voltages from 105 to 130 volts AC without catastrophic failure or irreversible performance changes.

(7) The System shall meet all specifications as set forth herein or in the Ordinance over an outdoor temperature range of 0 degrees F to 100 degrees F and over variation in supply voltages from 105 to 130 volts AC.

(8) The System shall be operated in such a manner as to avoid causing interference with the reception of off-the-air signals by a Subscriber.

(9) The upstream capacity of the System shall be such that there is no significant deterioration in the signal quality from the point of origin through the headend; and so that from the headend, there is no more deterioration in the signal quality on PEG channels than on any other channel. Deterioration refers to any signal problem, including but not limited to ghost images and other interference and distortions.

(10) The System shall use equipment generally used in high-quality, reliable, modern systems of similar design. The System including headend, distributive network, and customer premises equipment shall be an "open" network. The Franchisee must take affirmative steps, including in its design, research,

procurement and contracting practices so that the System operates as an "open" network as far as reasonably possible initially and so that openness is maintained and enhanced throughout the franchise term. An "open" system shall have at least the following characteristics:

(i) the standards for the hardware interfaces and software protocols used by the system, other than those required to maintain network integrity and security, the protection of copyrighted information or those protocols utilized to bill users of the network for network usage -- including at the node, headend and at customer premises -- shall be published and generally available;

(ii) the system shall be transparent as possible (that is, once a user has access to a transmission path, the user should not require the operator's cooperation to bring in or transmit particular applications), unless there is a particular time and usage fee associated with that access; and

(iii) the Franchisee shall offer customer premises equipment that has outlets or other connections which provide a user full access to the equipment functions (other than those functions which would compromise the security or transmission of information the user is not authorized to receive); among other things, this access shall allow the user to write to the equipment's central processing unit if the particular customer premise equipment is intended to be utilized in this manner. This does not require the Franchisee to provide

all elements of the "open network" in its system as of the date the system upgrade is completed. However, the openness of the network should be enhanced over time. The System should be designed so that the County and other users can where reasonably possible (physically or virtually) "collocate" facilities or equipment at the Cable System's headends and control centers.

(iv) Consistent with the obligations in this section 15(a)(10), the Franchisee will make publicly available all operational protocols and electronic standards necessary to allow third parties to plan and implement interconnection with the Franchisee's cable system. The prior sentence does not obligate Franchisee to release information that would facilitate signal theft or piracy. The Franchisee may establish reasonable charges for interconnection services provided to users other than qualified public, educational or governmental access users. Nothing in this requirement is intended to make the Franchisee a common carrier. However, the Franchisee has an obligation to reasonably mitigate the expense and inconvenience to third parties seeking to use and connect to all or any part of the Cable System's facilities.

(11) The System must have back-up power supplies capable of providing power to the System for three hours in the event of an electrical outage. The obligation to provide back-up power supplies requires Franchisee to provide back-up power supplies at each fiber optic node and at the headend. In addition, the design and construction of the System shall include

modulators, antennae, amplifiers and other electronics that permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration (thus, for example, the System shall include components so that a signal received at the headend in color may be received by the subscriber in color, and a stereo signal in stereo).

(12) The master headend shall be capable of providing at least 120-plus channels in full configuration and shall develop signals of high quality throughout the service area (including on channels retransmitting upstream signals received through the headend), and the headend shall have adequate ventilation and space to be able to meet or exceed applicable design and technical requirements and in order to reasonably accommodate equipment for the County.

(13) The System shall allow all unscrambled analog channels on all Service Tiers to be received by cable-ready television sets without the aid of a converter, and shall minimize, to the maximum extent feasible, interference with consumer electronic equipment. Franchisee may choose to trap signals not authorized for reception.

(14) As part of the System, the Franchisee shall offer every Subscriber, at the same price and regardless of the level of service taken, the opportunity to lease or buy converters that utilize wireless remote controls and that contain bypass or similar technologies that allow Subscribers to view a program on one channel while taping a program on another channel.

(15) Subscribers must be able to block out all premium and pay-per-view channels, and video on all channels.

(16) The System shall include equipment so that pay-per-view programming can only be activated by authorized subscribers.

(17) The Franchisee shall design the system so that channel capacity may be readily expanded through digital video compression or similar appropriate technology without compromising service quality or requiring significant alterations, upgrading or reconstruction.

(18) The Franchisee shall make available to all existing one-way converter subscribers interactive technology within four (4) years of the effective date of the Franchise.

(19) The rebuilt subscriber network will be two-way active on completion of the rebuild. Final tuning and sweeping of the upstream system will not occur until Franchisee chooses to provide a specific two-way service. The County may waive this requirement of two-way activation upon a showing by Franchisee that two-way services are commercially impracticable. In the event that the County waives the requirement, the waiver shall apply for one calendar year only, and a new showing must be made each year or the requirement must be met.

(20) All closed-caption programming retransmitted by the System shall include the closed-caption signal. It shall provide a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household

is mobility limited. For hearing impaired customers, the Franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, the Franchisee must have TDD/TTY (or equivalent) equipment at the company office, and a telephone number listed on subscriber bills, in local telephone directories and with directory assistance for such equipment, that will allow hearing impaired customers to contact the company.

(21) Except as provided in this paragraph, all County subscribers will be served with the same technology and the same services.

(i) The area of South King County served from the Tacoma headend as of January 1, 1994 will be integrated into the rest of the system by the completion of the rebuild and will have available the same set of public, educational and governmental services described in Sections 15 and 16. Prior to completion of rebuild, the Franchisee shall make best efforts to provide the same set of public, educational and governmental services as available in the rest of Franchisee's territory, provided the capital costs of such provision do not exceed \$300,000.

(ii) Vashon Island will be served in the same manner and with the same technology as the other parts of Franchisee's King County system. The County may waive the requirement for a two-way return from Vashon Island to the headend upon a showing by Franchisee that it is commercially

impracticable. In the event the County waives the requirement, that waiver shall apply for one calendar year only, and a new showing must be made each year or the requirement must be met.

(22) Status Monitoring. Franchisee shall provide system status monitoring upon completion of the rebuild and after the Cable System becomes two-way active pursuant to Section 15(a)(19) in accordance with a plan presented to and approved by the Cable Office. At minimum, the plan shall include equipment to monitor the health of the fiber optic receive sites at rebuild and to monitor other fiber and fiber sites as that equipment becomes reasonably available.

(b) Institutional Network.

(1) The County will build an Institutional Network physically and electrically related to the cable subscriber network. Franchisee agrees to cooperate with the County in the design coordination of the two networks. Franchisee will assist in the construction of the Institutional Network as specified in the Construction Agreement between the parties, dated *March 9* 1995 ("Construction Agreement"). And Franchisee will cooperate in the operation of the Institutional Network as specified in this franchise. The Franchisee agrees to construct for the County under the terms specified in the Construction Agreement optical fibers with a minimum design transmission capacity and to be located as specified by the County. These fibers and all related transmission equipment will be the property of the County and will be used by the County to link

public, educational and governmental facilities in the County and shall be for use by public, educational and governmental users (the "Institutional Network" or "Network"). This capacity shall be activated after completion of construction at a time designated by the County and shall be in addition to the engineered capacity required by Section 15(a)(1). The Franchisee shall cooperate with the County in Subscriber Network node locations and in the design, operation and maintenance of the Institutional Network. Any transmission on the Institutional Network may be simultaneously retransmitted on the downstream public, educational and governmental ("PEG") channels reserved under Section 16.

(2) The cost of construction, maintenance, repair and replacement of the facilities referred to in Section 15(b)(1) shall be allocated in accordance with the Construction Agreement dated March 9, 1995.

(3) The Franchisee shall provide reasonable space at the headend for switching equipment required for the utilization of the system capacity reserved for the Institutional Network.

(4) The Franchisee, as directed by work order pursuant to the Construction Agreement, shall connect to the Institutional Network such schools, libraries, courts, County offices and agencies, and such other public, educational and governmental facilities as shall be designated by the County from time to time.

(5) Interconnection of the Institutional Network and

the Subscriber Network shall be provided as reasonably requested by the County. Such interconnection shall be activated immediately upon the request of the County, as the County deems use of the interconnection to be necessary to its public, educational and governmental communications needs and interests. The Franchisee shall not be responsible for providing and operating any switching capability the County uses.

(6) If the County wishes to use transmission capacity on the Franchisee's Cable System beyond its rights to free use under this Agreement, the charges for such use shall be freely negotiated on terms and conditions equal to or more favorable to the County than those offered to any other major user by the Franchisee.

(c) Interim System Upgrade.

(1) The Franchisee shall complete an interim upgrade of its existing system to 450 MHz, with 54 programmed analog channels not later than January 1, 1995. If, through no fault of the Franchisee, any government agency delays necessary approvals such that Franchisee cannot complete the interim upgrade by this date, Franchisee may, after notice to the County, delay completion of the interim upgrade until March 31, 1995.

(d) System Upgrade and Institutional Network Schedule.

(1) The Franchisee shall begin construction of its proposed rebuilt system within two (2) years of the effective date of the Franchise and shall complete all construction within forty-eight (48) months of the effective date of the Franchise.

(2) The Franchisee shall construct so that service from each hub is extended to nodes in low income areas at least as quickly as it is extended to nodes in higher income areas.

(3) Following the commencement of construction of the System rebuild until the upgraded System is completed, the Franchisee shall provide detailed written reports to the County on the Franchisee's progress in constructing the rebuilt System at each point construction passes seven thousand (7000) additional homes and shall meet with the County to discuss such progress.

(4) Testing Requirements. The County has the right to conduct tests and to observe when Franchisee conducts tests, as consistent with federal law. The Franchisee shall perform all tests necessary to demonstrate compliance with the performance standards of a fully activated system it must satisfy under its Franchise Agreement or applicable law. All tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of NCTA "Recommended Practices for Measurements on Cable Television Systems," or if no recent edition exists, such other appropriate manual as the parties may designate. The Franchisee shall perform at least the following tests:

(i) The Franchisee shall assure that preactivation quality control is performed on cable and equipment. In the case of passive components, this will include testing to verify compliance with manufacturer's specifications.

All trunk and distribution cable shall be inspected and sample tested to verify compliance with manufacturer's specifications for frequency response and structural loss. All trunk and distribution amplifiers shall be bench-tested. No component should be used in system which fails to meet manufacturer's specifications. The manufacturer's specifications should meet or exceed industry standards.

(ii) The Franchisee shall perform acceptance tests on each construction area segment prior to subscriber connection. The tests should demonstrate that the system components are operating as expected. The Franchisee shall have the obligation, without further notice from County, to take corrective action if any segment is not operating as expected.

(iii) The Franchisee and the County will jointly select appropriate locations given the System design to install equipment to establish permanent test points. The test points shall be installed in locked enclosures so as to be accessible from ground level. The number of required test points may be specified by agreement of the parties, consistent with FCC rules and regulations, as appropriate to ensure all subscribers are receiving adequate service. The Franchisee shall perform proof of performance tests at these locations at least once every six months through life of franchise except as federal law otherwise limits the obligation; or more frequently if federal law so requires. If a location fails to meet applicable performance specifications, the Franchisee, without requirement

of additional notice or request from County, shall take corrective action, retest the locations and advise the County of the action taken and results achieved.

(iv) If based on subscriber complaints, or based on its own investigation, the County believes that the System may not be operating in compliance with the Franchise Agreement or applicable law, it may require the Franchisee to perform tests, and to prepare a report to the County on the results of those tests, including a report identifying any problem found and steps taken to correct the problem.

(v) The Franchisee shall notify the County at least one week in advance of any of the tests described above, except the County shall receive thirty (30) days advance notice of proof of performance tests required by Section 15(f). The County shall have the option of witnessing the tests. Written test results should be submitted to the County within thirty (30) days of completion of the testing.

(vi) Consistent with Section 15(d)(4), the County may conduct inspections and test the System, after notice to Franchisee. Franchisee may observe the tests conducted by the County, to assure the County's actions do not damage the system, provided, however, Franchisee may not in any way obstruct the conduct of the tests by the County. Tests and inspections may include determining whether the System is being constructed in accordance with the system construction plan. Inspection does not relieve the Franchisee of its obligation to comply with all

provisions of its Franchise Agreement and applicable law.

(e) Full Cable Service to Certain Facilities. Upon the request of the County, the Franchisee shall provide full basic and satellite tier Cable Service free of charge to each public school and public school administrative facility, each public library facility, each fire station, each Public Access Center, each County office and agency, and each County-owned and County-leased facility within the Franchise Area and other jurisdictions located within King County where the Franchisee has a franchise, permit, license or other right to serve as shall be designated by the County from time to time. To the extent any drop to facilities other than public schools and public libraries exceeds seventy-five (75) feet underground or one hundred fifty (150) feet aerial, Franchisee may request compensation for its time and materials. Inside wiring will not be Franchisee's responsibility. These service outlets will have sufficient electric power to be capable of serving all rooms in each facility, however, the Franchisee is not obligated to provide more than one standard line amplifier at each facility. Free service will not be provided to any private, for-profit concessionaire using County facilities.

(f) Proof of Performance Tests. Every six (6) months or as required by FCC rules, whichever is more often, the Franchisee shall conduct proof of performance tests pursuant to the Cable Ordinance, designed to demonstrate compliance with the Ordinance, this Franchise Agreement and FCC requirements, and shall provide

to the County a written report showing the results of such tests. If the tests reveal that the Franchisee is not in compliance with all applicable requirements, the Franchisee shall immediately take whatever steps are necessary to achieve compliance. Not later than thirty (30) days following completion of the tests which revealed non-compliance, the Franchisee shall conduct additional proof of performance tests to determine whether it has corrected its non-compliance; provided that the County may extend this thirty (30) day requirement as it deems necessary. Franchisee must correct and retest the system until either the system passes the test or obtains a waiver. Notwithstanding, this Section 15(f) is enforceable only to the extent inconsistent with federal law.

(g) Leased Access Channels. The Franchisee shall provide leased access channels as required by federal law.

(h) Customer Service Monitoring. The Franchisee shall install such devices as are required to enable it to determine whether it is complying with all telephone answering standards required by applicable customer service regulations, as amended from time to time.

(i) Local Office. Throughout the franchise term, the Franchisee must maintain, at a minimum, three (3) local offices conveniently located to King County subscribers. Franchisee shall install telephones and other equipment so that the office is reachable by a local, toll-free telephone number.

(j) Emergency Broadcasts. Franchisee shall install devices

and all equipment with reasonable performance standards as specified by the County. The equipment must permit the County to override the audio and video on all channels on the Cable System without the assistance of the Franchisee for emergency broadcasts from a location designated by the County. This obligation shall be effective only upon notice by the County that it has entered into a master agreement with other jurisdictions.

Notwithstanding, Franchisee shall use best efforts to coordinate with other jurisdictions.

(k) Interconnection. The Cable System in the County, operated by Franchisee, shall be interconnected within or at the boundaries of the franchise territory with other systems operated in the County and in the greater Seattle area, to the extent the signals of the other systems are available to Franchisee.

(l) Uses of System. Franchisee must agree to advise the County of all active uses of the System, for both entertainment and other purposes, such as data transmission, local area networks, and voice transmission, and the County shall have the right to conduct unannounced audits of such usage.

(m) Additional Capacity. Franchisee must agree to notify the County at least one hundred eighty (180) days in advance of the installation of any fiber optic capacity not contemplated by the initial design of the System, so that additional fiber may be installed in accordance with the Construction Agreement for government and institutional use.

(n) Programming. Franchisee shall provide broad categories

of video programming, which categories shall include but not be limited to general entertainment programming, programming primarily directed at children, public affairs, education, minority, 24-hour news, local news, foreign language, cultural and performing arts, and sports programming.

16. Channels, Facilities, Equipment and Services for Public, Educational and Government Use.

(a) Access Channel.

(1) In addition to the Minority Programming Channels described in Section 16(h), the Franchisee shall make available to all Subscribers not later than June 1, 1995 four (4) additional standard (6 Mhz) video channels for public, educational and governmental use, which channels shall be carried on the basic tier of service and shall be in addition to the Institutional Network. Each Subscriber, as that Subscriber is served and connected to the rebuilt System required by Section 15(a), shall have available two additional analog video channels and one closed digital channel for public, educational and governmental use at no additional charge. Notwithstanding, unless and until Franchisee activates digital capacity to subscriber homes, any closed channels shall be analog.

(2) In addition to the channels specified in Section 16(a)(1), after the rebuild of the System as described in Section 15, the Franchisee shall activate and make available to the County additional public, educational and governmental channels

as specified in this paragraph.

(i) Public Access: Franchisee shall provide an additional channel whenever the channels set aside by the County for public access programming are programmed with qualified programming at least seventy percent (70%) of the cumulative time between the test hours of 10:00 a.m. to 3:00 p.m. and 6:00 p.m. to 11:00 p.m., Monday through Friday, over a consecutive ten (10) week period. All qualified programming shall count in this measurement for the actual running time shown. Repeat programs as defined in Section 16(a)(3)(i) are qualified programming only to a maximum of twenty-five percent (25%) of total qualified programming. Programs which are neither locally produced programming nor programming related to the County may be qualified programming only to a maximum of fifty percent (50%) of total qualified programming.

(ii) Educational Access: Franchisee shall provide an additional channel whenever the channels set aside by the County for educational access programming are programmed with qualified programming at least seventy percent (70%) of the cumulative time of either between the test hours of 8:00 a.m. to 11:30 a.m. and 12:30 p.m. to 4:30 p.m., or between the test hours of noon to 10:00 p.m., Monday through Friday, over a consecutive ten (10) week period. All qualified programming shall count in this measurement for the actual running time shown. Repeat programs as defined in Section 16(a)(3)(i) are qualified programming only to a maximum of twenty-five percent (25%) of

total qualified programming. Programs which are neither locally produced programming nor programming related to the Puget Sound Region may be qualified programming only to a maximum of fifty percent (50%) of total qualified programming. Any program broadcast locally within three (3) years of the measurement period is not qualified programming. Notwithstanding, the Franchisee may, in its sole discretion, permit the program to be qualified programming upon written request by the County. The County and the Franchisee agree to meet within four (4) years of the effective date of this Franchise to discuss amending the treatment of programs broadcast locally as qualified programming. For purposes of this subparagraph, "broadcast locally" means transmitted on the signal of a local commercial television station or a qualified local noncommercial educational television station with signal carriage rights on the Franchisee's System pursuant to 47 U.S.C. Sec. 535, as in effect on the effective date of this Franchise.

(iii) Governmental Access: Franchisee shall provide an additional channel whenever the channels set aside by the County for governmental access programming are programmed with qualified programming at least seventy percent (70%) of the cumulative time between the test hours of 9:30 a.m. to noon, 1:30 p.m. to 4:30 p.m., and 7:00 p.m. to 10:00 p.m., Monday through Friday, over a consecutive ten (10) week period. All qualified programming shall count in this measurement for the actual running time shown.

(3) As used in Section 16(a)(2),

(i) "repeat program" means the running time of any program only to the extent it is shown more than four (4) times during the test hours over the ten (10) week measurement period.

(ii) "locally produced programming" means programming (a) produced within the County, or (b) produced by any County resident or any agency, public or private, which provides services to County residents within the County, regardless of the location at which the programming was produced.

(iii) "programming related to the County" and "programming related to the Puget Sound Region" means programming which addresses the educational, political, social or cultural interests of any segment of the residents of the County or of the Puget Sound Region.

(iv) "qualified programming" includes video bulletin board material if the material consists of multiple and different text (or video and text) screens transmitted to different subscribers simultaneously. The term does not include video bulletin board material such as character generated material to the extent the same text (or video and text) screen is sent simultaneously without variation to all system subscribers.

(4) Additional channels shall be analog format provided total analog channels do not exceed 10% of the System's activated analog capacity. Any required channels under this

paragraph in excess of the analog allotment shall be in digital format. Notwithstanding, unless and until Franchisee activates digital capacity, all additional channels shall be analog. The operator may convert the analog PEG channels to digital format when all subscribers have the necessary equipment to receive the channels. The bandwidth for individual digital PEG video channels shall equal or exceed the bandwidth and transmission quality of standard commercial digital video channels on the system.

(5) The County shall administer the use and allocate responsibility for the operation of all public, educational and governmental channels. The County shall have the right to allocate the channels to any entity responsible for managing access channels, or to maintain them as separate channels under the County's own control.

(6) The Franchisee will provide any open PEG channels (including the minority programming channel) on the basic tier throughout the life of the franchise.

(7) When the Franchisee begins offering any two way interactive commercial services, including any data service, it shall simultaneously allocate the County not less than 20 MHz bandwidth on the cable system for bi-directional transmissions by public, educational and governmental users. The bandwidth shall be equally allocated between forward and reverse bandwidth. This bandwidth shall be in addition to, and not in lieu of, the channels for public, educational and governmental use specified

elsewhere in this Section 16.

After the Franchisee initially implements two-way capacity for its own use, whenever the Franchisee adds additional capacity beyond the initial 5-40 Mhz installed as part of the rebuild plan, the County shall be assigned use of ten percent (10%) of that additional capacity.

The County may manage the use of the bandwidth or designate one or more nonprofit access management corporations, schools, school districts or any other qualified entities to manage or share the responsibility for managing the use of the bandwidth. Any entity responsible for management of the use of this bandwidth may, with respect to the bandwidth for which it is the manager, establish and enforce (1) the allocation of bandwidth to particular services and (2) rules for use of the allocated bandwidth, so long as those rules are consistent with this Franchise and relevant law. The franchisee shall not take any action which causes material degradation to information transmitted over the bandwidth.

Bandwidth made available to the County under this provision shall be solely for PEG use and not interrupted or shared by other users. The allocated frequencies must be in groups of not less than 10 MHz of adjoining frequencies. The bi-directional interactive capacity shall be activated from all system subscribers to the Franchisee's headend, and to the switcher of the County or other managing entity if the switching capacity is not located at the headend.

Franchisee and the County shall work together to determine the location of bandwidth allocated under this subsection, and the Franchisee shall have final authority to determine the spectrum location of that bandwidth. At the discretion of the Franchisee, the initial 10 MHz of reverse capacity may be the 5 MHz to 15 MHz portion of the spectrum. Once specific bandwidth is designated for use, the Franchisee may not change the spectrum location except on written approval of the County or other agency charged with managing this bandwidth.

Except as expressly permitted by federal law, the Franchisee agrees it will not exercise any editorial control over information created by others and transmitted using this capacity.

Except as otherwise specified in this Agreement, bandwidth availability and use, shall be available free of charge by the Franchisee to users, including the entity that manages the use of the bandwidth capacity, and to the County.

When the Franchisee leases, purchases or otherwise obtains or increases electronic memory storage capacity for its own use in support of bi-directional data and interactive services, it shall make such capacity available for public, educational and governmental video on demand, data transmission and other interactive applications. This capacity shall be available to the County and/or other PEG management entity at the Franchisee's cost.

(8) The County agrees that it will not use its

designated access channels or other facilities, its Institutional network facilities or other designated Franchisee subscriber network facilities to provide for-profit commercial services which compete with the Franchisee's lines of business. However, the County may authorize charges to pay the direct costs of the non-commercial services, such as fees for video class instruction or charges to recover the cost of special use equipment.

(9) Any reference to an analog channel for PEG use refers to a 6 MHz channel. When the System activates digital capacity and is delivering digital signals to customers, the County may elect to have some or all of the channels authorized in this Section transmitted in digital format.

(b) Capital Grant for Access Equipment and Facilities.

(1) The Franchisee shall provide the County an annual capital grant in a base amount subject to the adjustments and payment schedule set forth below, to be used by the County in its sole discretion for cable related and institutional network related purposes. These grants are not franchise fees and Franchisee waives any claim otherwise.

(2) On the effective date of the renewal franchise, the Franchisee shall provide the County \$800,000 in cash or cash equivalents as the first year's base amount.

(3) On the first and second anniversaries of the effective date of the franchise, the Franchisee shall provide grants in the form of construction/work order credits to the County in base amounts calculated in accordance with Section

16(b)(7) below, for the construction of its I-net.

The Franchisee agrees that it may be engaged by the County as its construction contractor to build designated portions of its I-net within the Franchisee's franchised service area on the terms and conditions set out in the Construction Agreement dated March 9, 1995. If the Franchisee provides construction services to the County, the Franchisee shall deduct the County's construction expenses in years two and three of the Franchise from the total annual grant allowance and provide the County a running balance. A final accounting of construction expenses incurred during years two and three of the franchise shall be performed in the first quarter of year four of the renewal term. Any unused portion of the allowance plus interest shall be provided to the County in cash or cash equivalents at such time. Any expenses incurred beyond the amount of the allowance plus interest shall be invoiced to the County, and shall be offset against the Base Amount referenced in Section 16(b)(4).

(4) On the third anniversary of the effective date of the franchise, the Franchisee shall pay to the County an amount equal to the base amount.

(5) On the fourth anniversary of the effective date of the franchise, the Franchisee shall pay to the County a lump sum payment for years five, six and seven of the franchise term equal to the base amount times three (3).

(6) On the seventh anniversary of the effective date

of the franchise, the Franchisee shall pay to the County a lump sum payment for years eight, nine and ten of the franchise term equal to the base amount times three (3).

(7) The base amount after the first payment shall be calculated as follows: The previous base amount, or \$800,000 when calculating the base amount for the second anniversary, shall be adjusted annually at the anniversary date of the franchise for incremental inflation during the subsequent year to the extent inflation exceeded two (2) percent as measured by the GNP-PI. For example, should the GNP-PI in a given year not exceed two (2) percent, no adjustment shall be made to the previous year's base amount. If the GNP-PI increases by three (3) percent, the base amount shall be increased by one (1) percent. Subsequent base amounts shall be based on the prior year's adjusted base amount.

(8) The annual grant may be further adjusted if the population within the Franchise area declines by more than twenty (20) percent after the effective date of this franchise. In that event, the amounts of the grants following the date the population decline reaches twenty (20) percent shall be adjusted by twenty (20) percent. Further adjustments up or down may be made for every ten (10) change in population. In no event may the grants for a one-year period ever exceed the base amount otherwise calculated under Section 16(b)(7).

(c) Return Feed from Facilities.

(1) The headend shall be designed and built to include

all equipment, including but not limited to laser transmitters, modulators, and processors, drops and wiring, so that the PEG access centers can send signals to the headend on the County's Institutional Network and those signals can be distributed downstream on the subscriber network; and so that the facilities can each remotely and without assistance from the Franchisee or access to its headend (i) receive signals from distant locations; (ii) route signals originated at an access center or at other locations onto any of the access channels on the regular subscriber network; and (iii) otherwise control the signals to allow for smooth breaks, transitions, insertion of station IDs and other material.

(2) At any time after any fiber node is completed and two-way activated (whether construction of all nodes is completed or not), the Franchisee, within 60 days of a request from the County, shall provide upstream capacity and all necessary system equipment from such node to the headend and designated access production facilities, so that signals can be originated at a distant location and routed onto an appropriate access channel without the assistance of the Franchisee.

(3) The County may collocate institutional and access network equipment as reasonably necessary in Franchisee's buildings and structures without charge. When Franchisee activates the subscriber network two-way capacity and provides the County upstream PEG capacity on the subscriber network, the County shall not authorize this capacity to be used for

commercial purposes by the County or third parties.

(d) Management of Channels. The County may designate one (1) or more entities, including a non-profit access management corporation, to manage the use of all or part of the Institutional Network and the public, educational, and governmental access channels and two-way capacity dedicated under Section 15(b) and Section 16, respectively. Until such an entity has been designated, the County shall perform all functions assigned to the entity in this Agreement.

(e) Program Guide. The County shall make the schedule of public, educational, and governmental programming available to Franchisee as required to meet franchisee's publication deadline. Franchisee shall cooperate with the County in making the schedule available to all subscribers and to appropriate news sources, in the same manner as it does all other programming on the System. Franchisee is not responsible for any decision by an independent news source to not publish the schedule.

(f) Costs and Payments not Franchise Fees. The parties agree that any capital costs to the Franchisee associated with the provision of support for public, educational or governmental access pursuant to this Franchise Agreement, and any capital grant payments made to the County pursuant to Section 16 of this Agreement, do not constitute and are not part of a franchise fee, and fall within one or more of the exceptions to 47 U.S.C. § 542.

(g) Editorial Control. Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial

control over the content of programming on the designated access channels (except for such programming the Franchisee may produce and cablecast on those channels).

(h) Minority, Ethnic, and Foreign Language Programming Channels. Throughout the term of the franchise in addition to the existing minority, ethnic and foreign language programming channels carried at the time of renewal, the Franchisee shall designate and maintain a channel on its basic tier for commercial use by a qualified minority, ethnic and foreign language programming source(s). The County, in consultation with the Franchisee and subject to its approval, shall select the minority, ethnic and foreign language programming source(s). The County may designate a different minority, ethnic and foreign language programming source periodically to the extent consistent with existing programming contracts. The Franchisee shall use best efforts to negotiate an agreement(s) for carriage with the selected programming source(s) and shall be solely responsible for all costs of carriage. The County shall cooperate with the Franchisee's efforts to negotiate appropriate agreements. Any such agreement shall be assignable to the County by the Franchisee in the event that any programming service affiliated with the Franchisee commences an action related to the provision of the minority, ethnic and foreign language programming channel. Franchisee shall indemnify and hold the County harmless from any action arising out of such assignment. The County may designate another minority, ethnic and foreign language programming source

if the Franchisee terminates the agreement with the prior programming source. The Franchisee shall add such a channel as soon as practicable but in no event later than one-hundred and twenty (120) days after the County has designated the programming source.

17. Timing and Planning of Construction; Extension.

(a) Interconnection. The Franchisee shall interconnect the system upon rebuild with all other willing cable system operators in immediately adjoining areas, whether in the County or not. Such operators must meet the Franchisee at or within the Franchise Area and provide signals of industry standard quality. The Franchisee shall provide signals to and receive signals from all interconnected operators so as to provide real time carriage of public, educational and governmental programming and Institutional network services that are comparable to services carried on Franchisee's King County Network.

(b) Line Extensions. In addition to the requirements contained in the Ordinance, Franchisee promises to enter all joint utility trenches and conduit whenever available upon reasonable notice within its franchise area at no charge to new subscribers. If Franchisee fails, after notice, to enter a conduit or joint trench, any later construction to reach locations that would otherwise have been served from the conduit or trench shall be at Franchisee's sole expense.

(c) Construction of the Institutional Network. The parties to this Agreement will execute a separate and simultaneous

contract to coordinate design, construction and operation of the I-net with the rebuilding of the Franchisee's network. Both parties will use best efforts to coordinate on the location of the Viacom fiber nodes to maximize the savings to the County while not altering the cost or specifications of the rebuild construction to Viacom. Pursuant to this separate agreement, to the extent the County contracts, Viacom will construct those parts of the County network that are not collocated with Viacom facilities and are solely for the County's use. Except as provided in Section 15(b), Franchisee shall undertake construction and installation of all County network facilities in accordance with the Construction Agreement.

(d) Permit Fees.

(1) The County shall waive Right-of-Way Construction Permit fees required by the County in connection with any construction by Franchisee which is solely for the County's Institutional Network or other Facilities described in Section 16.

(2) The County shall waive *pro rata* any Right-of-Way Construction Permit fees which are payable to the County's Property Services Division for its services, and which arise in connection with the Franchisee's joint construction of the Cable system and the County's Institutional Network or government access Facilities. The *pro rata* share of fees which will be waived shall be calculated by multiplying the total amount of Right-of-Way Construction Permit fees required in connection with

Franchisee's joint work by a fraction, the numerator of which is the number of fibers for the County involved in the Franchisee's joint work in the pertinent area, and the denominator of which is the total number of fibers involved in the joint work in the pertinent area. For example, if a project involves one hundred (100) feet of construction, forty (40) feet solely for the Franchisee and sixty (60) feet for both the Franchisee (6 fibers) and the County (2 fibers), the fee shall be calculated as follows:

$(40 \text{ feet times per ft. charge}) + (60 \text{ feet times per ft. charge times } 6/8) = \text{Franchisee's fee.}$

(e) Retention of Discretion. The County retains discretion to waive, extend or grant a substitute construction schedule or equipment requirement upon request and showing by Franchisee that the waiver, extension or substitution will result in improved design or performance of the cable system. If the County exercises its discretion under this Section 17(e), Franchisee shall not be liable for any damages specified in Section 10(a)(1) or 10(a)(3) to the extent of such action by the County. The County will not unreasonably withhold the requested actions.

18. Conditions on Use of Rights-of-Way: Specific Practices.

As provided in Sections 2(h) and (i), the construction, operation and repair of the Cable System must be performed in compliance with this Agreement and all applicable laws regarding use of the rights-of-way. The Franchisee's obligations and the

County's rights under that Section include, but are not limited to, the following:

(a) Use of Public and Private Property; Generally.

(1) The Cable System shall be constructed, operated and repaired so as to cause minimum interference with the rights and reasonable convenience of property owners (including the County) and users of the right-of-way and other public property. The County may from time to time issue reasonable rules, regulations and permit requirements concerning the construction, operation and repair of the Cable System as appropriate to ensure compliance with this Section 18. Applications for work permits shall be presented to the County's Property Services Division which may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. Any work done, whether by Franchisee, its contractors, or third parties will include necessary paving, patching, grading, and any other reasonably necessary repair or restoration to the County rights-of-way. All work shall be done to the satisfaction of the County's Director of Public Works.

(2) All equipment, lines, and appurtenances which are used in the operation, maintenance, repair or construction of the Franchisee's system, except for those pieces specifically noted in this Franchise, and which are located within the County's rights-of-way shall be considered to be part of Franchisee's system and shall be the Franchisee's responsibility. All permits for the operation, maintenance, repair or construction of said

system shall be applied for and given in the name of the Franchisee, who shall be responsible for all work done under the permit regardless of whether the work is done by the Franchisee, its employees or contractors, or by third parties. Except as contained in Section 17(d), to the extent that permit conditions are more stringent than the provision of this Franchise, the permit conditions shall govern.

(3) Franchisee shall obtain all required permits or easements before commencing any construction, reconstruction, repair, maintenance, or other work or property use. Permits for emergency work shall be obtained as soon as possible, but in no event later than one working day after the work is begun.

(4) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner and may be subject to the supervision, inspection, approval and direction of the County Engineer. The franchisee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law and permits during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Franchisee must comply with the then current edition of the County Road Standards, National Electric Code published by the National Fire Protection Association (currently ANSI/NFPA 70-1990, and replaced by subsequently adopted additions); National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers, Inc. (currently ANSI C2-1990 and replaced by

subsequently adopted additions); and Occupational Safety and Health Administration (OSHA) Safety and Health Standards. In addition, all work shall be performed in accordance with the National Cable Television Association Standards of Good Engineering Practices and the Franchisee's Construction Procedures Manual, except to the extent the practices described therein are inconsistent with applicable law. All traffic control shall be done in compliance with the then current edition of Manual on Uniform Traffic Control Devices, Part VI.

(5) Inspection fees shall be charged and billed monthly in accordance with administrative procedures developed by the County's Department of Public Works.

(b) Use of Poles and Conduits.

(1) Where electrical and telephone utility wiring is installed underground at the time of initial 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 services at no additional expense to the County or subscribers. Related cable system equipment such as pedestals must be placed in accordance with County code requirements and underground utility rules as interpreted by the County Road Engineer. In areas where both electric and telephone utility wiring is aerial, the Franchisee 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 Franchisee shall utilize existing poles and conduit wherever possible.

(3) The Franchise does not grant, give or convey to the franchisee 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 Cable Office.

(4) In any case where the Franchisee is or has been authorized to erect a pole, the Franchisee shall extend the right to use its poles upon reasonable terms and conditions to other persons having a franchise or permit to maintain lines and facilities upon the same road or right of way (a "franchise holder"). The County shall have the right to install and maintain free of charge upon the poles owned by the Franchisee any facilities that do not unreasonably interfere with the Franchisee's Cable System.

(c) Repair and Restoration of Property.

(1) The Franchisee shall protect public and private property from damage. If damage occurs, the Franchisee shall promptly notify the property owner.

(2) If public or private property is disturbed or damaged, the Franchisee shall restore the property to its former condition including necessary paving, patching, grading and other necessary repair or restoration, normal wear and tear excepted.

Public right-of-way or other County property shall be restored to its former condition, normal wear and tear excepted, in a manner and within a time approved by the County Road Engineer or custodial agency. If restoration of public right-of-way or other County property is not satisfactorily performed within a reasonable time, the County Road Engineer or custodial agency may, after prior notice to the Franchisee, 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 Franchisee's expense and recover the cost of those repairs from the Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Franchisee shall pay the County. Consistent with Section 11(a), if suit is brought upon Franchisee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of the County, then the Franchisee shall pay all of the County's actual costs resulting from the non-payment, including interest from the date the bill was presented, disbursements, attorney's fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed.

(3) Within thirty (30) calendar days of the effective date of the Franchise and prior to commencing any construction or upgrade, Franchisee shall provide a restoration bond in the

amount set by the County Road Engineer. As construction of the initial or upgraded cable system is completed, the amount of the bond may be reduced and/or released by the County. The bond required by this Section 18 shall be governed by the requirements of K.C.C. Section 14.44.080.

(4) The County may require an additional restoration bond, pursuant to K.C.C. §14.44.080, to be posted by Franchisee prior to any construction, reconstruction, maintenance or repair or other work in the County's right-of-way occurring subsequent to the completion of the initial construction or upgrade of the Cable Systems, in a reasonable amount and upon such terms as determined by the County Road Engineer. The Franchisee may obtain one bond to meet the requirements of both Section 18(c)(3) and Section 18(c)(4) if the combined bond meets the requirements and has the approval of both the County's Property Services Division and the Director of Public Works.

(5) Prior to entering onto private property to construct, operate or repair its Cable System, Franchisee shall give the person residing on or using the property adequate notice 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.

(d) Movement of Cable System For and By County. The

County may remove, replace, modify or disconnect Franchisee's facilities and equipment located in the public right-of-way or on any other County property in the case of fire, disaster, or other emergency, or when a County project or activity makes the removal, replacement, modification or disconnection necessary or less expensive for the County. Except during an emergency, the County shall attempt to provide reasonable notice to Franchisee prior to taking such action and shall, when feasible, provide Franchisee with the opportunity to perform such action.

Following notice by the County, Franchisee shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other County property, except that the County shall provide at least one hundred eighty (180) days written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Franchisee's facilities or equipment. If the Franchisee fails to complete this work within the time prescribed and to the County's satisfaction, the County may cause such work to be done and bill the cost of the work to the Franchisee.

Within thirty (30) days of receipt of an itemized list of those costs, the Franchisee shall pay the County. Notwithstanding the provisions of Section 2(o), the County, its officials, officers employees and agents shall not be liable to the Franchisee for any damage caused as a result of action taken under this Section 18(d).

(e) 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, Franchisee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The parties shall determine how costs associated with the removal, relaying or relocation shall be allocated.

(f) Movement for Other Permittees. At the request of any person holding a valid oversize load or similar permit and upon reasonable advance notice, Franchisee 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, including standby time, must be paid by the permit holder, and Franchisee may require a reasonable deposit of the estimated payment in advance.

(g) Tree Trimming and Excavation.

The Franchisee 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 County codes and regulations. At the option of the County, such trimming to the extent reasonable to satisfy the purpose of Section 18(g) may be done at Franchisee's expense by the County or under its direct supervision.

(h) Decisions of County Road Engineer. Whenever the

decision, requirement or approval is by this Agreement to be a determination of the County Road Engineer, that determination shall be conclusive upon the parties hereto, except in that instance where the determination is arbitrary, made in bad faith or to defraud the parties hereto.

(i) Road Vacations. If, at any time, the County vacates any County rights-of-way covered by this limited Franchise, the County shall not be held liable for any damages or loss to the Franchisee by reason of such vacation.

19. Operation and Reporting Provisions.

(a) Books and Records.

(1) The County and its representatives shall have the right to inspect and to have copied any and all books and records of the Franchisee and its affiliates which the County deems appropriate in order to monitor compliance with the terms of the Cable Ordinance, this Agreement, or applicable law. The County may conduct its inspection and copying at any time during normal business hours upon reasonable notice.

(2) The Franchisee shall maintain throughout the franchise term, at a location approved by the County, all records and information necessary to document its compliance with this Agreement, the Cable Ordinance, including those respecting its equal employment opportunity plan and its utilization of minority and women's businesses in its overall public and private business activities. The County shall have the right to inspect and have copied all such records and information on demand. If the books

and records are made available at a location other than within the County, the Franchisee must pay all reasonable expenses of the County or its representatives associated with travelling to inspect, audit or copy the books or records.

(3) The County shall have the right to have copied any documents it reasonably requires to carry out its responsibilities under this Agreement or the Cable Ordinance. Franchisee may mark documents the County has copied as "proprietary." The County will notify Franchisee if any third party seeks release of any document so marked and the County will withhold release for the maximum period permitted by law to provide Franchisee the opportunity to seek court protection against release of the requested documents.

(4) To the extent the books and records the County deems relevant are held by the franchisee or its Affiliates, the Franchisee is responsible for collecting those books and records and producing them at the location specified above.

(5) After the County has carried out its responsibilities which involve any copied records of the Franchisee, it shall, at Franchisee's option, either destroy such copies or return them to Franchisee to the extent permitted by law.

(b) Reports. The Franchisee shall provide the reports specified below, and such other reports as may be required.

(1) Within three (3) months of the close of its fiscal year, the Franchisee shall provide the Cable Office with an

annual report certified by a corporate officer that includes the following information:

(i) A summary of the previous fiscal year's activities in development of the system, including services initiated or discontinued, any retiering of programming services, number of subscribers receiving each type and class of service and gains and losses from the previous year, number of homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including system upgrades, during the year with any projections previously provided to the County, as well as rate and charge increases and/or decreases from the previous fiscal year.

(ii) A copy of updated maps depicting the location of all cable plant. On these maps, one (1) inch shall represent no more than 800'. These maps shall be accompanied by a digital copy in a standard format and medium agreed upon by the County and the Franchisee. The maps must include at least two tick marks representing Public Land Survey System section corners.

(iii) If Franchisee is a partnership at the time the report is submitted, a list of the partners, including any limited partners, and their addresses; and if a general partner is a corporation, a list of officers and members of the board of directors, the officers and directors of any and all parent corporations; and if any controlling corporation's or other parent entity's stock or ownership interests is publicly traded,

a copy of its most recent annual report.

(iv) A chart detailing all entities with a legal affiliation to the Franchisee, the legal character and ownership of each. If no individual owns fifty (50) percent or greater interest of the legal entity holding ultimate control of the Franchisee, such chart shall include all legal persons holding a five (5) percent or more interest in each and, a list of the twenty (20) largest owners of each such entity, their ownership shares or other ownership interests.

(v) A copy of Franchisee's procedures and terms and conditions of service, if any, applicable to subscribers and programmers of the Cable System. For example, including procedures for resolving complaints and for prioritizing installation and service calls.

(vi) A copy of Franchisee's arrangements and procedures for ensuring that subscribers can conveniently make payments, exchange or accept equipment, receive responses to inquiries and schedule appointments. In addition, Franchisee shall give the Cable Office reasonable notice before ceasing to use any location used to receive payments, exchange or accept equipment, receive responses to inquiries or schedule appointments.

(vii) A full schedule and description of services and service hours offered to subscribers or programmers.

(viii) A summary of all subscriber and consumer complaints, identifying the number and nature of complaints and

their disposition. Where complaints involve one or more recurrent problems, the nature of each such problem and what steps have been taken to correct it shall be identified. More detailed information on complaints shall be submitted upon request of the County.

(ix) A report detailing whether each applicable customer service standard was met. For each standard not met, the report will explain the cause, and corrections taken for each.

(2) Within six months (6) of the close of its fiscal year, the Franchisee shall provide the Cable Office with an annual report that includes the following information:

(i) A financial statement of operations which the Chief Financial Officer of the Franchisee states is true and accurate.

(ii) A financial statement setting forth the computation of Gross Revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation. The accuracy of the statement must be verified by the Controller or the Chief Financial Officer of the Franchisee .

(iii) If Franchisee is a public corporation at the time the report is submitted, Franchisee will provide a copy of its 10-K report relevant to the particular year. If Franchisee is not obligated to file a 10-K report, it will provide the following: a list of officers and members of the

board of directors; the officers and members of the board of directors of any and all parent or controlling corporations or persons; and if Franchisee or any controlling corporation's or other parent entity's stock or ownership interests is publicly traded, a copy of its most recent annual report.

(iv) A report on the number of disabled, elderly and low income subscribers receiving any rate discounts, and the amount of the discounts.

(3) Within one (1) month of the end of each quarter, which shall end on March 31, June 30, September 30, and December 31 of every year, the Franchisee shall provide the Cable Office with the following information:

(i) A copy of any reports submitted to the FCC regarding compliance with technical requirements together with information on instrumentation, calibration, procedures and tester's qualifications.

(ii) A statement, in a form specified by the County showing the number of subscribers served in the entire system and in the franchise area; and the number of channels on the basic tier, on the expanded tier, and from satellite. In addition, the statement shall separately list revenues for each source of revenue which is included within the definition of gross revenues in the County Cable Ordinance. Each source shall also state the number of units comprising the total for that source. If revenue is calculated by means of allocation rather than by segregation of actual revenues, the statement shall

include a description of the method used in making the allocation.

(iii) A report summarizing Cable System outages. An outage includes any loss of one or more video or audio channels that affects the lesser of 10% of the subscribers on a single fiber optic node or 50 or more subscribers on the same distribution line simultaneously, but does not include instances where the sound or video is lost prior to its receipt by the Cable System.

(iv) For each month during the quarter, a subscriber bill showing all categories used by the system but with zero dollar amounts will be addressed to the County Cable Office, together with copies of all other information, offers and notices sent to subscribers as a group.

(4) Franchisee shall provide the Cable Office the following:

(i) A statement of the resolution of complaints referred to it by the Cable Office. Notwithstanding any provision of the Cable Ordinance that could be read to require a more formal response, such notice shall be by telephone unless the Cable Office requests written notice, and shall be given as soon as practicable.

(ii) a copy of its equal employment opportunity plan filed with or submitted to the FCC, and any changes to the employment opportunity plan made in the last year, and a copy of its most recent FCC Form 395A. If the FCC replaces Form 395A,

the Franchisee shall file the succeeding forms which contain any of the information previously required in Form 395A. If the FCC no longer requires the filing of Equal Employment Opportunity information, the Franchisee shall file with the County the information it would have been required to file with the County on the date the Franchise was signed, including the information which would have been included on Form 395A.

(iii) Franchisee will comply with County ordinances related to persons with disabilities and will provide the Cable Office copies of all reports required covering persons with disabilities.

(iv) Franchisee will comply with County ordinances related to persons with disabilities and will provide the Cable Office copies of all required reports.

(v) Copies of all notices, legal pleadings and applications which may materially affect Franchisee's operations in the County and of all notices, legal pleadings and decisions pertaining to any allegation that the Franchisee, or controlling owners, have filed for bankruptcy, may be subject to revocation, termination or nonrenewal of a cable franchise or license, or may be accused of violating a security or antitrust law, or of having committed a felony, or any crime involving moral turpitude, fraud, deceit or bribery by any court or administrative agency. The notice shall be given to the Cable Office in writing and shall be sent by next day delivery.

(vi) Franchisee shall provide the Cable Office

with reasonable notice of any loss of one or more video or audio channels that affects the lesser of 10% of the subscribers on a single fiber optic node or 50 or more subscribers on the same distribution line, including their date, time, cause, location by street, and expected time of repair. Such notice shall be by facsimile or telephone within four (4) hours after the Franchisee first becomes aware of any such outage. As soon as possible after completion of the repair work, the Franchisee shall notify the Cable Office of the actual date and time of completion of the repair and any actions taken to prevent a reoccurrence.

(c) Books and Records Must Be Complete. Franchisee must maintain a complete set of books and records available for inspection, audit and copying by the County for purposes of ascertaining compliance with requirements of this Agreement and applicable law and regulations. Books and records must be retained for a period of at least five years. The County shall conduct inspections and audits no more frequently than annually unless the County has reasonable cause to believe the Franchisee is in material violation of this Agreement or the Cable Ordinance. The Franchisee shall be given reasonable notice prior to any inspection, audit or copying of books and records; the inspection shall be conducted during normal business hours. The books and records must either be made available in the County at a local office of the Cable Systems, or the Franchisee must pay all reasonable expenses of the County or its representatives associated with travelling to inspect, audit or copy the books or

records. Nothing in this Section 19c waives FCC open records provisions.

(d) Provision of Other Materials. Franchisee shall supply the Cable Office with such other information the Office determines is necessary or relevant in accomplishing its mandated tasks. Franchisee shall provide such requested information in a reasonable form and will have a reasonable amount of time in which to comply.

(e) Retention of Records; Relation to Privacy Rights. The Franchisee shall take all steps required, if any, to ensure that it is able to provide the County all information which must be provided or may be requested under the Cable Ordinance or this Agreement, including by providing appropriate subscriber privacy notices. Nothing in this Section 19 shall be read to require the Franchisee to violate 47 U.S.C. § 551. The Franchisee shall be responsible for blacking out any data that federal law prevents it from providing to the County.

(f) Charges for Inspection, Audits or Tests. In addition to any expenses the Franchisee must bear under Section 19(c), if an inspection, audit or test determines that Franchisee has not materially complied with its obligations, the Franchisee shall reimburse the County for all reasonable costs including expert fees arising from the inspection, audit or test. In addition, if it is determined that Franchisee has underpaid amounts due the County by more than four percent (4%) of the amount owing, or the Franchisee has not materially complied with other requirements,

the County shall have the right to conduct additional inspections, audits or tests, and to charge all costs arising from these inspections, audits or tests to the Franchisee until it is determined that the Franchisee is in full compliance. These charges are incidental to the enforcement of the Franchise; they do not limit any right the County may have to exercise any other remedy.

20. Remedies.

(a) Rights of County. In addition to exercising any of the other remedies provided in this Agreement, or the remedies specified under applicable law, the County may revoke the Franchise and void the Franchise Agreement if:

(1) Franchisee attempts to or does practice any fraud or deceit in its conduct or relations under this Franchise Agreement or in the process of being granted the rights, authority, power, privileges and permission herein; or

(2) Franchisee attempts deliberately to evade any material provision of this Franchise Agreement, the Cable Ordinance or the Cable Rules; or

(3) Franchisee fails to correct any material breach of this Agreement, the Cable Ordinance or the Cable Rules after notice and opportunity to cure; or

(4) Franchisee repeatedly violates this Agreement, the Cable Ordinance, or the Cable Rules regardless of whether any single provision violated is deemed immaterial; or

(5) Franchisee abandons its Franchise.

Without limitation, the failure of Franchisee to comply with the deadlines established herein, its failure to provide or maintain the required reports and records or its failure to comply with applicable law shall be deemed a material violation of this Franchise Agreement.

(b) Rights of Franchisee. Notwithstanding any provision of the Cable Ordinance to the contrary that could be read to limit the Franchisee's rights, before the County revokes the Franchise, it shall:

(1) Provide notice to the Franchisee of the violation;
(2) Permit the Franchisee to request an opportunity to be heard on the issue; and

(3) If the Franchisee timely requests an opportunity to be heard, allow the Franchisee to appear and present information relevant to determining whether the violation occurred, and the appropriate remedy for the violation, if any. The parties agree that K.C.C. §6.27A.240 satisfies the requirements of this Section 20(b).

(c) Procedures Prior to Revocation

(1) Notice of Violation. County shall provide Franchisee with a detailed written notice of any franchise violation upon which it proposes to take revocation action, and a ninety (90) day period within which Franchisee may demonstrate that a violation does not exist or cure the alleged violation.

(2) Default. If Franchisee fails to disprove or cure

the violation within ninety (90) days, then County may declare the Franchisee in default, which declaration must be in writing.

(3) Hearing Available to Franchisee. Within fifteen (15) days after receipt of a written declaration of default from the County, Franchisee may request, in writing, a hearing before the County or its agent, in a public proceeding. Such hearing shall be held within forty-five (45) days of the receipt of the request therefor and a decision rendered within thirty (30) days after the conclusion of the hearing. Any decision shall be in writing and shall be based upon written findings of fact.

(d) Duty to Exhaust Remedies. In the event of any dispute between the Franchisee and the County arising out of this Franchise Agreement, the Cable Ordinance or the Cable Rules, the Franchisee agrees to pursue and exhaust all administrative remedies pursuant to law prior to pursuing any legal or equitable remedy.

(e) Effect of Revocation or Forfeiture. The revocation or forfeiture of the Franchisee's rights under the Franchise shall not affect any of the County's rights under the Franchise or applicable law. The Franchisee shall continue to be bound, for example, by any duties it may have under the Cable Ordinance to continue to provide service.

21. Abandonment.

(a) Effect of Abandonment. If the Franchisee abandons its System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the County, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Franchisee restores service under conditions acceptable to the County or until the Franchise is revoked and a new Franchisee selected by the County is providing service; or obtain an injunction requiring the Franchisee to continue operations. If the County is required to operate or designate another entity to operate the Cable System, the Franchisee shall reimburse the County or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the Cable System.

(b) What Constitutes Abandonment. The County shall be entitled to exercise its option and obtain any required injunctive relief if:

(1) The Franchisee fails to provide Cable Service in accordance with this Franchise Agreement over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless the County authorizes a longer interruption of service; or

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

22. Exercise of right to purchase.

(a) Option to Purchase. The County shall have the option to purchase the Cable System as provided in this Agreement, the Cable Ordinance or applicable law.

(b) Arbitration.

(1) If the County exercises a right to purchase the Cable System pursuant to the Agreement, the Cable Ordinance, or applicable law, and the parties are unable to agree on a price for the purchase of the system, or the terms and conditions of the sale, the price of the Cable System may be determined by arbitration as set forth below.

(2) The arbitration procedure employed shall be consistent with the rules and procedures of the American Arbitration Association. The Cable Office and the Franchisee will each select a qualified arbitrator. The two persons selected shall select a third qualified arbitrator, and the three arbitrators will constitute a panel whose decision is binding on the County and the Franchisee. The fees of the arbitrators selected by each party shall be paid by that party, and the fees of the third arbitrator shall be paid one-half each by the County and the Franchisee. The other costs of the proceeding shall be shared equally by the County and the Franchisee.

(3) Notwithstanding the above, nothing shall require the County to submit the matter to arbitration should it purchase the Cable System through an exercise of the right of eminent domain.

(c) Rights Not Waived. The purchase option provided does not waive any rights the Franchisee may have under applicable law.

23. Miscellaneous Provisions.

(a) Governing Law. This Franchise Agreement shall be governed in all respects by the laws of the State of Washington. All actions brought by the Franchisee against the County, whether brought in state or federal court, shall be brought in a court located in King County, Washington, unless prohibited by law.

(b) Force Majeure. The Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, labor strikes, floods, or other circumstances beyond the Franchisee's control, and the Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health or safety of the Franchisee's employees or the integrity of its property, or the health or safety of the public, or the integrity of public right-of-way, public property, or private property; and only if the Franchisee has notified the County in writing of the reason for the inability within three (3) business days of the Franchisee's discovery of the reason.

(c) Connections to System; Use of Antennae.

(1) Subscribers shall have the right to attach devices to the Franchisee's System to allow them to retransmit signals or services in an authorized manner. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment and, if possible, the Franchisee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the Franchisee's System.

(2) The Franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit or discourage a subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable law.

(d) Calculation of Time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, the franchisee is directed to file action within ten (10) calendar days, the action must be completed no later than midnight January 11.

(e) Time of Essence; Maintenance of Records of Essence. In

determining whether the Franchisee has substantially complied with its Franchise, the parties agree that time is of the essence to this Agreement. As a result, the Franchisee's failure to complete construction, extend service, seek approval of transfers, or provide information in a timely manner may constitute material breaches. The maintenance of records and provision of reports in accordance with the Franchise is also of the essence to this Agreement.

(f) Guarantee. The performance of the Franchisee shall be guaranteed in all respects by Tele-Vue Systems, Inc. A signed guarantee, in a form acceptable to the County shall be filed with the Cable Office prior to the effective date hereof.

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

AGREED TO THIS 9th DAY OF March, 1995.

TELE-VUE SYSTEMS, INC.
d/b/a VIACOM CABLE

KING COUNTY, WASHINGTON

BY: [Signature]
Its: President
Date: 2/27/95

BY: [Signature] FOR
Its: GARY LOCKE
KING COUNTY EXECUTIVE
Date: 3/1/95

CONSTRUCTION AGREEMENT

BETWEEN

KING COUNTY, WASHINGTON,

AS OWNER,

AND

TELE-VUE SYSTEMS, INC., d/b/a,

VIACOM CABLE,

AS CONTRACTOR

Dated as of March 9, 1995

TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
RECITALS	1
ARTICLE I. <u>THE CONTRACT AND THE CONTRACT DOCUMENTS</u>	2
1.1 The Contract	2
1.2 The Contract Documents	2
1.3 Entire Agreement	3
1.4 No Privity With Others	3
1.5 Intent, Interpretation and Definitions	3
ARTICLE II. <u>THE WORK</u>	5
ARTICLE III. <u>CONTRACT TIME</u>	10
3.1 Time	10
3.2 Substantial Completion	10
ARTICLE IV. <u>CONTRACT PRICE</u>	11
4.1 The Contract Price	11
4.2 Cost of Work	11
4.3 Cost of Repair and Maintenance	13
ARTICLE V. <u>PAYMENT OF CONTRACT PRICE</u>	14
5.1 Payment Procedure	14
ARTICLE VI. <u>THE OWNER</u>	16
6.1 Information, Services and Things Required From Owner	16
6.2 Permits and Fees	16
ARTICLE VII. <u>THE CONTRACTOR</u>	16
7.4 Warranty	16
7.6 Supervision	17
7.8 Cleaning the Site and the Project	17
7.9 Access to Work	17
7.10 Indemnity	17
ARTICLE VIII. <u>SUBCONTRACTORS</u>	18
8.1 Definition	18
8.2 Award of Subcontracts	18
ARTICLE IX. <u>CHANGES IN WORK</u>	19
9.1 Changes Permitted	19
9.2 Change Order Defined	19

9.3 Changes in the Contract Price 19
9.4 Effect of Executed Change Order 19
9.5 Notice to Surety; Consent 20

ARTICLE X. CORRECTING WORK 20

10.1 Correcting Work 20

ARTICLE XI. CONTRACT TERMINATION 20

11.1 Termination by Contractor 20
11.2 Right to Stop Work or Termination by Owner 21
11.2.5 For Cause 21

ARTICLE XII. INSURANCE 21

ARTICLE XIII. MISCELLANEOUS 22

CONSTRUCTION AGREEMENT BETWEEN KING COUNTY,
WASHINGTON, AS OWNER, AND TELE-VUE SYSTEMS, INC.,
d/b/a VIACOM CABLE, AS CONTRACTOR

THIS AGREEMENT (the "Construction Agreement") is made as of March 9, 1995 by and between King County, Washington, 700 Fifth Avenue, Suite 2300, Seattle, Washington 98104-5002 (the "Owner"), and Tele-Vue Systems, Inc., d/b/a Viacom Cable, 900 132nd Street S.W., Everett, Washington 98204 ("Contractor"), for construction of the cable television Institutional Network ("I-Net") within King County, Washington, related to King County's cable television franchise granted to Viacom Cable to use the County's public rights of way and compatible utility easements to construct, reconstruct, repair and maintain a Cable System and/or Institutional Network.

The Owner and the Contractor hereby recite and agree as follows:

RECITALS

WHEREAS, Owner and Contractor have entered into a written Franchise Agreement, dated MARCH 9, 1995, under which Contractor will hold a cable franchise from the Owner to use the Owner's public rights of way and compatible utility easements to construct, reconstruct, repair and maintain a Cable System and/or I-Net in a portion of unincorporated areas of King County, Washington and in other areas as authorized (the "Franchise Agreement").

WHEREAS, as part of the consideration due from Contractor to Owner under the Franchise Agreement, Contractor has agreed to provide certain capital grants and construction services for design, construction and maintenance of the I-Net.

WHEREAS, both Contractor and Owner anticipate that Contractor will provide construction services for design, construction and maintenance of the I-NET under the terms of this Construction Agreement at a cost to the Owner below the cost achievable through an open bid for those same services.

WHEREAS, in the Franchise Agreement, Owner and Contractor have agreed to execute a Construction Agreement, subject to the terms of the Franchise Agreement, evidencing the obligation of Contractor to provide construction services for design, construction and maintenance of the I-Net in connection with the upgrade and reconstruction of a portion of Contractor's Cable System.

WHEREAS, in the Franchise Agreement, Owner and Contractor have agreed that Contractor should serve as Owner's general contractor for the design, construction and maintenance of designated parts of the I-Net, and that both parties will use best efforts to coordinate on the location of the Nodes to maximize the savings to Owner while not increasing the cost or altering specifications of the rebuild construction to Contractor.

WHEREAS, pursuant to the Franchise Agreement, Contractor will provide certain capital grants and construction credits to Owner, against which Contractor will be entitled to receive certain credits as described herein and in the Franchise Agreement for the Cost of the Work incurred by Contractor in constructing the I-Net.

ARTICLE I.

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract.

1.1.1 The Contract between Owner and Contractor, of which this Construction Agreement is a part, consists of the Contract Documents. The Contract shall be effective on the date this Agreement is executed by the last party to execute it.

1.2 The Contract Documents.

1.2.1 The Contract Documents consist of

- a. This Construction Agreement;
- b. Work Orders issued pursuant to Article II below;
- c. Change Orders issued hereafter;
- d. Any other amendments hereto executed by the parties hereafter;
- e. The Maps described in Article II below; and
- f. The Franchise Agreement as it relates to the design, construction and maintenance of and payment for the I-Net.

Documents not enumerated in this Section 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement.

1.3.1 The Contract, together with Contractor's performance and Owner's payment, constitute the entire and exclusive agreement between Owner and Contractor with reference to Contractor's design, construction and maintenance of the I-Net and Owner's payment therefor. Specifically, without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between Owner and Contractor relating to the design, construction and maintenance of the I-Net and payment therefor. While the primary agreement between the parties is the Franchise Agreement, if there is a conflict between this Construction Agreement and the Franchise Agreement relating to the design, construction and maintenance of the I-Net and payment therefor, then this Construction Agreement shall control.

1.4 No Privity With Others.

1.4.1 Nothing contained in the Contract shall create, or be interpreted to create privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 Intent, Interpretation and Definitions.

1.5.1 The intent of the Contract is to require complete, correct and timely design, construction and maintenance of the I-Net and payment therefor. Any work that may be required by the Contract Documents or any one or more of them as necessary to produce the intended results shall be provided by Contractor. Any payments or offsets that may be required by the Contract Documents or any one or more of them shall be made by Owner.

1.5.2 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in the Contract, it shall be interpreted or construed as follows: First, as defined in this Construction Agreement or in the Franchise Agreement; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

Definitions.

1.5.3.1 "Backbone Fiber Optic Network" means the network created by Fiber Optic Cables running from Headends to Nodes and between Nodes in a Cable System.

1.5.3.2 "Cable System" means that term as defined at 47 U.S.C. § 522(7).

1.5.3.3 "Capital Grant Allowance" means the annual capital grants due from Contractor to Owner, pursuant to Section 16(b)(3) of the Franchise Agreement, in the form of construction work order credits for construction of the I-Net in the approximate amount of \$800,000/year, plus an inflation adjustment, due on the first and second anniversaries of the effective date of the Franchise Agreement.

1.5.3.4 "Capital Grant Cash Payments" means the annual capital grants due from Contractor to Owner, pursuant to Sections 16(b)(2), (4), (5) and (6) of the Franchise Agreement, in the form of cash payments in the approximate amount of \$800,000/year, plus an inflation adjustment, due on the effective date of the Franchise Agreement and also on the third, fourth (for years 5-7) and seventh (for years 8-10) anniversaries of the Franchise Agreement.

1.5.3.5 "Fiber Optic Cable" means jacketed bundles of one or more optical fibers each of which is capable of transporting audio, video and data forms of communication.

1.5.3.6 "Franchise Area" means that portion of unincorporated areas of King County for which Contractor, pursuant to the Franchise Agreement, has the right to use Owner's public rights of way and compatible utility easements to construct, reconstruct, repair and maintain a Cable System and/or I-Net and in which Contractor actually constructs, reconstructs, repairs and maintains a Cable System and/or I-Net.

1.5.3.7 "Headend" means equipment that centrally receives and controls signals to be transmitted through the cable system, usually including antennas, preamplifiers, frequency converters, demodulators, modulators and related equipment. Both the building and the equipment which receive the signals and process them before application to the Cable System are known as the Headend.

1.5.3.8 "Hub" means a Cable System control point located between a Headend and a Node which receives the signals from the Headend and reorganizes and redirects those signals to particular Nodes.

1.5.3.9 "Institutional Network" or "I-Net" means a communications network related to and physically joined with the Cable System which is to be constructed by Contractor and operated by Owner and which is not generally available to residential subscribers of the Cable System in King County, Washington.

1.5.3.10 "Node" means a point in a Cable System which terminates optical fiber cables at a point remote from the Headends and Hubs and which bridges the signals from optical fibers to copper wires or to other optical fibers and from which distribution cables branch out to serve residential subscribers.

1.5.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.5 Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.6 Neither the organization of any of the Contract Documents nor the divisions, sections, paragraphs, articles (or other categories) shall control Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by subcontractors.

ARTICLE II.

THE WORK

2.1 Contractor shall perform all the Work required by the Contract.

2.2 The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties under the Contract, including the following: design, construction and maintenance of the designated parts of the I-Net; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required to fulfill Contractor's obligations under the Contract. The Work to be performed by Contractor is described as follows:

2.2.1 As part of Contractor's planned upgrade in the Franchise Area of its Cable System pursuant to the Franchise Agreement, Contractor intends to replace in phases the coaxial cables between its Headends and Nodes in the Franchise Area with

Fiber Optic Cables. It does not intend, except on a case by case basis and at its sole discretion, to replace the coaxial wire in the Franchise Area that runs from the Nodes to residential or other subscribers.

2.2.2 As Contractor in phases replaces coaxial cable with Fiber Optic Cable between the Headends and the Nodes and, on a case by case basis, replaces coaxial cable that runs from the Nodes to residential or other subscribers, Contractor will purchase and have installed within the optical fiber jacket or in a separate optical fiber jacket, as requested by Owner, as many optical fibers as requested by Owner in Work Orders issued pursuant to Section 2.3.5 and dedicate them to the use by Owner for the operation of the I-Net. Owner shall decide whether to have its fibers jacketed with Contractor's fibers or whether to have its fibers jacketed separately after, in good faith, taking into account the recommendations of Contractor, which recommendations Owner shall not unreasonably reject. However, this shall not obligate the Owner to take any action it believes to be contrary to its interest.

2.2.3 Contractor shall install Fiber Optic Cable from the Nodes to the County site locations designated by Owner in the Work Orders issued pursuant to Section 2.3.5.

2.2.4 Contractor shall install at each facility and at a location therein designated by the Owner in the Work Orders issued pursuant to section 2.3.5 termination block hardware including standard connectors to be designated by Owner, so that Owner can connect to the Fiber Optic Cable. Such connection shall be made by Contractor within a reasonable time but, if the requested connections are not in an area where Contractor is then currently working, the connection shall be made in a way so as not to interrupt Contractor's schedule for the rebuild of the Cable System.

2.2.5 I-Net construction by Contractor for Owner's benefit may also occur outside the Franchise Area to the extent requested by Owner, provided, Contractor shall have the obligation to build only in other jurisdictions in King County where Contractor has a franchise, permit, license or other right to serve.

2.3 The design and execution of the Work is generally described as follows:

2.3.1 On or about nine (9) months before Contractor begins construction of a phase of the upgrade of its Cable System, Contractor shall give Owner a map relating to that phase that shows Contractor's proposed route for its Backbone Fiber Optic Network, the proposed location of Nodes for Contractor's subscriber system and the proposed location of the distribution system within King County relating to that phase of the upgrade.

2.3.2 On or about eight (8) months before Contractor begins construction of a phase of the upgrade of its Cable System, Owner shall give to Contractor the address of each County site location Owner wishes connected during that phase by Fiber Optic Cable to the Cable System Nodes and the number of optical fibers Owner wishes to have run to each location.

2.3.3 On or about seven (7) months before Contractor begins construction on a phase of the upgrade of its Cable System, Contractor and Owner shall meet and use best efforts to coordinate the location of the Nodes that will be reconstructed as part of the upgrade in order to maximize the savings to the Owner while not increasing the cost or altering the specifications of the upgrade of the Cable System for Contractor. If Owner wants a Node location that will increase the cost or alter the specifications of the upgrade of the Cable System for Contractor, Owner can direct such a Node location if Owner compensates Contractor for the increased cost or altered specifications.

2.3.4 On or about six (6) months before Contractor begins construction of a phase of the upgrade of its Cable System, the Contractor shall give Owner:

(a) A string map showing Contractor's proposed route for the Backbone Fiber Optic Network, and its proposed location of Nodes and Contractor's proposed routing and number of optical fibers from Nodes or breakout points to County site locations. The map shall be on a scale of one inch equal to one thousand feet and shall also be provided as a computer file in .DXF format. The map shall include at least two reference marks corresponding to geological survey markers.

(b) Contractor's estimate of the material cost of the Fiber Optic Cable on a per foot per fiber basis;

(c) Contractor's estimate of the labor costs on a cost per foot basis from Nodes or breakout points to County site locations; and

(d) Contractor's estimate of any other Direct Costs to be paid by Owner.

2.3.5 On or about five (5) months before Contractor begins construction on a phase of the upgrade of its Cable System, Owner shall give Contractor a written Work Order that details the Work requested by the Owner during that phase of the Cable System

upgrade. Such Work Order shall include the following information:

- (a) The specific number of optical fibers required by Owner and whether they are to be jacketed with Contractor's fibers or jacketed separately;
- (b) The County site locations to which Owner wants Contractor to run Fiber Optic Cable;
- (c) Identification of the equipment and hardware to be installed by Contractor at points of termination; and
- (d) A design for splicing and termination of Fiber Optic Cable at each County site location.

If Owner gives an untimely Work Order to Contractor and the untimeliness is material, then Contractor shall have no obligation to construct the I-NET during that phase of Contractor's upgrade of its Cable System unless, by Change Order, Owner extends the Contract Time sufficient to compensate Contractor for the untimeliness of the Work Order and increases the Contract Price sufficient to compensate Contractor for its costs and damages relating to the untimeliness of the Work Order.

2.3.6 On or about four (4) months before Contractor begins construction of a phase of an upgrade to its Cable System,

- (a) Contractor shall prepare and give to Owner a Purchase Memorandum which shall itemize the types, quantities and prices of the Fiber Optic Cable, equipment and hardware that Contractor intends to purchase to perform the work requested in the Work Order. The prices shall be Contractor's purchase prices or the fair market prices, whichever are lower. Owner shall promptly reply to Contractor, in writing, stating any objections that Owner may have that the prices are not Contractor's purchase prices or fair market prices.
- (b) Contractor shall prepare and give the Owner a Subcontractor Memorandum which shall state the names of persons or entities proposed by Contractor to act as subcontractors on the phase and the price of the subcontractors on a cost per foot basis from Nodes or breakout points to County site

locations. Owner shall promptly reply to Contractor, in writing, stating any objections that Owner may have to such proposed subcontractors and their subcontract prices relating to that portion of the I-Net where the Cable System and the I-Net are not co-located. In such event, the parties shall in good faith immediately try to resolve the objections.

(c) Contractor shall prepare and give to Owner a Memorandum of Inhouse Labor Charges, if any, which shall state the estimated price of labor to be performed by Contractor on a cost per foot basis.

(d) Within fifteen (15) days of its receipt of the Purchase Memorandum, the Subcontractor Memorandum and the Memorandum of Inhouse Labor Charges, Owner may amend or cancel its Work Order.

(e) If Owner cancels its Work Order, then Contractor may proceed immediately with the construction of the phase of the upgrade of its Cable System. If Owner amends its Work Order, then Contractor shall amend its Purchase Memorandum, its Subcontractor Memorandum and its Memorandum of In-House Labor Charges in response to Owner's amended Work Order. Within fifteen days of these amended Memoranda, Owner may cancel its amended Work Order.

(f) If Owner does not amend or cancel its Work Order or amended Work Order, then Owner will be deemed to have authorized Contractor to proceed with such Work Order, including the purchasing of materials, the executing of subcontracts and the employing of inhouse labor. As soon as available, contractor shall give Owner copies of the executed subcontracts.

2.3.7 On or about one (1) month before Contractor begins construction of a phase of the upgrade of its Cable System, Contractor shall give Owner final design maps of the proposed construction phase. The maps shall depict:

(a) Contractor's plan for the Backbone Fiber Optic Network location and Fiber Optic Cable routing based on the location of Nodes;

(b) Routing of Fiber Optic Cable and number of optical fibers in each run of Fiber Optic Cable between Contractor's Headends, Hubs and Nodes; and

(c) Routing and number of optical fibers between Nodes and County site locations to provide the I-Net transmission paths.

These maps shall be on a scale of one inch equal to one thousand feet and shall also be provided as a computer file in .DXF format. Contractor shall also provide Owner with copies of the manufacturer's written specifications for the Fiber Optic Cable and for any equipment used in connection with the I-Net.

2.3.8 Following commencement of construction of a phase of the I-Net, every three months until that phase of the I-Net is completed, Contractor shall provide detailed written reports to the Owner on the Contractor's progress in constructing the I-Net and shall meet with the Owner to discuss such progress.

ARTICLE III.

CONTRACT TIME

3.1 Time.

3.1.1 Contractor shall commence the Work pursuant to the terms of Section 2.3 above and shall achieve Substantial Completion of the Work, as defined under Section 3.2, no later than four years from the effective date of the Franchise Agreement. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time."

3.2 Substantial Completion.

3.2.1 "Substantial Completion" shall mean that stage when a Work Order is sufficiently complete such that the Work performed pursuant to the Work Order is ready for final inspection and is subjected to and passes a technical performance test in accordance with Section 5.1.2.

3.2.2 It is understood that the Work shall be performed in phases and that "Substantial Completion" shall be measured on a phase-by-phase basis.

ARTICLE IV.

CONTRACT PRICE4.1 The Contract Price.

4.1.1 Owner shall pay and Contractor shall accept, as full and complete payment for all of the Work required herein, consideration in the manner set forth in this Article.

4.2 Cost of Work.

4.2.1 For construction of the I-Net at any location where Contractor for its own account lays new or replacement Fiber Optic Cable or coaxial cable (i.e., where the I-Net and the Cable System are co-located), the Cost of Work shall be only Contractor's direct material cost of the additional optical fibers installed for Owner's account. The Cost of such Work shall be calculated on the basis of invoices received by the Contractor for the purchase of the Fiber Optic Cable. The Cost of Work shall not include the cost for construction, installation and testing of the Fiber Optic Cable. For example, if Contractor purchases Fiber Optic Cable with twenty-six (26) optical fibers per tube, twenty-four (24) of which Contractor will use in its Backbone Fiber Optic Network and two (2) of which Owner will use for the I-Net, then the Cost of Work shall be the actual cost of the Fiber Optic Cable multiplied by $2/26$. As another example, if Contractor purchases Fiber Optic Cable with twenty-six (26) optical fibers per tube for its own use, and also purchases Fiber Optic Cable with twenty-six (26) optical fibers per tube for the account of Owner, then the Cost of Work shall be the actual cost of the Fiber Optic Cable multiplied by $26/52$.

4.2.2 For the construction of the I-Net at all other locations, the Cost of Work shall be the "Direct Cost" of labor and material Contractor actually incurs in the construction, installation and testing of the Fiber Optic Cable, equipment and hardware solely in connection with the I-Net. The Cost of Work shall not include any "Indirect Cost."

4.2.3 "Direct Cost" shall include:

(a) Costs of necessary materials (including the Fiber Optic Cable, equipment and hardware requested in the Work Order pursuant to Article II), equipment, tools, supplies, fuel, rentals, freight charges and services;

(b) Payments made by Contractor to subcontractors in accordance with the requirements of the subcontracts;

- (c) Wages and salaries of Contractor's employees performing Work on the relevant portion of the I-Net, including those employees involved in designing and mapping the I-Net to the extent such designing and mapping is a Direct Cost that is over and above any Direct Cost that contractor would incur in designing and mapping its Cable System, and also including their welfare, unemployment compensation, social security and other benefits, for such part of their time as is employed on this Work;
- (d) Payroll taxes and insurance and contributions applicable to wages and salaries of Contractor's employees performing Work on the relevant portion of the I-Net, and sales, excise, business and occupation, and other taxes paid by Contractor on materials, equipment, supplies and services chargeable to the relevant portion of the I-Net;
- (e) Any labor force travel expenses directly chargeable to the Work on the relevant portion of the I-Net;
- (f) Costs of necessary licenses and permit fees, including Right-of-Construction Permit fees and inspection fees, if any, related to the relevant portion of the I-Net;
- (g) Reasonable rental costs for necessary temporary facilities, machinery, equipment and hand tools used in the Work on the relevant portion of the I-Net;
- (h) That portion directly attributable to this Contract of premiums for insurance and bonds related to the design, construction and maintenance of the I-Net;
- (i) Losses, expenses, and cost of reconstructing any Work destroyed or damaged, not compensated by insurance or otherwise, sustained by Contractor in connection with the Work, provided they have resulted from causes other than the fault or negligence of Contractor;
- (j) Costs of removal of debris on the relevant portion of the I-Net;

(k) Costs incurred on the relevant portion of the I-Net in taking action to prevent threatened damage, injury, loss in case of an emergency affecting the safety of persons and property; and

(l) Other costs incurred on the relevant portion of the I-Net in the performance of the Work if and to the extent approved in advance in writing by Owner.

4.2.4 "Indirect cost" shall include:

(a) Salaries and other compensation of Contractor's employees stationed at Contractor's principal office or offices other than the Work site, except as provided in Section 4.2.3;

(b) Overhead and general expenses, except as may be expressly included in Section 4.2.3;

(c) Contractor's capital expenses, including interest on Contractor's capital, employed for the Work;

(d) Costs due to the fault or negligence of contractor, subcontractors, anyone directly or indirectly employed by any of them, or for those whose acts any of them may be liable, including, but not limited to, costs for the correction of damage, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, in making good damage to property not forming a part of the Work.

4.3 Cost of Repair and Maintenance.

4.3.1 After Substantial Completion, if any repair and maintenance is required for the I-Net where Contractor's Cable System and Owner's I-Net are co-located, then the Cost of Repair and Maintenance shall be borne by Contractor, unless the repair and maintenance arises from damage or defect caused by Owner, in which case Owner shall bear the Cost of Repair and Maintenance.

4.3.2 After Substantial Completion, for any repairs and maintenance to the I-Net at all other locations, the Cost of Repair and Maintenance shall be the Direct Cost of labor and material Contractor incurs in such repair and maintenance. Such Cost of Repair and Maintenance shall not include any Indirect Costs.

4.3.3 It is agreed that only Contractor, or persons operating under Contractor's direction and authority, shall have the authority to repair and maintain the I-Net where Contractor's Cable System and Owner's I-Net are co-located. At all other I-Net locations, Owner may employ other persons for purposes of repair and maintenance.

ARTICLE V.

PAYMENT OF CONTRACT PRICE

5.1 Payment Procedure.

5.1.1 Owner shall make payments to Contractor for Work under the Contract in accordance with Section 16(b) of the Franchise Agreement. However, the payment procedure set forth in this Construction Agreement shall control in case of conflict between this Construction Agreement and the Franchise Agreement.

5.1.2 When the Work is completed under a Work Order and the Contractor is ready for a final inspection, the Contractor shall notify the Owner in writing and propose a date for Owner's inspection. On the inspection date, the Contractor shall conduct a technical performance test in Owner's presence to demonstrate the Work done is in full compliance with the Contract, including compliance with the manufacturer's specifications for the equipment and hardware. If the Work passes the technical performance test to the reasonable satisfaction of the Owner, then the Work for that phase of the I-Net shall be deemed to have reached "Substantial Completion." If the Work fails to pass the test, the Contractor shall correct the problem promptly and propose a date for a second inspection.

5.1.3 When the Work for a phase of the I-Net is deemed to have reached "Substantial Completion", or when Work related to any repair and maintenance is completed to the reasonable satisfaction of the Owner, then Contractor shall submit to Owner an invoice for the cost of the Work related to that phase or repair and maintenance. The invoice shall give a listing of the labor and materials used in connection with the I-Net and the costs thereof, as calculated in accordance with Article II. Invoices shall be paid immediately by offsetting the amount due from Owner to Contractor as stated on the invoice against the Capital Grant Allowance until such time as the Capital Grant Allowance is exhausted. Thereafter, those invoices issued before the third anniversary of the effective date of the Franchise Agreement shall be paid immediately by offsetting the amount due from Owner to Contractor as stated on the invoice against the Capital Grant Cash Payment due on the third anniversary of the effective date of the Franchise Agreement until such Capital Grant Cash Payment is exhausted. If the Capital Grant Allowance or the Capital Grant Cash Payment are not exhausted by the third

anniversary of the effective date of the Franchise Agreement, then any balances remaining on the Capital Grant Allowance or such Capital Grant Cash Payment shall be paid by Contractor to the Owner in accordance with the Franchise Agreement. Thereafter, invoices shall be paid by direct money payment from Owner to Contractor in the ordinary course of Owner's business or financial affairs and according to Owner's ordinary business terms with its other contractors and vendors.

5.1.4 Contractor shall maintain and provide Owner monthly with a running Statement of Account setting forth the date and amount of each invoice, each payment thereon, and the balance of the Capital Grant Allowance remaining, if any.

5.1.5 Owner shall have the right for a period of three (3) years after payment of such invoice to protest to Contractor in writing that the invoice is not in compliance with this Contract. Contractor shall keep full and detailed records and accounts and exercise such controls as may be necessary for proper financial management under the Contract. Contractor shall afford Owner's authorized personnel and independent auditors, if any, full access to all of Contractor's books, records, correspondence, instructions, drawings, receipts, vouchers and other documents relating to the Work under this Contract. Contractor shall preserve all such records relating to each invoice issued under Section 5.1.3 for three (3) years after payment of such invoice.

5.1.6 Contractor warrants that title to all Work covered by an offset of Cost of Work against the Capital Grant Allowance or the Capital Grant Payments or by direct money payment will be passed to Owner no later than the time the offset or direct money payment is made. Contractor further warrants that, upon the offset or direct money payment, all Work for which the offset or direct money payment has been made shall be free and clear from all liens, claims, security interests or other encumbrances in favor of Contractor or any other person or entity.

5.2 Contractor shall promptly pay each subcontractor the amount to which subcontractor is entitled. If Owner becomes informed that Contractor has not paid a subcontractor as herein provided, Owner shall have the right, but not the duty to notify the holder of the performance bond posted under the Franchise Agreement.

ARTICLE VI.

THE OWNER6.1 Information, Services and Things Required From Owner.

6.1.1 Owner shall furnish Contractor all information required to be provided under this Agreement and the Franchise Agreement.

6.2 Permits and Fees.

6.2.1 Owner shall use best efforts to ensure that the necessary permits for construction of the upgrade to Contractor's Cable System and the I-Net are issued to Contractor in a timely and nondiscriminatory manner.

6.2.2 Owner shall waive Right of Construction Permit fees in accordance with and pursuant to Section 17(d) of the Franchise Agreement.

ARTICLE VII.

THE CONTRACTOR

7.1 If Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to and approval of Owner, Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 Contractor shall perform the Work strictly in accordance with this contract.

7.3 Contractor shall be responsible to Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of Contractor.

7.4 Warranty.

7.4.1 Contractor warrants to Owner that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will be free from defects not inherent in the quality required or permitted, that the Work will conform with requirements of the Contract Documents, that the materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused

by Owner, modifications or maintenance or abuse not executed by Contractor or its authorized agents, improper operation by Owner, or normal wear and tear under normal usage. Contractor's warranty is limited pursuant to the terms and conditions of Article X below.

7.5 Contractor shall obey and pay for all permits, fees and licenses necessary and ordinary for the Work except as provided in Articles II and VI above. Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 Supervision.

7.6.1 Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the contract, unless Contract Documents give other specific instructions concerning these matters.

7.7 Contractor shall continuously maintain at its local office for the benefit of Owner one record of the Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at its local office for the Owner the maps and specifications and other required submittals.

7.8 Cleaning the Site and the Project.

7.8.1 Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of Work, Contractor shall clean the site and move all waste, together with all of Contractor's property therefrom.

7.9 Access to Work.

7.9.1 Owner shall have access to the Work at all times from commencement of the Work through Substantial Completion. Contractor shall take whatever steps are necessary to provide access when requested.

7.10 Indemnity.

7.10.1 To the fullest extent permitted by law, Contractor shall protect, defend, indemnify and hold harmless Owner from and against liability, claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damages, loss or expense is attributable to bodily injury,

sickness, disease or death, or to injury or to destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or part by negligent acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder. Notwithstanding anything herein to the contrary, if (and only if) the provisions of RCW 4.20.4.115 apply to the Work and any such injuries to persons or property arising out of the performance of this Contract are caused by or result from the concurrent negligence of Contractor or its agents or employees, and of the Owner and its agents or employees, Contractor's indemnification obligations, if any, apply only to the extent of the negligence of Contractor, its agents or employees.

7.10.2 Contractor's obligation under this section shall include indemnification for claims made by the Contractor's own employees or agents. For this purpose, Contractor, by mutual negotiation, hereby waives, with respect to Owner only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Owner incurs any judgment, award and/or cost arising therefrom including attorneys' fees to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from Contractor.

7.10.3 In claims against any person or entity indemnified hereunder by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation hereunder shall not be limited by a limitation on any amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under its Workers Compensation Acts, Disability Benefit Acts and other employee benefits acts.

ARTICLE VIII.

SUBCONTRACTORS

8.1 Definition.

8.1.1 A subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work.

8.2 Award of Subcontracts.

8.2.1 Contractor shall not enter into a subcontract with a proposed subcontractor with reference to whom Owner has made timely and reasonable objection pursuant to Section 2.3.4.

Contractor shall not be required to subcontract with any party to whom Contractor has objection.

8.2.2 All subcontracts shall afford Contractor's rights against the subcontractor which correspond to those rights afforded to Owner against the Contractor herein.

ARTICLE IX.

CHANGES IN WORK

9.1 Changes Permitted.

9.1.1 Changes in the Work within the general scope of this contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered without invalidating this contract, by Change Order.

9.1.2 Changes in the Work pursuant to Change Orders shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

9.2 Change Order Defined.

9.2.1 Change Order shall mean a written order to Contractor executed by Owner and issued after execution of this Contract that authorizes and directs a change in the Work, an adjustment in the Contract Price or the Contract Time, or a combination thereof, to which Contractor agrees.

9.3 Changes in the Contract Price.

9.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows:

(a) By mutual agreement between Owner and Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto being initialed by both parties and (3) the Contractor's execution of the Change Order.

9.4 Effect of Executed Change Order.

9.4.1 Execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, and that this Contract is thus amended.

9.5 Notice to Surety; Consent.

9.5.1 Contractor shall notify and obtain the consent and approval of Contractor's surety with reference to all Change Orders for which such notice, consent or approval are required by Contractor surety or by law. Contractor's execution of the Change Order shall constitute Contractor's warranty to Owner that surety has been notified of and consents to such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE X.

CORRECTING WORK

10.1 Correcting Work.

10.1.1 If within one (1) year after Substantial Completion of a Work Order as evidenced by the Work having passed the performance test and a payment having been made by Owner in favor of Contractor, whether by offset or direct money payment, any Work is found to be defective or not in accordance with this Contract, then Contractor shall correct it promptly upon receipt of written notice from Owner. Contractor shall pay all costs and expenses associated with correcting such work, including additional testing and inspections.

10.1.2 Nothing contained herein shall establish any period of limitation with respect to other obligations which Contractor has under this contract. Establishment of the one-year time period herein relates only to the duty of Contractor to specifically correct the Work.

ARTICLE XI.

CONTRACT TERMINATION

11.1 Termination by Contractor.

11.1.1 If Owner shall persistently or repeatedly fail to perform any material obligation to Contractor, and if such failure shall continue unremedied for a period of thirty (30) days after written notice from Contractor of Contractor's intent to terminate performance, then Contractor may terminate performance under this Contract. In such event, Contractor shall be entitled to recover from Owner as though Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Section 11.2.

11.2 Right to Stop Work or Termination by Owner.

11.2.1 If Contractor persistently fails or refuses to perform the Work related to the portion of the I-Net where Contractor's Cable System is not co-located with Owner's I-Net, then Owner may order Contractor to stop work on such portion of the I-Net until the cause of stoppage has been corrected, no longer exists, or Owner orders that work be resumed.

11.2.2 Owner may for any reason whatsoever terminate performance under this Contract by Contractor. Owner shall give a thirty (30) day written notice of such termination to Contractor specifying when termination becomes effective and whether the termination relates to all Work contemplated by this Agreement or only to Work related to a specific phase of Contractor's upgrade of its Cable System.

11.2.3 Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop work on Owner's account, but not work for Contractor's account, when such termination becomes effective. Contractor shall also terminate outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of termination of such subcontracts and orders.

11.2.4 When Contractor has been paid in full, then Contractor shall transfer title and deliver to Owner such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

11.2.5 For Cause.

11.2.5.1 If Contractor persistently or repeatedly refuses or fails to do the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the Owner may, by a thirty (30) day written notice to Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor.

ARTICLE XII.

INSURANCE

12.1 During the term of the Contract, Contractor shall provide Owner with proof of insurance and comply with all the insurance provisions as required in the Franchise Agreement.

ARTICLE XIII.

MISCELLANEOUS

13.1 The Contract shall be governed by the law of State of Washington.

13.2 Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this contract. Neither Contractor nor Owner shall assign this Contract without the written consent of the other party which consent shall not unreasonably be withheld. However, this shall not obligate the Owner to take any action it believes to be contrary to its interest.

13.3 Contractor shall furnish a performance bond to Owner as required in the Franchise Agreement.

13.4 If a dispute arises out of or relates to the Contract, or a breach thereof, and if the dispute cannot be settled through negotiation, Owner and Contractor agree first to try to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before resorting to litigation in the King County Superior Court, King County, Washington.

13.5 If Contractor shall be delayed or interrupted in the performance or completion of the Work hereunder by an embargo, war, fire, flood, earthquake, epidemic or other calamity, act of God or of the public enemy, or by any strike or labor dispute, or by the inability to secure governmental licenses, permits or priorities, or by the unavailability of sources of supply to Contractor, or by any other outside cause which is beyond the control of Contractor and without its fault or negligence, then it shall be excused from any delay or failure to perform under the Contract.

GUARANTEE

Tele-Vue Systems, Inc. d/b/a Viacom Cable, 900 - 132nd Street S.W., Everett, Washington 98204, hereby accepts unconditionally and agrees to be bound by all the terms and conditions of Franchise No. 11680 of King County, Washington, dated March 9, 1995, as granted by the King County Council and of the associated Construction Agreement.

TELE-VUE SYSTEMS, INC.
d/b/a VIACOM CABLE

By: [Signature]

Its: President

Dated: 2/27/95

State of Washington
County of _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the

_____ of Tele-Vue Systems, Inc. d/b/a Viacom Cable to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3/5/95 [Signature]
Signature

(Seal or stamp)

Title _____
My appointment expires _____

See Attached

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

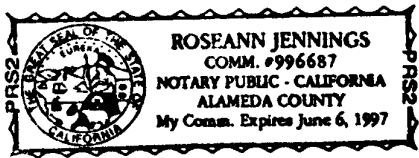
State of California

County of Alameda

On 2/27/95 before me, Roseann Jennings, Notary Public

personally appeared John W. Goddard

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal. Roseann Jennings
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Acknowledgment

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: John W. Goddard

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: Roseann Jennings

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

ORDINANCE 11680

**APPENDIX A
LEGAL DESCRIPTION OF FRANCHISE AREA**

**APPENDIX B
FRANCHISE AGREEMENT BETWEEN TELE-VUE
SYSTEMS, INC. D/B/A VIACOM CABLE AND KING
COUNTY, WASHINGTON 1994**

**APPENDIX C
CONSTRUCTION AGREEMENT BETWEEN KING
COUNTY, WASHINGTON, AS OWNER, AND TELE-
VUE SYSTEMS, INC., D/B/A, VIACOM CABLE, AS
CONTRACTOR**

**APPENDIX D
GUARANTEE**

ATTACHMENT(S) AVAILABLE IN ARCHIVES