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Appendix _

**FRANCHISE AGREEMENT
BETWEEN**

**TELE-VUE SYSTEMS, INC. D/B/A VIACOM CABLE
AND
KING COUNTY, WASHINGTON
1996**

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 cable television services.

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 providing cable television services. The King County Council held a public hearing on the Application on the _____ day of _____, 19__.

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. _____, 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. _____. 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 cable television services commencing on the effective date of the Franchise through and including [February 6, 2005]. The Franchise shall become effective when the Franchisee has:

- I. Signed the Franchise Agreement attached as Appendix B;
- II. Signed the Construction Agreement Filed attached as Appendix C;
- III. Signed an unconditional acceptance of this Franchise attached as Appendix D; and
- IV. 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. _____, or the Franchise shall be null and void and without effect.

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

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Appendix A

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

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

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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 North 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 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.

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Less any portion lying within an incorporated area.

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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 corner of said section; thence northerly along the west line of Section 22, Twp. 24 N., R. 6, E.W.M. to the northwest 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 southwestwesterly 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 northwestwesterly 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, of said 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 southwestwesterly 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,

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E.W.M. to the N.W. $\frac{1}{4}$ corner of 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.

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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.

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PARCEL FIVE

(Formerly Franchise No. 561)

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.

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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.

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**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.

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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 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.

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CABLE TELEVISION FRANCHISE AGREEMENT

BETWEEN KING COUNTY, WASHINGTON

AND

TELE-VUE SYSTEMS, INC. D/B/A VIACOM CABLE

FOR

FRANCHISE _____

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) Cable Services. As used in Franchise and the Franchise Agreement, the term "Cable Services" or "cable television services" means the one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any which is required for the selection of such video programming or other programming service;
- (c) Franchise Agreement. This contract and any amendments, exhibits, or appendices hereto.
- (d) Franchisee. Refers to Tele-Vue Systems, Inc. d/b/a Viacom Cable, and its lawful and permitted successors and assigns.

(e) 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.

(f) 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.

(g) 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.

(h) 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 and repair a Cable System within the franchise

territory defined in this Agreement to provide Cable Services and to provide a related Institutional Network ("I-Net") for Public, Educational and Governmental use for voice, video and data subject to Section 17.(a)(9). The Franchise issued to the Franchisee is subject to the terms and conditions of this Agreement. It shall remain in effect from the effective date of this grant to February 16, 2005, 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. 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. The County retains the inherent right to maintain and repair Institutional and Wide Area Network fiber optic lines and related equipment installed under the terms of this Franchise Agreement wherever they may exist.

(3) Nothing in this Franchise Agreement 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. This Franchise only authorizes Franchisee to engage in cable service, as that term is defined in the Federal Cable Act, 47 U.S.C. Sec. 521, et seq., as set forth on December 31, 1995.

(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 directly involved in the offering of Cable Services in King County, or directly involved in the management or operation of the Cable System in King 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) Construction of Agreement. The provisions of this Agreement shall be liberally construed to promote the public interest.

(g) 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.

(h) 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.

(i) Relation to Prior Franchise. As of the effective date of this Franchise, the Franchises previously held by the Franchisee are superseded and of no further force and effect. Franchisee promises to pay all amounts owed the County and subscribers under its prior franchises 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 franchises were effective to the extent any claims related to such acts and omissions are not barred by the statute of limitations.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) 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.

(o) External Costs. The Franchisee may itemize any external costs on subscriber bills to the extent permitted by federal law. Franchisee agrees that it was planning the upgrade and rebuild of the subscriber system before entering this Franchise Agreement and therefore will not claim the upgrade and rebuild costs attributable to the subscriber system as an external cost for which recovery could

be sought through 47 CFR Sec. 76.922(d)(3). 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 that 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(a) (Grant of Authority); 2(b) (Scope of the Franchise); 2(c) (Exercise of Authority under Franchise); 2(h) (Relation to other Provisions of Law); 2(i) (Relation to Prior Franchise); 5 (Franchise Fee); 16 (System Facilities, Equipment and Services); 17 (Channels, Facilities, Equipment and Services for Public, Educational, and Governmental Use); and 19 (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 all or

substantially all 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, the Cable Rules, 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, the Franchise or all or substantially all of 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, Cable Rules, this Agreement and any additional terms and conditions that the County reasonably determines are needed to protect the public interest; 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 years of the effective date of this Agreement; and

(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 closing date of the transfer.

(f) 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 financial compensation for use of Public Rights-of-Way for the offering of Cable Services, the Franchisee and its affiliates shall pay the County a Franchise fee in an amount equal to five (5) percent of the Gross Revenues. "Gross Revenues" means the annual gross revenue of the Franchisee or its affiliates from all sources derived from the operation of the Cable System in providing Cable Services, excluding any bad debt, sales tax, excise tax, or other taxes collected for direct pass-through to local, state or federal government. Notwithstanding, any portion of franchise fees and the Capital Grant in Sec. 17.(b) which Franchisee passes through to subscribers as external costs, as that term is defined by the FCC at 47 C.F.R. 922(d)(3), as amended, shall not be included in the term Gross Revenues. "Affiliate" as used in this paragraph means any affiliate or joint venture or partner of the Franchisee directly involved in the offering of Cable Services in King County, or directly involved in the management or operation of the Cable System in King County.

(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

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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 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) Limit on Certain Payments.

(1) In the event that any communications provider, including a cable operator serving more than ten thousand (10,000) subscribers, competes

with the Franchisee in Cable Services or services equivalent to Cable Services, 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.

(2) In the event a cable operator that serves less than ten thousand (10,000) subscribers competes with the Franchisee in Cable Services or services equivalent to Cable Services, and such communications provider is subject to the County's jurisdiction and control, the obligations imposed upon such provider by the County with respect to franchise fees and capital grants to support PEG and I-Net services shall be substantially the same as those imposed upon the Franchisee

as measured on a per subscriber basis.

(3) Notwithstanding this 5.(f), the Franchisee acknowledges and agrees that Section 5(f)(1) -(2) do not apply to any franchise issued to TCI of Seattle, Inc., TCI of Auburn, Inc. and TCI of Southwest, Washington, Inc. ("TCI Franchisees") and Franchisee acknowledges and agrees that the obligations imposed on the TCI Franchisees under Franchise Ordinance No. ____ (TCI renewed Franchise), dated ____, 1996, by that Ordinance, are not substantially less burdensome than those obligations imposed on Franchisee by this Franchise.

(g) 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 17.(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:

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

c/o 2233 1012 Ave. N.E.

Bellevue, WA 98004

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) 462-2853. 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.

8. Deductibles and Self-insured Retentions. If Franchisee changes its policy to include a self-insured retention, the Franchisee shall give notice of such change to the County. If any such self-insured retention creates any obligation or liability for the County, such self-insured retention shall be subject to the approval of the County Risk Manager. Such approval will be given if the self-insured retention is

consistent with standard industry practices. Any 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.

(a) Endorsements.

(1) General liability and automobile liability policies shall contain, or shall be endorsed so that:

(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 construction, operation or repair, or 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 so that:

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.

(b) 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.

(c) Verification of Coverage. The Franchisee shall furnish the County with certificates of insurance required by this Agreement and endorsements or a copy of the page of the policy reflecting blanket additional insured status, if required by written contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard ACORD forms or such forms as are consistent with standard industry practices 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.

9. 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, operation or repair 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. 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 and duty 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) Additional Indemnifications. The County may require Franchisee to execute specific and additional indemnifications in connection with issuing any permits related to performance under this Agreement.

10. Security Fund, Performance Bond and Letter of Credit.

(a) Amount. Prior to 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 ("Security Fund"). The security fund shall be in the amount of Fifty Thousand Dollars (\$50,000) and may be in the form of either a cash security

deposit to an account designated by the County upon which the County may draw in accordance with this Section or 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 Security 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 including channel capacity and construction of the I-net, the bond shall be reduced to one hundred thousand dollars (\$100,000). If the County agrees there has been a satisfactory completion of the upgrade or rebuild including channel capacity and construction of the I-net, the County will execute all

necessary documents to allow for the reduction in performance bond. 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.

11. 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 1996 dollars and shall be increased each year by the increase in the U.S. Consumer Price Index for the Seattle Metropolitan Region.

(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 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: \$25 per violation multiplied by the number of affected subscribers. The County hereby elects to have those damages credited to the affected subscribers, and Franchisee agrees to do so;

(5) For failure to maintain a local office as required in Section 16(k)

below: \$5000 per month;

(6) For violating any performance standard other than those described in paragraphs (1) to (5), where the Franchisee fails to meet such performance standard, which affects the lesser of 10% of the subscribers served from the same fiber optic node or 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 13(e), as provided in that Section; and

(8) For all other material violations of this Agreement for which actual damages may not be ascertainable: \$100/day for each violation for each day the violation continues.

(b) Date of Violation, Notice and Opportunity to Cure. The date of violation will be the date of the event and not the date the Franchisee receives notice of the violation. The County must provide written notice of a violation. Upon receipt of notice, the Franchisee will have a period of thirty (30) days to cure the violation or to present to the County a reasonable remedial plan. The County, in its sole discretion, shall decide whether to accept or reject the remedial plan presented by the Franchisee. Liquidated Damages occur only in the event either cure has not occurred within thirty days or the County rejects the plan. Damages will be retroactive to the date of violation.

(c) 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.

(d) Accrual. Liquidated damages accrue from the date the violation occurs pursuant to 11.(b), and not from the date the County determines there has been a violation.

12. 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.

13. 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 Franchise Area; and the Franchisee