



# BUCKLEY CITY COUNCIL AGENDA

Tuesday, 02, 27, 2024 at 6:00 P.M.

Multi-Purpose Center, 811 Main Street

Next Ordinance #03-24, Next Resolution #24-01, Next Agenda Bill #24-014

Or Via Zoom:

<https://us02web.zoom.us/j/83366597529?pwd=N2hMTmh5eEZ4TGpJd2dpbFp0cnkvdz09>

Call-in Number: 253-215-8782

Meeting ID: 833 6659 7529 Meeting Passcode: 863441

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## A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll call
3. Agenda Modifications
4. Announcements, Appointments and Presentations
  - a. Presentation from the Buckley Chamber of Commerce

## B. PUBLIC COMMENTS - *Time Limit of Three Minutes* (Citizens wishing to speak are Encouraged to sign up at City Hall by Wednesday prior to the Council Meeting)

## C. COMMITTEE REPORTS

1. Mayor's Report Burkett
2. Council Member Comments & Good of the Order

## D. CONSENT AGENDA

- a. Approval Applicant Authorization for RCO Funding Applications
- b. Approve Minutes of February 13, 2024 City Council Meeting

## E. REGULAR AGENDA

### 1. ORDINANCE

- a. ORD. No. \_\_-24: Authorizing a Franchise Agreement between Cable Communications Management, LLC and the City of Buckley
- b. ORD. No. \_\_-24: Amending Vacation Ordinance 08-16

### 2. UNFINISHED BUSINESS

- a. Authorization for an additional Full-Time Firefighter

## F. STAFF REPORTS

1. City Administrator Update

## G. PUBLIC COMMENTS - *Time Limit of Three Minutes*



## **MISSION**

To promote, strengthen and grow businesses in the greater Buckley community with a focus on the success of our members.

## **VISION**

The Buckley Chamber of Commerce is the voice of the business community. We advance the prosperity of our community through economic development, goods and services, jobs and tax revenue needed for essential public services.

## **STRATEGIC PLAN**

### **Advocate**

- We strengthen our Chamber through a strong unified voice.
  - Goal: In 2024, we will update our membership contacts to share information quickly and effectively to our members.
  - Goal: Quarterly each year, we will send a newsletter to our membership, keeping them updated on key issues and events.
  - Goal: We plan to continue our membership with the Association of Washington Business Grassroots Alliance.
- The Board informs City and Regional leaders of the business perspective on local and regional issues.
  - Goal: Continue to Advocate for our membership at the City, County and State levels by meeting with staff and electeds. Specifically, we do this by:
    - Meeting City Council Liaison and/or City staff at least monthly.
    - Continuing to meet with our Pierce County Councilmember at least quarterly.
    - Continuing to meet with our State electeds as needed.

### **Elevate**

- The Board elevates our Chamber and its members through effective and forward-thinking resources, information and educational opportunities towards their business goals.
  - Goal: In 2024, we will create two general membership meetings with a focus on networking and education.
- We attract new businesses to the Buckley community through economic development and marketing.
  - Goal: By March of 2024 we will create an economic development marketing tool to showcase our community in Pierce County and regional markets.

### **Engage**

- We engage with the community by hosting, supporting and attending local events.
  - Goal: In 2024 we will pursue two new events and track data to determine the success of the events.

### **Promote**

- We increase visibility and credibility of our members by promoting their brand, story, products and/or services.
  - Goal: In 2024 we will create the Courier Herald ad program for the Chamber to showcase our membership to be published monthly. This ad will include a calendar of events in our community.
  - Goal: We will celebrate and promote new businesses in our community with ribbon cuttings.
  - Goal: In 2024 we will pursue additional social media options and advertising opportunities to include our current sign and explore the potential for additional signage options on Hwy 410.



# BUCKLEY

*Washington*

## CHAMBER OF COMMERCE

THE VOICE OF OUR  
BUSINESS COMMUNITY



## WHAT WE DO:

- **Advocate**

We strengthen our Chamber through a strong unified voice. The board informs City and Regional leaders of the business perspective on local and regional issues.

- **Elevate**

The Board elevates our Chamber and its members through effective and forward thinking resources, information and educational opportunities towards their business goals. We attract new businesses to the Buckley community through economic development and marketing.

- **Engage**

We engage with the community by hosting, supporting and attending local events.

- **Promote**

We increase visibility and credibility of our members by promoting their brand, story, products and/or services.

Our Mission is to promote, strengthen, and grow businesses in the greater Buckley community with a focus on the success of our members.

We are committed to helping our area and businesses prosper, and we view our members as partners in that endeavor.

Visit our website for upcoming events, and learn how to become a member.

We look forward to working with you!



[www.BuckleyChamber.com](http://www.BuckleyChamber.com)

City Council Agenda Packet - February 27, 2024  
[BuckleyChamberofCommerce@gmail.com](mailto:BuckleyChamberofCommerce@gmail.com)



## WHY BECOME A MEMBER?

- \*Free exposure on our website and social media
- \*Sign up for advertising on our reader board sign on 410
- \*Opportunity to advertise in the Courier Herald as a featured Chamber Member
- \*Attend networking events to meet potential customers, support other businesses, and build brand recognition
- \*BE INFORMED! Hear about activities, news, legislative issues and more that effect your business
- \*Only members vote! Make your voice heard on Chamber and City issues affecting YOU
- \*Take Part in a Ribbon Cutting Ceremony when requested
- \*Discounts and perks during Chamber events

## OUR VISION:

The Buckley Chamber of Commerce is the voice of the business community. We advance the prosperity of our community through economic development, goods and services, and jobs and tax revenue needed for essential public services.

Follow our social media on Instagram and Facebook:



[www.BuckleyChamber.com](http://www.BuckleyChamber.com)

[BuckleyChamberofCommerce@gmail.com](mailto:BuckleyChamberofCommerce@gmail.com)

# WHAT WE DO:

## ● Advocate

We strengthen our Chamber through a strong unified voice. The board informs City and Regional leaders of the business perspective on local and regional issues.

## ● Elevate

The Board elevates our Chamber and its members through effective and forward thinking resources, information and educational opportunities towards their business goals. We attract new businesses to the Buckley community through economic development and marketing.

## ● Engage

We engage with the community by hosting, supporting and attending local events.

## ● Promote

We increase visibility and credibility of our members by promoting their brand, story, products and/or services.



# OUR VISION:

The Buckley Chamber of Commerce is the voice of the business community. We advance the prosperity of our community through economic development, goods and services, and jobs and tax revenue needed for essential public services

# THANK YOU!

The Buckley Chamber of Commerce is only as strong as its members and the community in which we do business. Thank you for your membership, time and donations that makes this organization possible! Learn more on our website below.

# WHY BECOME A MEMBER?

- \*Free exposure on our website and social media
- \*Sign up for advertising on our reader board sign on SR 410
- \*Opportunity to advertise in the Courier Herald as a featured Chamber Member
- \*Attend networking events to meet potential customers, support other businesses, and build brand recognition
- \*BE INFORMED! Hear about activities, news, legislative issues and more that effect your business
- \*Only members vote! Make your voice heard on Chamber and City issues affecting YOU
- \*Take part in a Ribbon Cutting Ceremony when requested
- \*Discounts and perks during Chamber city-wide events

City Council Agenda Packet February 27, 2024



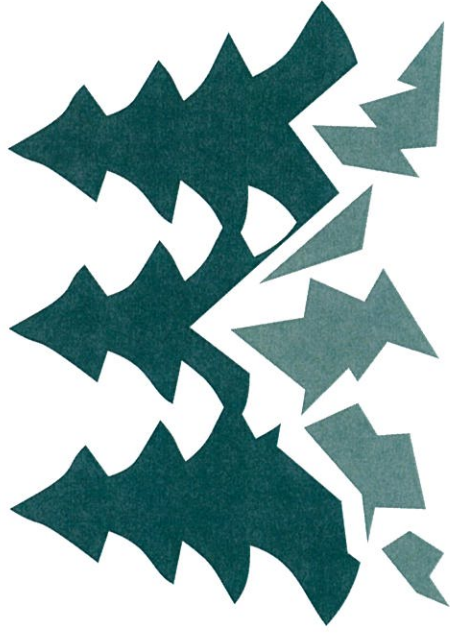
We are committed to helping Buckley businesses continue to grow and prosper. We view our Chamber members as partners in that endeavor, and we look forward to supporting you in your success!



Visit the Website to join us today!

# BUCKLEY

*Washington*  
CHAMBER OF  
COMMERCE



THE VOICE OF OUR  
BUSINESS COMMUNITY

Our Mission is to promote, strengthen, and grow businesses in the greater Buckley community with a focus on the success of our members.

## **D. CONSENT AGENDA**



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b> RCO Applicant Authorization for Miller Park development grants.	<b>Agenda Date:</b> February 27, 2024 AB24-014		
	Department/Committee/Individual	Created	Reviewed
	Mayor		
	City Administrator		
	City Attorney		
	City Engineer		
	City Clerk		
	Finance Dept		
	Building Official		
	Fire Dept		
	Parks & Recreation	X	
	Planning Dept		
Police Dept			
Municipal Court			
PW/Utilities			
<b>Fiscal Impact:</b>			
<b>Fund Source:</b>			
<b>Timeline:</b>			
<b>Staff Contact:</b> Erin Snodgrass, Director of Parks & Recreation			
<b>Attachments:</b> Authorization Document from RCO			
<b>SUMMARY STATEMENT:</b> RCO (Recreation Conservations Office) requires a council resolution to authorize staff and elected officials to sign documents related to the applications and agreements for grant programs. This authorization form is for applications in spring of 2024 for Miller Park development.			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION:</b> Move to approve the applicant resolution authorization for the Miller Park development grants.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

**Summary Statement Continued:**



## Applicant Resolution/Authorization

Organization Name (sponsor) City of Buckkley

Resolution No. or Document Name \_\_\_\_\_

Project(s) Number(s), and Name(s) Miller Park Development Projects Phase 1 & 2

This resolution/authorization authorizes the person(s) identified below (in Section 2) to act as the authorized representative/agent on behalf of our organization and to legally bind our organization with respect to the above Project(s) for which we seek grant funding assistance managed through the Recreation and Conservation Office (Office).

WHEREAS, grant assistance is requested by our organization to aid in financing the cost of the Project(s) referenced above;

NOW, THEREFORE, BE IT RESOLVED that:

1. Our organization has applied for or intends to apply for funding assistance managed by the Office for the above "Project(s)."
2. Our organization authorizes the following persons or persons holding specified titles/positions (and subsequent holders of those titles/positions) to execute the following documents binding our organization on the above projects:

Grant Document	Name of Signatory or Title of Person Authorized to Sign
Grant application (submission thereof)	Erin Snodgrass, Director of Parks & Recreation
Project contact (day-to-day administering of the grant and communicating with the RCO)	Erin Snodgrass, Director of Parks & Recreation
RCO Grant Agreement (Agreement)	Beau Burkett, Mayor
Agreement amendments	Courtney Brunell, City Administrator
Authorizing property and real estate documents (Notice of Grant, Deed of Right or Assignment of Rights if applicable). These are items that are typical recorded on the property with the county.	Beau Burkett, Mayor

The above persons are considered an "authorized representative(s)/agent(s)" for purposes of the documents indicated. Our organization shall comply with a request from the RCO to provide documentation of persons who may be authorized to execute documents related to the grant.

3. Our organization has reviewed the sample RCO Grant Agreement on the Recreation and Conservation Office's WEB SITE at: <https://rco.wa.gov/wp-content/uploads/2019/06/SampleProjAgreement.pdf>. We understand and acknowledge that if offered an agreement to sign in the future, it will contain an indemnification and legal venue stipulation and other terms and conditions substantially in the form contained in the sample Agreement and that such terms and conditions of any signed Agreement shall be legally binding on the sponsor if our representative/agent enters into an Agreement on our behalf. The Office reserves the right to revise the Agreement prior to execution.
4. Our organization acknowledges and warrants, after conferring with its legal counsel, that its authorized representative(s)/agent(s) have full legal authority to act and sign on behalf of the organization for their assigned role/document.
5. Grant assistance is contingent on a signed Agreement. Entering into any Agreement with the Office is purely voluntary on our part.
6. Our organization understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the Agreement, the characteristics of the project, and the characteristics of our organization.
7. Our organization further understands that prior to our authorized representative(s)/agent(s) executing any of the documents listed above, the RCO may make revisions to its sample Agreement and that such revisions could include the indemnification and the legal venue stipulation. Our organization accepts the legal obligation that we shall, prior to execution of the Agreement(s), confer with our authorized representative(s)/agent(s) as to any revisions to the project Agreement from that of the sample Agreement. We also acknowledge and accept that if our authorized representative(s)/agent(s) executes the Agreement(s) with any such revisions, all terms and conditions of the executed Agreement shall be conclusively deemed to be executed with our authorization.
8. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.
9. [for Recreation and Conservation Funding Board Grant Programs Only] If match is required for the grant, we understand our organization must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non-cash matching share commitments to this project should they not materialize.
10. Our organization acknowledges that if it receives grant funds managed by the Office, the Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Office after we incur grant eligible and allowable costs and pay them. The Office may also determine an amount of retainage and hold that amount until all project deliverables, grant reports, or other responsibilities are complete.
11. [for Acquisition Projects Only] Our organization acknowledges that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to in writing by our organization and the Office. We agree to dedicate the property in a signed "Deed of Right" for fee acquisitions, or an "Assignment of Rights" for other than fee acquisitions (which documents will be based upon the Office's standard versions of those documents), to be recorded on the title of the property with the county auditor. Our organization acknowledges that any property

acquired in fee title must be immediately made available to the public unless otherwise provided for in policy, the Agreement, or authorized in writing by the Office Director.

12. [for Development, Renovation, Enhancement, and Restoration Projects Only–If our organization owns the project property] Our organization acknowledges that any property owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity unless otherwise allowed by grant program policy, or Office in writing and per the Agreement or an amendment thereto.
13. [for Development, Renovation, Enhancement, and Restoration Projects Only–If your organization DOES NOT own the property] Our organization acknowledges that any property not owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant as required by grant program policies unless otherwise provided for per the Agreement or an amendment thereto.
14. [Only for Projects located in Water Resources Inventory Areas 1-19 that are applying for funds from the Critical Habitat, Natural Areas, State Lands Restoration and Enhancement, Riparian Protection, or Urban Wildlife Habitat grant categories; Aquatic Lands Enhancement Account; or the Puget Sound Acquisition and Restoration program, or a Salmon Recovery Funding Board approved grant] Our organization certifies the following: the Project does not conflict with the Puget Sound Action Agenda developed by the Puget Sound Partnership under RCW 90.71.310.
15. This resolution/authorization is deemed to be part of the formal grant application to the Office.
16. Our organization warrants and certifies that this resolution/authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that our organization has full legal authority to commit our organization to the warranties, certifications, promises and obligations set forth herein.

This resolution/authorization is signed and approved on behalf of the resolving body of our organization by the following authorized member(s):

Signed \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

On File at: 933 Main Street, Buckley WA 98321

This Applicant Resolution/Authorization was adopted by our organization during the meeting held:  
(Local Governments and Nonprofit Organizations Only):

Location: 811 Main Street, Buckley WA 98321 Date: \_\_\_\_\_

Washington State Attorney General's Office

Approved as to form Brian Teller 2/13/2020  
Assistant Attorney General Date

You may reproduce the above language in your own format; however, text may not change.

**February 13, 2024  
Council Meeting  
Minutes Will Be  
Available Tuesday  
February 27, 2024  
City Council Meeting.**

## **E. REGULAR AGENDA**



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

## ITEM INFORMATION

<b>SUBJECT:</b> <b>ORD No. __-24: Authorizing a Franchise Agreement between Comcast Cable Communications Management, LLC and the City of Buckley.</b>		<b>Agenda Date: February 27, 2024</b>		<b>AB24-015</b>
		Department/Committee/Individual	Created	Reviewed
		Mayor Beau Burkett		X
		City Administrator – Courtney Brunell	X	X
		City Attorney – Phil Olbrechts		X
		City Engineer – Dominic Miller		
		City Clerk – Treva Percival		X
		Finance Dept – Sandi Hines		
		Fire Dept – Chief Skogen		
		Parks & Rec Dept – Erin Snodgrass		
		Planning Dept – Chris Banks		
		Police Dept – Chief Arsanto		
		Municipal Court – Jessica Cash		
		PW/Utilities – Chris Banks		
Cost Impact: \$				
Fund Source:				
Timeline: July 11, 2023- study session				
January 2, 2024- study session				
January 23, 2024-first review of ordinance				
<b>Attachments:</b> Ordinance with Franchise Agreement				
<p>SUMMARY STATEMENT: For City Council approval of a new Franchise Agreement between Comcast Cable Communications Management, LLC and the City of Buckley allowing Comcast to provide services, facilities and equipment necessary to meet the future cable-related needs of the community.</p> <p>The current franchise agreement between the City and Comcast expired on September 9, 2023 The agreement was drafted in 2008 with two five-year extensions. Since 2008, the model for franchise agreements has changed requiring a new contract rather than an additional renewal. The proposed franchise agreement was modeled based on the agreements recently approved in nearby Cities including Wilkeson and Orting with some updated language requested by the Buckley City Attorney.</p> <p>Council completed its first reading of the Ordinance and draft agreement on January 23, 2024 as required by RCW 35A.47.040 when granting a new Franchise. During that meeting, staff shared that Comcast had requested additional revisions, one of which the City Attorney had concern with. Comcast agreed to maintain the language as originally drafted per request of the City.</p>				
COMMITTEE REVIEW AND RECOMMENDATION:				
RECOMMENDED ACTION: <b>Move to Approve ORD No. 03-24 Authorizing a Franchise Agreement between Comcast Cable Communications Management, LLC and the City of Buckley.</b>				
<b>RECORD OF COUNCIL ACTION</b>				
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>		

**CITY OF BUCKLEY, WASHINGTON**

**ORDINANCE NO. XXXX**

**AN ORDINANCE OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, FINDING THE PROPOSED NON-EXCLUSIVE CABLE TELEVISION FRANCHISE TO COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC TO BE IN THE PUBLIC INTEREST; SETTING FORTH TERMS AND CONDITIONS ACCOMPANYING THE GRANTING OF THE FRANCHISE; PROVIDING FOR REGULATION OF CONSTRUCTION, OPERATION, MAINTENANCE, AND USE OF THE SYSTEM; PRESCRIBING REMEDIES FOR THE VIOLATION OF THE PROVISIONS OF THE FRANCHISE; AND AUTHORIZING THE MAYOR TO ENTER INTO THE FRANCHISE AGREEMENT.**

---

Whereas, Comcast Cable Communications Management, LLC., a Washington Corporation doing business in the State of Washington, has applied for a non-exclusive cable television franchise to construct, operate, and maintain a cable television system upon, in, under, across, along, and over certain City roads, highways, and other City property in the City of Buckley, Washington as hereinafter set forth; and

Whereas, two readings of the franchise were conducted as required by 35A.47.040 and this ordinance was passed by a majority of the whole membership of the City Council as required by RCW 35A.12.120, and

BE IT ORDAINED by the City Council of the City of Buckley:

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. The City of Buckley City Council hereby finds that the Cable Television Franchise, a copy of which is attached hereto and incorporated herein by reference as Exhibit A, is in the public interest.

Section 2. The City Council hereby authorizes the Mayor to enter into the attached Franchise Agreement, authorizing Comcast to construct, operate, and maintain a Cable system

in, across, under, upon, along, and over City roads, rights-of-way, highways, and City property in City of Buckley, Washington as described in the Franchise Agreement.

Section 3.     Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4.     Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this 27<sup>rd</sup> day of February, 2024.

\_\_\_\_\_  
Beau Burkett, Mayor

**ATTEST:**

\_\_\_\_\_  
Treva Percival, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Phil Olbrechts, City Attorney

Published:

Effective:

EXHIBIT A

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND  
THE CITY OF BUCKLEY, WASHINGTON

CABLE FRANCHISE AGREEMENT  
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## SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely discretionary. A list that follows the use of the word "including" is intended to illustrate examples, not be an exhaustive list, unless the context clearly indicates otherwise. The Grantor and Grantee may be collectively referred to as the "Parties."

1.1 "Access" means the availability for non-commercial use by various agencies, institutions, organizations, groups, and individuals in the community, including the Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. "Educational Access" means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, "school" means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges, and universities.

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

1.2 "Access Channel" means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

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

1.5 "Applicable Law" means any statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law that determines the legal standing of a case or issue.

1.6 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 "Basic Service" is the level of programming service which includes the retransmission of local television Broadcast Channels, all EG SD Access Channels required in this Franchise, and any additional programming designated by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local non-commercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes, or any other means.

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 “Cable Service” or “Wireline Cable Service” will have the meaning provided under the Cable Act.

1.13 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems will have the meaning under the Cable Act applicable regulations. In every case of its use in this Franchise, unless otherwise specified the term will refer to the cable system constructed and/or operated by the Grantee in the City under this Franchise.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 “City” is the City of Buckley, Washington, a body politic and corporate under the laws of the State of Washington.

1.16 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.17 “Designated Access Provider” means the entity or entities designated now or in the future by the Grantor to manage or co-manage Access Channels and facilities. The Grantor may be a Designated Access Provider.

1.18 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.19 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.20 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation, and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units, unless the additional facilities are clearly accessory.

1.21 “FCC” means the Federal Communications Commission.

1.22 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.23 “Finance Director” means the director of the Grantor’s Finance Department or designee.

1.24 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Grantor and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements, and other related matters.

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

1.26 “Franchise Fee” means that fee payable to the Grantor described in subsection 3.1.

1.27 “Grantee” means Comcast Cable Communications Management, LLC or its lawful successor, transferee, or assignee.

1.28 “Grantor” means the City of Buckley, Washington.

1.29 “Grantor Council” means the Buckley City Council, or its successor, the governing body of the City of Buckley Washington.

1.30 “Gross Revenues” means, and shall be construed broadly, to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium

Cable Services, digital Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);

- installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees, and administrative fees, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees;
- commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area;

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Franchise Area and shall be allocated on a pro rata basis using Grantee’s Cable System Subscribers within the Franchise Area in relation to the total number of Grantee’s Cable Service subscribers covered under the advertising arrangement. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast EffectTV or their successors associated with sales of advertising on the Cable System within the Franchise Area allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion that is subsequently collected, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;

- any taxes and/or fees on services furnished by Grantee imposed by an municipality, State, or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state, or other governmental unit on Grantee, including but not limited to Public, Educational and Governmental (hereinafter “EG”) Fees;
- launch fees and marketing co-op fees; and
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services that includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, State, or local law. The allocations shall be done for each bundled package separately, and updated and revised within sixty (60) days, each time an element within the package has its rate card changed, including when an element is substituted for another element within the bundled package. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee’s calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this subsection 1.31 in order to meet the standards required by governing accounting principles, as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”), and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee shall notify Grantor of any changes in allocation methodologies in its next quarterly franchise fee reports delivered to Grantor.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”), as promulgated and defined by the FASB, EITF, and/or the SEC. Notwithstanding the foregoing, the Grantor reserves its right to challenge Grantee’s calculation of Gross Revenues, including the application of GAAP to Franchise Fees and the interpretation of GAAP as promulgated and defined by the FASB, EITF, and/or the SEC.

1.31 “Headend” means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks that are part of the Cable System, and all other

related equipment and facilities.

1.32 “Leased Access Channel” means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.33 “Mayor” means the chief administrative officer of the City of Buckley or designee.

1.34 “Municipal Code” means the Buckley Municipal Code adopted for application and enforcement within the City of Buckley Washington.

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

1.36 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program, or per-event basis.

1.37 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding Persons residing in such Multiple Dwelling Units to the extent Cable Services are billed on a bulk-billing basis.

1.38 “Right(s)-of-Way” means land acquired or dedicated for public roads and streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, but does not include:

(a) State highways where the Grantor does not have authority to grant permits related to Cable Systems;

(b) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public, unless specifically used as a utility corridor;

(c) Structures, including poles and conduits, located within the right-of-way;

(d) Federally granted trust lands or forest board trust lands;

(e) Lands owned or managed by the state parks and recreation commission; or

(f) Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

“Right(s)-of-Way” also includes easements dedicated for compatible use and consistent with Section 621 of the Cable Act.

1.39 “WMC” means the Buckley Municipal Code.

1.40 “State” means the State of Washington.

1.41 “Subscriber” means any Person who or which has entered into an agreement to receive Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who has not been disconnected for failure to adhere to Grantee's regular and non-discriminatory terms and conditions for receipt of service.

1.42 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.43 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.44 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

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

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

### **2.1 Grant**

(A) The Grantor hereby grants to Grantee a nonexclusive and revocable franchise to make reasonable and lawful use of the Rights-of-Way consistent with the requirements of 47 U.S.C. § 541(a)(2), within the Franchise Area to construct, operate, maintain, reconstruct, and rebuild a Cable System and to provide Cable Service subject to the terms and conditions set forth in this Franchise and Applicable Law.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Grantor ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision, or condition herein is subject to the provisions of State law, federal law, and the generally applicable ordinances and regulations enacted by the Grantor Council pursuant thereto, portions of which may be codified in the Municipal Code. To the extent there is any conflict between this Franchise and any provision of the Grantor’s Code as it exists on the Effective Date of this Franchise, the terms of this Franchise shall control. Subject to the Grantor’s right to exercise its police power under subsection 2.5, the Grantor may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) If allowed under Applicable Law, this Franchise shall not be interpreted to prevent the Grantor from imposing additional lawful conditions, for use of the Rights-of-Way should Grantee provide service other than Cable Service, nor shall this Franchise be interpreted to either prevent or authorize Grantee from making any other lawful uses of the Cable System as permitted by Applicable Law related to Grantee’s non-Cable Service operations.

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

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

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

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

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

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

## **2.2 Use of Rights-of-Way**

(A) Subject to the Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Franchise Area. Provided, however, all of the utility poles located in the City of Buckley are owned by the Grantor and Grantees specific use of those poles shall be subject a separate pole attachment agreement.

(B) Grantee must follow Grantor's established non-discriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by the Grantor or others, including others that may be installing communications facilities. Within limits reasonably related to the Grantor's role in protecting public health, safety, and welfare, the Grantor may require that Cable System facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Grantor's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the Grantor, or that is installed without prior Grantor approval of the time, place, or manner of installation, and charge Grantee for all the costs associated with removal and repair.

## **2.3 Effective Date and Term of Franchise**

This Franchise and the rights, privileges, and authority granted hereunder shall take effect on \_\_\_\_\_, 2024 (the "Effective Date"), and shall terminate on \_\_\_\_\_, 2034, unless terminated sooner as hereinafter provided.

#### **2.4 Franchise Nonexclusive**

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or licenses granted by the Grantor to any Person to use any property, Right-of-Way, right, interest, or license for any purpose whatsoever, including the right of the Grantor to use the same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Grantor may at any time grant authorization to use the Rights-of-Way for such additional franchises for Cable Systems as the Grantor deems appropriate.

#### **2.5 Police Powers**

Grantee's rights hereunder are subject to the police powers of the Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Grantor or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Grantor shall have the right to adopt, from time to time, such ordinances as it may deem necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Grantor's police powers shall be resolved in favor of the latter.

#### **2.6 Competitive Equity**

(A) The Grantee acknowledges and agrees that the Grantor reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Rights-of-Way in order to provide Cable Services within the Franchise Area. If the Grantor grants such an additional franchise or other similar lawful authorization to utilize the Rights-of-Way for Cable Services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then the Grantor agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, following Grantee's request as described in subsection 2.6(B), so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The Parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.

(B) The modification process of this Franchise as provided for in subsection 2.6(A)

shall only be initiated by written notice by the Grantee to the Grantor regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the authorization granted in subsection 2.6(A) that are materially different from Grantee's obligations under this Franchise; (2) identifying the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; (3) identifying the Franchise terms and conditions for which Grantee is seeking amendments; and (4) providing text for any proposed Franchise amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent. Notwithstanding any modification of this Franchise pursuant to the provisions of this subsection 2.6, should any entity, whose authorization to provide Cable Services or similar video programming service resulted in a triggering of the amendments under this Section, fail or cease to provide such services within the Franchise Area, the Grantor may provide ninety (90) days' written notice to Grantee of such fact, and the Grantor and Grantee shall enter into good faith negotiations to determine the original terms, conditions, and obligations of this Franchise shall be reinstated and fully effective.

(C) Upon receipt of Grantee's written notice as provided in subsection 2.6(B), the Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Grantor shall amend this Franchise to include the modifications.

(D) Notwithstanding anything contained in subsection 2.6(A) through (D) to the contrary, the Grantor shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar video programming service available for purchase by Subscribers or customers under its franchise or similar agreement with the Grantor.

(E) In the event that a wireline multichannel video programming distributor, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or wireline video services within the Franchise Area without a Cable Service franchise or other similar lawful authorization granted by the Grantor, then Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend this Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide the text of all proposed Franchise amendments to the Grantor, and (4) identify all material terms or conditions in the applicable state or federal authorization that are substantially more favorable or less burdensome to the competitive entity. The Grantor shall not unreasonably withhold consent to Grantee's petition.

## **2.7 Familiarity with Franchise**

The Grantee acknowledges and warrants by acceptance of the rights, privileges, and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms, and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State, and federal laws and regulations currently in effect, including the Cable Act.

## **2.8 Effect of Acceptance**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) 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.

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

### **3.1 Franchise Fee**

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Grantor's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the Grantor, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

### **3.2 Payments**

Grantee's Franchise Fee payments to the Grantor shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

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

No acceptance of any payment shall be construed as an accord by the Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by Grantee was due or such shorter period if required by Applicable Law.

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

Each payment shall be accompanied by a written report to the Grantor, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the

computation of the payment amount.

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

Within ninety (90) days of the Grantor's written request after the end of each year, Grantee shall, , furnish to the Grantor a statement stating the total amount of Gross Revenues for the year and all payments, deductions, and computations for the period.

### **3.6 Audits**

On an annual basis, upon thirty (30) days prior written notice, the Grantor, including Grantor's Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise for a period of time in accordance with state law (the "audit period"). Pursuant to subsection 1.31, as part of the Franchise Fee audit/review, the Grantor shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for the Grantor's subscribers during the audit period. To the extent that the Grantor does not believe that the relevant data supplied is sufficient for the Grantor to complete its audit/review, the Grantor may require other relevant data. For purposes of this subsection 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers), and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the Grantor to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the actual and verifiable cost of the audit/review, such cost not to exceed seven thousand five hundred dollars (\$7,500.00) for each year of the audit period. The Grantor's right to audit/review and Grantee's obligation to retain records necessary to complete any audit under this subsection shall expire consistent with the applicable statute of limitations period under State law; provided, however, that this would not apply to a time period covered under a pending audit.

### **3.7 Late Payments**

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due at the then current maximum rate set forth in RCW 19.52.020, calculated from the date the payment was originally due until the date the Grantor receives the payment.

### **3.8 Underpayments**

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the then current maximum rate set forth in RCW 19.52.020, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Grantor.

### **3.9 Alternative Compensation**

In the event the obligation of Grantee to compensate the Grantor through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall comply with any other Applicable Law related to the right to occupy the Grantor's Rights-of-Way and compensation therefor.

### **3.10 Maximum Legal Compensation**

The Parties acknowledge that, at present, applicable federal law limits the Grantor to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the Grantor is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the Grantor, by resolution of Grantor Council, to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Grantor hereunder, provided that Grantee has received at least ninety (90) days' prior written notice from the Grantor of such amendment, so long as all cable operators in the Franchise Area are paying the same Franchise Fee amount.

### **3.11 Additional Commitments Not Franchise Fee Payments**

The EG Capital Contribution pursuant to Section 9.5, as well as any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations) shall not be offset against Franchise Fees. Furthermore, the Grantor and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, as entitled by Applicable Law. The Grantor likewise reserves all rights it has under Applicable Law. Should Grantee elect to offset items to which it is entitled under law, including any Orders resulting from the FCC, Grantee shall provide the Grantor advance written notice and up to one hundred-twenty (120) days to make an election as to an offset from franchise fees or modification of the obligation as set forth in Applicable Law by amendment of this Franchise. Upon receipt of Grantee's written notice as provided in subsection 3.11, the Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed offsets to be made to the Franchise Fee obligations. Grantor's failure to determine such offset or act to amend this Franchise shall not preclude Grantee from following through on its notice to the Grantor.

### **3.12 Tax Liability**

Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by the Grantor. Any other license fees, taxes,

or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

### **3.13 Financial Records**

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

### **3.14 Payment on Termination**

If this Franchise terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, signed by a representative of Grantee under penalty of perjury under the laws of the State of Washington, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in the letter of credit or other security provided by the Grantee, or any other manner authorized by Applicable Law.

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

### **4.1 Authority**

(A) The Grantor shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under federal, State, and local law, to any agent in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the Grantor's right of eminent domain under State law.

### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Grantor to the full extent authorized by Applicable Law.

### **4.3 Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, gender

identity, marital, military or economic status, physical or mental disability, or, where consistent within the Franchise Area. Nothing herein shall be construed to prohibit:

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

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and non-discriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

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

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Grantor a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

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

#### **4.5 Cross Subsidization**

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

#### **4.6 Reserved Authority**

Both Grantee and the Grantor reserve all rights they may have under the Cable Act and any other relevant provisions of Applicable Law.

#### **4.7 Time Limits Strictly Construed**

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the Grantor to invoke any relevant remedy in accordance with subsection 13.1 of this Franchise.

#### **4.8 Franchise Amendment Procedure**

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, or such other time as the Parties may agree, the Grantor and Grantee shall meet to discuss the proposed amendment(s). If the Parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Grantor Council for its approval. If so approved by the Grantor Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

#### **4.9 Late Fees**

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

(B) Nothing in this subsection shall be deemed to create, limit, or otherwise affect the ability of the Grantee to impose other assessments, charges, fees, or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule, or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be non-discriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Franchise Area without regard to the neighborhood or income level of the Subscriber.

#### **4.10 Force Majeure**

In the event either party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of such party, the delayed party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation. Those conditions that are not within the control of a party include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, pandemics and epidemics, and severe or unusual weather conditions, all of which have a direct and substantial impact on the party's ability to perform its commitments under this Franchise and were not caused and could not have been avoided by the party, who used its best efforts in its operations to avoid such results.

If a party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party claiming a force majeure condition has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure.

## SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

### 5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend, and hold the Grantor, its officers, officials, boards, commissions, agents, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the Grantor while conducting its defense of the Grantor. Grantee shall not be obligated to indemnify the Grantor to the extent of the Grantor's negligence or willful misconduct. The provisions of this section shall survive the expiration or termination of this Franchise.

(B) RCW 4.24.115. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the Grantor, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Franchise.

(C) Indemnification for Relocation. Grantee shall indemnify the Grantor for any damages, claims, additional costs, or reasonable expenses assessed against, or payable by, the Grantor resulting from, Grantee's failure to remove, adjust, or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by this Franchise.

(D) Additional Circumstances. Grantee shall also indemnify, defend, and hold the Grantor harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way resulting from:

(1) The lawful actions of the Grantor in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

(E) Procedures and Defense. If a claim or action arises, the Grantor or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The Grantor's failure to so notify and request indemnification shall not

relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. The Grantor may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses, or other costs the Grantor may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(G) is required. In that event, the provisions of Paragraph 5.1(G) shall govern Grantee's responsibility for Grantor's attorneys' fees, expenses, or other costs. In any event, Grantee may not agree to any settlement of claims affecting the Grantor without the Grantor's approval.

(F) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(G) Expenses. If separate representation to fully protect the interests of both Parties is or becomes necessary, such as a conflict of interest between the Grantor and the counsel selected by Grantee to represent the Grantor, Grantee shall select separate counsel that does not have such a conflict to represent Grantor. Provided, however, that in the event that such separate representation is or becomes necessary, and Grantor desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Grantor shall be required to obtain Grantee's consent to the engagement of such counsel, experts, or consultants, such consent not to be unreasonably withheld. The Grantor's expenses shall include all reasonable out-of-pocket costs and expenses, such as consultants' fees and court costs, and shall also include the reasonable value of any services rendered by the Grantor's attorney or his/her assistants or any employees of the Grantor or its agents, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided to the Grantor by Grantee.

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

(I) Damage to Grantee Facilities. Notwithstanding any other provisions of this subsection 5.1, Grantee assumes the risk of damage to its Cable System facilities located in or upon the Rights-of-Way from activities conducted by the Grantor, and agrees to release and waive any and all such claims against the Grantor except to the extent any such damage or destruction is caused by or arises from the negligence or criminal actions of the Grantor.

(J) Survival. The indemnification, defense, and hold harmless obligations contained in this subsection 5.1 shall survive the expiration, abandonment or termination of this Franchise.

## **5.2 Insurance**

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

- (1) Commercial General Liability insurance with limits of no less than one

million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by the current ISO CG 00 01 or its equivalent and include severability of interests with respect to each additional insured. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The Grantor shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect this Franchise Agreement using the current ISO endorsement CG 20 12 05 09.

(2) Commercial Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles, with a minimum combined single limit for bodily injury and property damage of one million dollars (\$1,000,000.00) per accident. The policy shall contain a severability of interests provision with respect to each additional insured.

(3) Excess or Umbrella Liability insurance shall be written with limits of not less than one million dollars (\$1,000,000.00) per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits. Such insurance shall name Grantor, its officers, officials, and employees as additional insureds.

(B) The insurance shall provide for notice of cancellation in accordance with policy provisions. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide notice of such cancellation or material alteration within two (2) business days of its receipt of such notice. Grantee shall additionally provide evidence of a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

(C) The Grantee shall cause each of its subcontractors to provide insurance coverage reasonably appropriate to the scope of each such subcontractor's work.

(D) Failure on the part of the Grantee to maintain the insurance as required shall constitute a material breach of this Agreement.

(E) Endorsements.

(1) All commercial general, automobile, and umbrella excess liability policies required herein shall contain, or shall be endorsed so that:

(a) Grantor, its officers, officials, boards, commissions, and employees are to be covered as, and have the rights of, additional insureds with respect to liability for which the Grantee is responsible herein;

(b) Grantee's insurance coverage shall be primary insurance with respect to each additional insured. Any insurance or self-insurance maintained by the additional insured shall be in excess of the Grantee's insurance and shall not contribute to it with respect to liability for which the Grantee is responsible hereunder; and

(c) Grantee's insurance shall provide for severability of interest with respect to each additional insured.

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

(G) Verification of Coverage. The Grantee shall furnish Grantor with certificates of insurance, evidencing the required endorsements, including but not limited to blanket additional insured status. The certificates are to be on standard forms or such forms as are consistent with standard industry practices.

(H) Adequacy of Limits and Coverage. It is agreed that these insurance requirements shall not in any way act to reduce or otherwise alter the liability of Grantee herein. No representation is made that the minimum insurance requirements of this Franchise are sufficient to cover the obligations of Grantee hereunder.

### **5.3 Letter of Credit**

(A) If there is a claim by the Grantor of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the Grantor may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the Grantor, to the Grantor as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the Grantor in the amount of twenty-five thousand dollars (\$25,000.00).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at twenty-five/fifty thousand dollars (\$25,000.00) until the allegations of the uncured breach have been resolved. After all allegations have been resolved, the letter of credit may be withdrawn.

(C) After completion of the procedures set forth in subsection 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the Grantor for purposes including, but not limited to, the following:

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

(2) Reimbursement of actual costs borne by the Grantor to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

(4) Failure to comply with any Customer Service Standards of the Grantor, as the same may be amended from time to time by the Grantor Council acting by ordinance or resolution.

(D) The Grantor shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within fifteen (15) business days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(E) Grantee shall have the right to appeal to the Grantor Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Grantor erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

#### **5.4 Bonds**

Grantee, at its expense, shall comply with all of the applicable bonding requirements provided for in the Grantor's Code or construction / development standards officially adopted by the Grantor.

### **SECTION 6. CUSTOMER SERVICE**

#### **6.1 Customer Service Standards**

Grantee shall comply with customer service standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619, as amended, and any local standards adopted in accordance with applicable law. Grantee acknowledges the Grantor's ability to enact customer service standards that exceed those enacted by the FCC and the Grantor acknowledges Grantee's right to recover the costs associated with complying with such standards. The Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or the requirements of any applicable customer service standards. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

#### **6.2 Subscriber Privacy**

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

### **6.3 Subscriber Contracts**

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the Grantor a sample of the Subscriber contract or service agreement then in use.

### **6.4 Identification of Local Franchise Authority on Subscriber Bills**

Within sixty (60) days after written request from the Grantor, Grantee shall place the Grantor's telephone number on its Subscriber bills.

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

### **7.1 Open Records**

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Grantor. The Grantor, or its authorized representative shall have access to, and the right to inspect, books and records of Grantee, its parent corporations and Affiliates that are reasonably necessary to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate, or a third party. The Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Grantor, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may, within ten (10) days of a request, require that the Grantor or its designee inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and are not made available in copies to the Grantor or its designee upon written request as set forth above, and if the Grantor determines that an examination of such records is necessary or appropriate for the performance of any of the Grantor's duties, administration, or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by the Grantee.

### **7.2 Confidentiality**

The Grantor agrees to treat as confidential any books or records that constitute proprietary or confidential information under RCW 42.56, the Public Records Act ("PRA"), to the extent Grantee makes the Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information and shall provide a brief written explanation as to why such information is confidential under the PRA. As a public agency, records and information may be subject to a request submitted under the PRA. If the Grantor receives a request under the PRA to inspect or copy the information so identified by Grantee and the Grantor determines that release of the information is required by the PRA or otherwise appropriate, Grantor will use its best efforts to

promptly provide Grantee with notice of the request in accordance with RCW 42.56.540, and a copy of any written request by the party demanding access to such information, in order to have a reasonable time (of no less than ten (10) business days) within which Grantee may seek an injunction to prohibit the Grantor's disclosure of the requested record. If the Grantee fails to timely obtain a court order enjoining disclosure, the Grantor will release the requested information on the date specified. Grantee shall join the Person requesting the documents to such an action. Grantee shall defend, indemnify, and hold the Grantor harmless from any claim or judgment.

The Grantor has, and by this Section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the PRA. The Grantor shall not be liable to the Grantee for releasing records. The Grantor shall not be liable to the Grantee for any records that the Grantor releases in compliance with this Section or in compliance with an order of a court of competent jurisdiction.

### **7.3 Records Required**

(A) Grantee shall at all times maintain, and shall make available to the upon thirty (30) days prior written request and subject to Applicable Law:

(1) A complete set of maps showing the location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Grantor's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Grantor. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations, or Affiliates that relate to the operation of the Cable System in the Franchise Area;

(3) Number of current subscribers by Tier;

(4) A log of Cable Services added or dropped, Channel changes, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates, and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Grantor is public information, and shall be treated as such,

### **7.4 Annual Reports**

Within ninety (90) days of the Grantor's written request, Grantee shall submit to the Grantor a written report, in a form acceptable to the Grantor, which shall include, but not necessarily be limited to, the following information for the Grantor:

- (A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;
- (B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);
- (C) The number of homes passed, beginning and ending plant miles, and any technological changes occurring in the Cable System;
- (D) A statement of planned construction, if any, for the next year; and,
- (E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

## **7.5 Copies of Federal and State Reports**

Within sixty (60) days of a written request, Grantee shall submit to the Grantor copies of all regular reports maintained in the ordinary course of business submitted by Grantee or its parent corporation(s), to any federal, State, or local courts, regulatory agencies, and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall not claim confidential, privileged, or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

## **7.6 Complaint File and Reports**

Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System for the previous twelve (12) months, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints, and shall provide such information to Grantor within sixty (60) days of a written request.

# **SECTION 8. PROGRAMMING**

## **8.1 Broad Programming Categories**

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

- (A) Educational programming;
- (B) Washington news, weather, and information;
- (C) Sports;
- (D) General entertainment (including movies);

- (E) Children/family-oriented;
- (F) Arts, culture, and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather, and information; and,
- (J) Educational and Government Access, to the extent required by this Franchise.

## **8.2 Deletion or Reduction of Broad Programming Categories**

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Grantor.

## **8.3 Obscenity**

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming that is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming that is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

## **8.4 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, filters, or software solutions to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

## **8.5 Continuity of Service Mandatory**

It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

## **8.6 Services for the Disabled**

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

## **SECTION 9. ACCESS**

### **9**

Grantor agrees that the Educational and Governmental Access programming provided on Grantee's Cable System as part of the Pierce County regional lineup adequately meets the needs of the community. Grantee agrees to continue to carry Pierce County Television (PCTV) in high definition (HD) and standard definition (SD) throughout the term of this Franchise, provided that it remains available.

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

### **10.1 Right to Construct**

Subject to Applicable Law, regulations, rules, resolutions, and ordinances of the Grantor and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

### **10.2 Joint Trenching/Boring**

Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Franchise Area.

### **10.3 General Standard**

(A) All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. All installations of equipment shall be permanent in nature, durable, and installed in accordance with good engineering practice and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic. Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of bundles of unused cables.

(B) All construction shall be subject to the Grantor's permitting process.

(C) Grantee and Grantor shall meet, at the Grantor's request, to discuss the progress of the design plan and construction.

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

(E) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

#### **10.4 Permits Required for Construction**

Prior to doing any work in the Right-of-Way, Grantee shall apply for, and obtain, all required permits from the Grantor. As part of the permitting process, the Grantor may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Grantor permits received by Grantee.

#### **10.5 Emergency Actions and Repairs**

In the event that emergency repairs are necessary, Grantee will immediately notify the Grantor of the need for such repairs. Grantee may initiate such emergency repairs and will apply for appropriate permits as soon as reasonably practicable but in no event not later than two business days after discovery of the emergency. Grantee will comply with all applicable Grantor regulations relating to such repairs, including the payment of permit or license fees. Designated representative shall contact the designated local Network Operations Center (NOC) at +1 (855) 537-6296 (option 1; then option 2). Comcast shall respond on-site to any routine trouble calls within four (4) hours of receipt of notification at the NOC

#### **10.6 Compliance with Applicable Codes**

(A) Construction Codes. Grantee shall comply with all applicable industry, State and Grantor construction codes and standards.

(B) Safety Codes. Grantee shall comply with all federal, State, and Grantor safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by Applicable Law during construction, operation, and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

#### **10.7 GIS Mapping**

Grantee shall comply with any generally applicable ordinances, rules, and regulations of the Grantor regarding geographic information mapping systems for users of the Rights-of-Way.

#### **10.8 Minimal Interference**

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Grantor, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the Grantor's authority. The Grantee's Cable System shall be located, erected, and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Grantor may deem proper to make, or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic.

#### **10.9 Prevent Injury/Safety**

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change, and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

#### **10.10 Hazardous Substances**

(A) Grantee shall comply with all Applicable Laws, statutes, regulations, and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

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

(C) Grantee agrees to defend, indemnify, and hold the Grantor harmless against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by or assessed against the Grantor arising out of a release of hazardous substances caused by Grantee's Cable System.

#### **10.11 Locates**

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the Grantor and to the notification association established in Ch. 19.122 RCW, as amended.

Within forty-eight (48) hours after any Grantor employee, contractor, franchisee, licensee, or permittee notifies Grantee of a proposed Right-of-Way excavation or the need for a design locate, Grantee shall, at Grantee's expense:

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

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

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

#### **10.12 Notice to Private Property Owners**

Grantee shall give reasonable notice to private property owners of work on or adjacent to private property, consistent with the requirements of the permit authorizing such work.

#### **10.13 Underground Construction and Use of Poles**

(A) When required by general ordinances, resolutions, regulations, or rules of Grantor or applicable State or federal law, or Grantor project, Grantee's Cable System shall be placed underground at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances .

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with Grantor's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles wherever possible but in no case shall Grantee be permitted to install any of its own poles in the Franchise area.

(D) This Franchise does not grant, give, or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of Grantor or any other Person.

#### **10.14 Cable Drop Bonding**

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

#### **10.15 Prewiring**

Any ordinance or resolution of the Grantor which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems to the extent consistent with said ordinance or resolution.

#### **10.16 Repair and Restoration of Property**

(A) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(B) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the Grantor may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within sixty (60) days of receipt of an itemized list of those costs, including the costs of labor, materials, and equipment, the Grantee shall pay the Grantor.

(C) Private Property. Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

#### **10.17 Acquisition of Facilities**

Upon Grantee's acquisition of Cable System-related facilities in any Grantor Right-of-Way, or upon the addition to the Grantor of any area in which Grantee owns or operates any such facility, Grantee shall, at the Grantor's request, submit to the Grantor a statement describing all such facilities involved, whether authorized by franchise, permit, license, or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

#### **10.18 Discontinuing Use/Abandonment of Cable System Facilities**

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the Grantor permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the Grantor may require Grantee to remove the facility from the

Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the Grantor. Until such time as Grantee removes or modifies the facility as directed by the Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

#### **10.19 Movement of Cable System Facilities For Grantor Purposes**

(A) The Grantor shall have the right to require Grantee to, at the Grantor's request, locate (which may include potholing) and survey Grantee's facilities and equipment, relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the Grantor for public purposes, in the event of an emergency; or when the public health, safety, or welfare requires such change. For example, without limitation, this movement of or the request to locate Grantee's facilities may be needed by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Grantor for public purposes. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this subsection 10.19 shall be borne by Grantee. Such work shall be performed at Grantee's expense.

(B) Except when a shorter time is necessitated due to an emergency, Grantee shall, within sixty (60) days' written notice by the Grantor, or such longer period as the Grantor may specify, complete all work to temporarily or permanently relocate, remove, replace, modify, or disconnect any of its facilities and equipment located in the Rights-of-Way or on any other property of the Grantor. In the event of any capital improvement project exceeding five hundred thousand dollars (\$500,000.00) in expenditures by the Grantor, which requires the removal, replacement, modification, or disconnection of Grantee's facilities or equipment, the Grantor shall provide at least one hundred twenty (120) days' written notice to Grantee. Following notice by the Grantor, if other users of the Right-of-Way relocate aerial facilities underground as part of an undergrounding project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. If the Grantor requires Grantee to relocate its facilities located within the Rights-of-Way, the Grantor will work collaboratively with Grantee to

identify available alternate locations within the Rights-of-Way for Grantee to relocate its facilities at Grantee's cost.

(C) If Grantee fails to complete this work within the time prescribed above and to the Grantor's satisfaction, the Grantor may cause such work to be done and bill the cost of the work to Grantee, including all costs and expenses incurred by the Grantor due to Grantee's delay. In such event, the Grantor shall not be liable for any damage to any portion of Grantee's Cable System. Within sixty (60) days of receipt of an itemized list of those costs, Grantee shall pay the Grantor. In any event, if Grantee fails to timely relocate, remove, replace, modify or disconnect Grantee's facilities and equipment, and that delay results in any delay damage accrued by or against the Grantor, Grantee will be liable for all documented costs of construction delays attributable to Grantee's failure to timely act. Grantee reserves the right to challenge any determination by the Grantor of costs for construction delays related to an alleged failure to act in accordance with this subsection 10.19.

#### **10.20 Movement of Cable System Facilities for Other Entities**

If any removal, replacement, modification, or disconnection of the Cable System is required to accommodate the construction, operation, or repair of the facilities or equipment of another entity with the rights to use the Rights-of-Way, Grantee shall, after at least sixty (60) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee shall require that the costs associated with the removal or relocation be paid by the benefited party.

#### **10.21 Temporary Changes for Other Permittees**

At the request of any Person holding a valid permit (a "Permittee") and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the Permittee, and Grantee may require a reasonable deposit of the estimated payment in advance. The cost of such temporary change may be charged by the Grantee to the Permittee, and Grantee may require the estimated payment in advance. Such payment is an exchange between the Grantee and the Permittee, and the Grantor will not be the administrator of these transactions.

#### **10.22 Reservation of Grantor Use of Right-of-Way**

Nothing in this Franchise shall prevent the Grantor or public utilities owned, maintained, or operated by public entities other than the Grantor from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the use and operation of Grantee's Cable System but insofar as the Cable System, or any portion thereof, is required to be relocated to accommodate the construction of the Grantor or public utility, Grantee shall be solely responsible for the costs associated with relocation, in accordance with State law.

### **10.23 Tree Trimming**

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Grantor's Rights-of-Way that interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulation of the Grantor regarding tree trimming except in emergencies. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

### **10.24 Inspection of Construction and Facilities**

The Grantor may inspect any of Grantee's facilities, equipment, or construction located in the Rights-of-Way at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. If an unsafe condition is found to exist, the Grantor, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Grantor establishes. The Grantor has the right to correct, inspect, administer, and repair the unsafe condition if Grantee fails to do so, and to charge Grantee for its costs.

### **10.25 Stop Work**

(A) On notice from the Grantor that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Grantor, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Grantor.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

Grantee shall be liable for all costs incurred by the Grantor and associated with Grantee's violation and the Grantor's issuance of the stop work order. Grantee reserves the right to challenge any Grantor determination of Grantee's obligations under this Section.

### **10.26 Removal of Facilities from Poles**

If Grantee leases or otherwise utilizes a pole within the Rights-of-Way owned by Grantor for attachment of Grantee's facilities, and Grantor subsequently abandons the pole, for example

by building a replacement pole, Grantee shall remove or relocate its facilities from such pole within ninety (90) days of notification from Grantor. If Grantee requires additional time to accomplish the removal and/or relocation, Grantee shall notify the Grantor in writing of the reasons for the additional time and its anticipated schedule, which in no case shall be longer than 180 days.

#### **10.27 Work of Contractors and Subcontractors**

Grantee shall be responsible for all work performed by its contractors, subcontractors, and others performing work on its behalf, as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them.

### **SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING**

#### **11.1 Subscriber Network**

(A) Grantee's Cable System shall consist of a mix of fiber to the premises and HFC in the proposed project areas, and shall provide activated two-way capability. Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

#### **11.2 Standby Power**

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Grantor no later than thirty (30) days following receipt of a request.

#### **11.3 Emergency Alert Capability**

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the Grantor shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the

EAS shall be retested.

#### **11.4 Technical Performance**

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC) standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Grantor shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

#### **11.5 Cable System Performance Testing**

(A) Grantee shall provide to the Grantor a copy of its current written process for resolving complaints about the quality of the video programming services signals delivered to Subscribers and shall provide the Grantor with any amendments or modifications to the process at such time as they are made.

(B) Grantee shall, at Grantee's expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the Franchise Area for a period of at least one (1) year, and individual Subscriber complaints from the Franchise Area for a period of at least three (3) years, and make such information available to the Grantor at Grantee's office upon reasonable request.

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

(D) Grantee shall perform any tests required by the FCC.

#### **11.6 Additional Tests**

Where there exists other evidence that in the judgment of the Grantor casts doubt upon the reliability or technical quality of Cable Service, the Grantor shall have the right and authority to require Grantee to test, analyze, and report on the performance of the Cable System. Grantee shall fully cooperate with the Grantor in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem that precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis that may be required.

## **SECTION 12. SERVICE AVAILABILITY**

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. The seven (7) day requirement shall be extended if necessary to comply with any underground construction permitting requirements. Except as otherwise provided herein, Grantee shall provide such service:

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

(2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop from nearest connection drop to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Grantor; and

(3) At non-discriminatory monthly rates for Residential Subscribers consistent with subsection 4.3 above.

(B) Service to Multiple Dwelling Units. The Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise, and all applicable laws.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Procedure for Remedying Franchise Violations**

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

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

(2) cure the default; or,

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

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

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the Grantor orders a meeting in accordance with subsection (A)(3), the Grantor shall set a meeting to investigate said issues or the existence of the alleged default. The Grantor shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the Grantor determines that a default exists, the Grantor shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Grantor shall determine. In the event Grantee does not cure within such time to the Grantor's reasonable satisfaction, the Grantor may:

(1) Withdraw an amount from the letter of credit as monetary damages imposed under subsection 13.8;

(2) If a material violation, recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,

(3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Grantor, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

(E) It shall not be a violation of this Franchise if Grantee decides, on a company-wide basis, to cease providing Cable Services. Grantee shall provide a minimum of one (1) year's written notice to Grantor of the termination date, and upon that date, all rights, duties, and obligations of this Franchise shall terminate except for those that by their nature, should survive termination.

## **13.2 Revocation**

(A) In addition to revocation in accordance with other provisions of this Franchise, the Grantor may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance, or document regarding the Grantor and Grantee;

(2) If Grantee fails to restore service to the Cable System after three (3) consecutive days of an outage or interruption in service; except in the case of an emergency or during a Force Majeure occurrence, or when approval of such outage or interruption is obtained from the Grantor, it being the intent that there shall be continuous operation of the Cable System;

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

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

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

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

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

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

(D) Any proceeding under the paragraph above shall be conducted by the Grantor Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the Parties. The Grantor Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Grantor Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or, if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and

on the terms and conditions that the Grantor Council determines are reasonable under the circumstances. If the Grantor determines that the Franchise is to be revoked, the Grantor shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the Grantor's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Grantor Council may, at its sole discretion, take any lawful action that it deems appropriate to enforce Grantor's rights under the Franchise in lieu of revocation of the Franchise.

### **13.3 Procedures in the Event of Termination or Revocation**

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the Grantor may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the Grantor's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4 below; or

(3) Upon written request of Grantee, permit the Franchise term to continue pursuant to subsection 14.1(C), or commence the transfer provisions of subsection 14.2(C).

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Grantor may order the removal of the above-ground Cable System facilities and such underground facilities from the Grantor at Grantee's sole expense within a reasonable period of time as determined by the Grantor. In removing its plant, structures, and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places, and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3(B) to the Grantor's satisfaction, after written notice to Grantee, the Grantor may cause the work to be done and Grantee shall reimburse the Grantor for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Grantor may recover the costs through the letter of credit provided by Grantee.

(D) The Grantor may seek legal and equitable relief to enforce the provisions of this Franchise.

#### **13.4 Purchase of Cable System**

If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Grantor shall have the option to purchase the Cable System in accordance with Sect. 627 of the Cable Act.

#### **13.5 Receivership and Foreclosure**

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

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

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

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

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

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

#### **13.6 No Monetary Recourse Against the Grantor**

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

### **13.7 Alternative Remedies**

No provision of this Franchise shall be deemed to bar the right of the Grantor to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise, nor the exercise thereof, shall be deemed to bar or otherwise limit the right of the Grantor to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### **13.8 Assessment of Monetary Damages**

(A) The Grantor may assess against Grantee monetary damages of (i) up to five hundred dollars (\$500.00) per day for any general construction delays, (ii) up to two hundred fifty dollars (\$250.00) for failure to provide EG Channels, or (iii) up to one hundred dollars (\$100.00) per day for any other material breaches. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the Grantor in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs, and expenses that are incurred by Grantor by reason of the breach of this Franchise.

### **13.9 Effect of Abandonment**

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

### **13.10 What Constitutes Abandonment**

The Grantor shall be entitled to exercise its options in subsection 13.9 if:

The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for three (3) consecutive days, unless in the case of Force Majeure event or if the Grantor authorizes a longer interruption of service.

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

(A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as now or hereafter amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording required public notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement, and Grantee and Grantor are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and Grantor shall continue to comply with all obligations and duties under the Franchise.

### **14.2 Transfer of Ownership or Control**

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, or consolidation; nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity without the prior written consent of the Grantor, which consent shall be by the Grantor Council, acting by ordinance.

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

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

(D) In seeking the Grantor's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State, or local law or regulations, or is currently under an

indictment, investigation, or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data, including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Grantor may reasonably require; and

(5) Has the financial, legal, and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The Grantor shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease, or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical, and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Grantor shall not be required for any sale, assignment, or transfer of the Franchise or Cable System to an entity controlling, controlled by, or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Grantor; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

## **SECTION 15. SEVERABILITY**

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

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 Preferential or Discriminatory Practices Prohibited**

In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State, and local laws, and in particular, FCC rules and regulations relating thereto.

### **16.2 Notices**

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid, or by email to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the Grantor or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast Cable Communications Management, LLC  
410 Valley Ave. NW, Suite 9  
Puyallup, WA 98371  
Attention: Franchise Director

With a copy to:  
Comcast Cable Communications Management, LLC  
900 132<sup>nd</sup> Street SW  
Everett, WA 98204  
Attention: Franchising Department

The Grantor's address shall be:

City of Buckley  
933 Main Street

P.O. Box 1960  
Buckley, WA 98321  
Attn: Mayor

with a copy to:

City of Buckley  
933 Main Street  
P.O. Box 1960  
Buckley, WA 98321  
Attn: City Clerk

### **16.3 Descriptive Headings**

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only and shall not affect the meaning or interpretation of the text herein.

### **16.4 Publication Costs to be Borne by Grantee**

Grantee shall reimburse the Grantor for all costs incurred in publishing this Franchise.

### **16.5 Binding Effect**

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

### **16.6 No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

### **16.7 Waiver**

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

### **16.8 Reasonableness of Consent or Approval**

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

## **16.9 Entire Agreement**

This Franchise and all Exhibits represent the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the Parties.

## **16.10 Jurisdiction**

Venue for any judicial dispute between the Grantor and Grantee arising under or out of this Franchise shall be in Pierce County Superior Court, Washington, or in the United States District Court for the Western District of Washington in Seattle.

## **16.11 No Third-Party Beneficiaries**

Nothing in this Franchise is or was intended to confer third-party beneficiary status on any Person or any member of the public to enforce the terms of this Franchise.

## **16.12 Acceptance**

Within sixty (60) days of receipt of an executed Franchise from the Grantor, this Franchise shall be executed by Grantee by filing with the Grantor Clerk. In addition to filing the executed Franchise, Grantee shall furnish the additional insured endorsements and certificates of insurance required pursuant to Section 5. The failure of Grantee to file the executed Franchise shall be deemed a rejection by Grantee and this Franchise shall then be voidable at the discretion of the Grantor.

**16.13 Termination of Prior Franchise** Grantee and the Grantor agree that this Franchise replaces and supersedes Ordinance No. 1480 (the "Prior Franchise") with respect to Grantee; provided, however, that the grant of this Franchise shall have no effect on Grantee's obligations to indemnify or insure the Grantor against acts and omissions occurring during the period(s) that the Prior Franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees consistent with Washington State statute of limitations that were due and owed under a Prior Franchise.

IN WITNESS WHEREOF, this Franchise is signed in the name of the \_\_\_\_\_ of \_\_\_\_\_, Washington this \_\_\_\_ day of \_\_\_\_\_, 2024.

ATTEST:

CITY OF BUCKLEY, WASHINGTON:

\_\_\_\_\_  
Treva Percival, City Clerk

\_\_\_\_\_  
Beau Burkett, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Buckley City Attorney

Accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 2024.

ATTEST:

COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC

\_\_\_\_\_  
Public Notary

\_\_\_\_\_  
Name/Title: \_\_\_\_\_



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  ORD No. ____-24: Amending Vacation Ordinance 08-16 to Change the Width of a Retained City Utility Easement from 60 feet to 30 feet.          Fiscal Impact: 0 Fund Source: 0 Timeline:	<b>Agenda Date: February 27, 2024 AB24-016</b>		
	Department/Committee/Individual	Created	Reviewed
	Mayor		
	City Administrator		X
	City Attorney	X	X
	City Engineer		X
	City Clerk		
	Finance Dept		
	Fire Dept		
	Parks & Recreation		
	Planning Dept		X
	Police Dept		X
	Municipal Court		
	PW/Utilities		X
	<b>Staff Contact: Courtney Brunell</b>		
<b>Attachments:</b> Draft Ordinance and Ordinance 08-16			
<b>SUMMARY STATEMENT:</b> The proposed Ordinance amends the Vacation Ordinance 08-16, which vacated a portion of 112 <sup>th</sup> St E, to change the width of a retained utility easement from 60 feet to 30 feet. Following the street vacation the City quit claimed its interest in the eastern 30 feet of the utility easement. The City has utilities located in the eastern section of the easement that it quit claimed and no utilities in the western half the utility easement that exists today. The City and the property owner desire to swap the easement that exists on the western half for the eastern half to protect the utilities.			
<b>COMMITTEE REVIEW AND RECOMMENDATION: None</b>			
<b>RECOMMENDED ACTION: Move to Approve Ordinance No. 04-24 to Amend Vacation Ordinance 08-16.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<b>Meeting Date</b>	<b>Action</b>	<b>Vote</b>	

**CITY OF BUCKLEY, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_-24**

**AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON,  
AMENDING VACATION ORDINANCE 08-16 TO CHANGE THE  
WIDTH OF A RETAINED CITY UTILITY EASEMENT FROM 60  
FEET TO 30 FEET AND FIXING A TIME WHEN THE SAME  
SHALL BECOME EFFECTIVE.**

---

**WHEREAS**, Ordinance 08-16, which vacated a portion of 112<sup>th</sup> E, retained a utility easement for the City across the width of the vacation area; and

**WHEREAS**, the utility easement was recorded as part of a recorded boundary lot adjustment, BLA-2017-0003, Pierce County Recording No. 201709145001, and

**WHEREAS**, subsequent to the recording of the boundary lot adjustment, the City quit claimed its interest in the eastern 30 feet of the utility easement, recorded as Pierce County Recording No. 201712050667, and

**WHEREAS**, the City has utilities located in the utility easement that it quit claimed in Pierce County Recording No. 201712050667, and

**WHEREAS**, the City seeks to exchange the utility easement it has for the western half of vacated 112<sup>th</sup> E, where it has no utilities, for the eastern half of vacated 112<sup>th</sup> E, where it does have utilities,

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1.** Section 1B of Buckley Ordinance 08-16 is amended to have the City only retain a utility easement over the eastern half of the 112<sup>th</sup> vacated area. The Mayor is authorized to quit claim and/or extinguish the utility easement the City retains in the western half of the area vacated by Ordinance 08-16 in exchange for a utility easement to the eastern half.

**Section 2.** If any sentence, clause, or phrase of the Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

**Section 3.**     Effective date. This Ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city, and shall take effect and be in full force five (5) days after publication.

Introduced, passed and approved this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Beau Burkett, Mayor

ATTEST:

\_\_\_\_\_  
Treva Percival, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Phil Olbrechts, City Attorney

PUBLISHED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_

**CITY OF BUCKLEY, WASHINGTON**

**ORDINANCE NO. 08-16**

**AN ORDINANCE OF THE CITY OF BUCKLEY, PIERCE  
COUNTY, WASHINGTON, VACATING A PORTION OF 112<sup>th</sup>  
STREET E RIGHT-OF-WAY.**

**WHEREAS**, RCW 35.79 and RCW 35A.47.020 grants authority to the City to establish procedures, notice requirements and fees for the vacation of streets and alleys within the City; and

**WHEREAS**, The City Council through adoption of Resolution #16-01 initiated the vacation of a portion of 112th Street E. that is no longer in use as a public right-of-way described on Exhibit "A" attached hereto and incorporated herein; and

**WHEREAS**, the City of Buckley pursuant to RCW 35.79.010 and BMC 13.25.060, passed a Resolution 16-01 setting a public hearing on the vacation for February 9, 2016; and

**WHEREAS**, a public hearing was held on February 9, 2016 pursuant to legal notice by the Buckley City Council heretofore and the matter of the vacation was considered; and

**WHEREAS**, the Buckley City Council determined that as conditioned the vacation of the right-of-way complies with all of the review criteria of BMC 13.35 and would be in the public interest; and

**WHEREAS**, the Buckley City Council approved the vacation on the conditions set forth below,

**WHEREAS**, this street vacation is being approved in order to facilitate a City realignment project for SR165/SR410/RyanRd/112thStE. The realignment project also involves a purchase and sale agreement approved by the City Council on December 8, 2015 ("Purchase and Sale Agreement"). The conditions of approval for this vacation are dependent upon the actions of the other party to the Purchase and Sale Agreement, Dantzler 410 LLC,

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUCKLEY,  
PIERCE COUNTY, WASHINGTON, DO ORDAIN AS FOLLOWS:**


**Section 1. Vacation and Conditions.** A portion of 112<sup>th</sup> Street E, as described in Exhibit “A”, attached hereto and incorporated by this reference, is hereby vacated upon satisfaction of the conditions identified below:

- A. Payment of \$46,893 to City of Buckley (“City”) by Dantzler 410 LLC. It is acknowledged that payment of this amount will be satisfied by the Dantzler 410 LLC payment of the full purchase price specified in the Purchase and Sale Agreement.
- B. As part of this vacation, the City retains utility easements for itself and PSE natural gas facilities within the vacation area. Dantzler 410 LLC shall grant utility easements to City and PSE for City and PSE natural gas facilities located within the entire vacation area legally described in Ex. A. Said easements shall grant full access to the City and PSE for maintenance, repair, expansion and replacement of utility facilities. It is recognized that Dantzler 410 LLC will only acquire ownership of the eastern half of the 112<sup>th</sup> Street E right of way via the transfer of property from the City to Dantzler 410 LLC pursuant to the Purchase and Sale Agreement. Dantzler 410 LLC may have to agree, as determined necessary by the Mayor, to an amendment to the Purchase and Sale agreement that would require the utility easement in order to satisfy this condition.
- C. Dantzler 410 LLC shall have the requisite ownership rights to execute all the documents required by this ordinance.

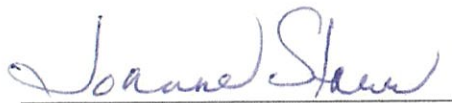
All of the conditions required by this vacation ordinance shall be completed by the execution of documents approved by the Mayor. The Mayor is authorized to approve and execute such documents without additional approval from the Council. This ordinance shall not be published or recorded until all conditions herein have been met or adequate assurance of completion has been provided as approved by the Mayor.

**Section 2. Effective Date.** This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city once all conditions have been met, and shall take effect and be in full force five (5) days after publication.


Passed by the City Council on the 8<sup>th</sup> day of March, 2016.

  
Mayor Pat Johnson

Attest:

  
City Clerk, Joanne Starr

APPROVED AS TO FORM:

  
Phil Olbrechts, City Attorney

PUBLISHED: June 8, 2016

EFFECTIVE: June 13, 2016

## EXHIBIT 'A'

**Owner: City of Buckley  
112<sup>th</sup> Street East  
Southeasterly R/W Vacation**

THAT PORTION of the 112th Street East Right of Way lying within Sections 3 and 4, Township 19 North, Range 6 East, Willamette Meridian, described as follows:

COMMENCING at the monument common to Sections 3, 4, 9, and 10 of said Township 19 North, Range 6 East;

THENCE North 02°06'34" East a distance of 35.01 feet along the East line of said Section 4 to a line parallel with and 35.00 feet Northerly, measured at right angles from the South line of said Section 4;

THENCE North 88°49'16" West a distance of 260.02 feet along said parallel line to its intersection with the centerline of said 112th Street East Right of Way and the POINT OF BEGINNING, said point being the beginning of a 573.00 foot radius non-tangent curve to the left, the center of which bears North 18°57'02" West;

THENCE Northeasterly along the arc of said curve and said centerline a distance of 333.40 feet, through a central angle of 33°20'14";

THENCE North 37°42'44" East a distance of 252.92 feet along said centerline;

THENCE South 17°09'46" East a distance of 26.49 feet to the beginning of a 345.00 foot radius curve to the right;

THENCE Southeasterly along the arc of said curve a distance of 10.30 feet, through a central angle of 01°42'37" to the Southeasterly Right of Way line of said 112th Street East;

THENCE South 37°42'44" West a distance of 231.62 feet along said Southeasterly Right of Way line to the beginning of a 603.00 foot radius curve to the right;

THENCE Southwesterly along the arc of said curve and said Southeasterly Right of Way line a distance of 280.14 feet, through a central angle of 26°37'06" to the aforesaid line that is parallel with and 35.00 feet Northerly, measured at right angles from the South line of said Section 4;

THENCE North 88°49'16" West a distance of 75.14 feet along said parallel line to the POINT OF BEGINNING.

Contains: 16,427 Square Feet, more or less.

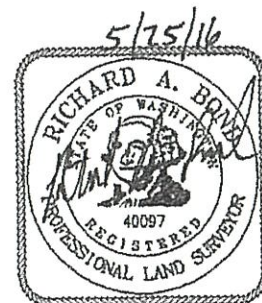
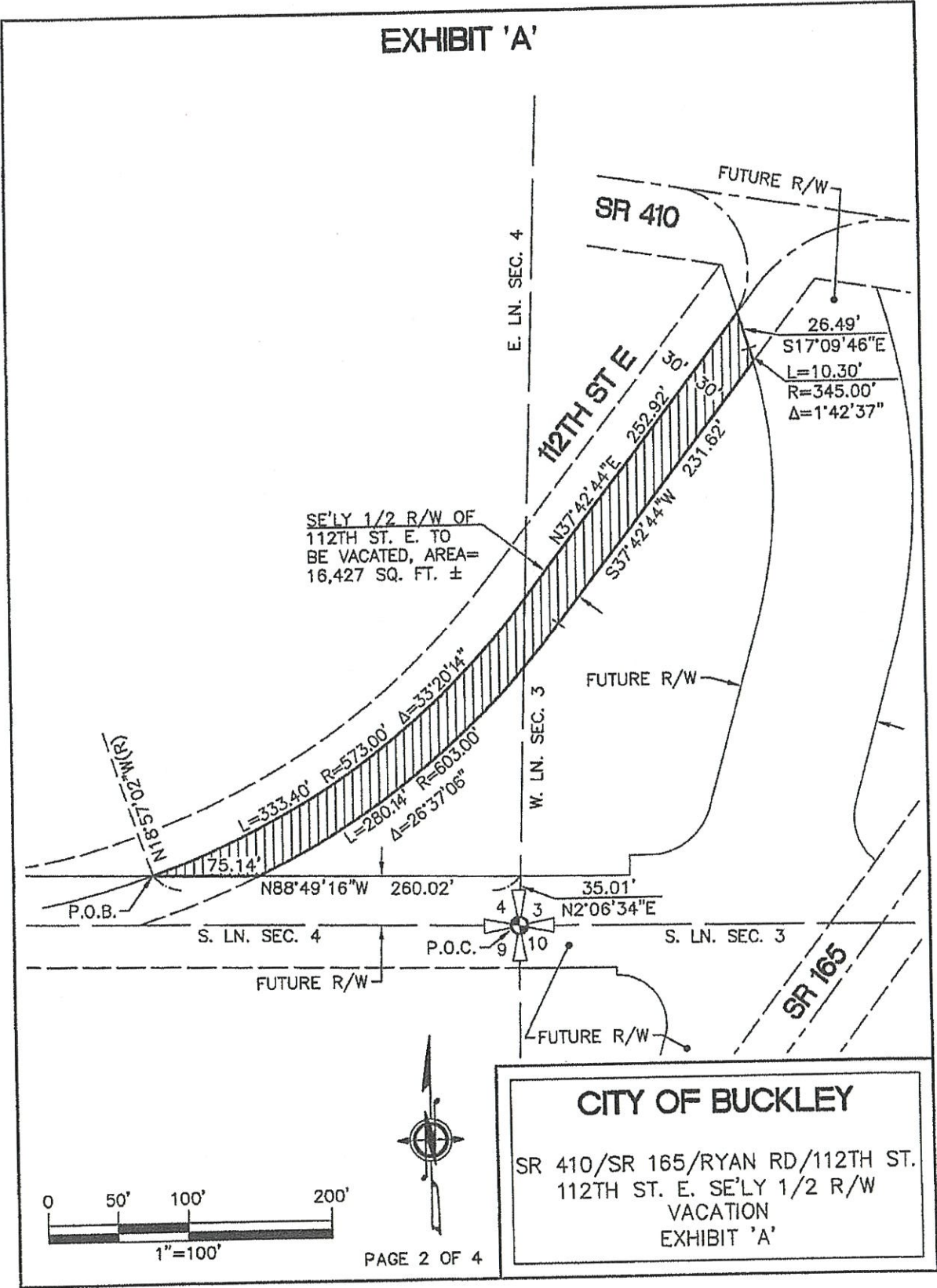


EXHIBIT 'A'

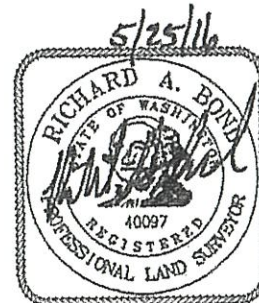


## EXHIBIT 'A'

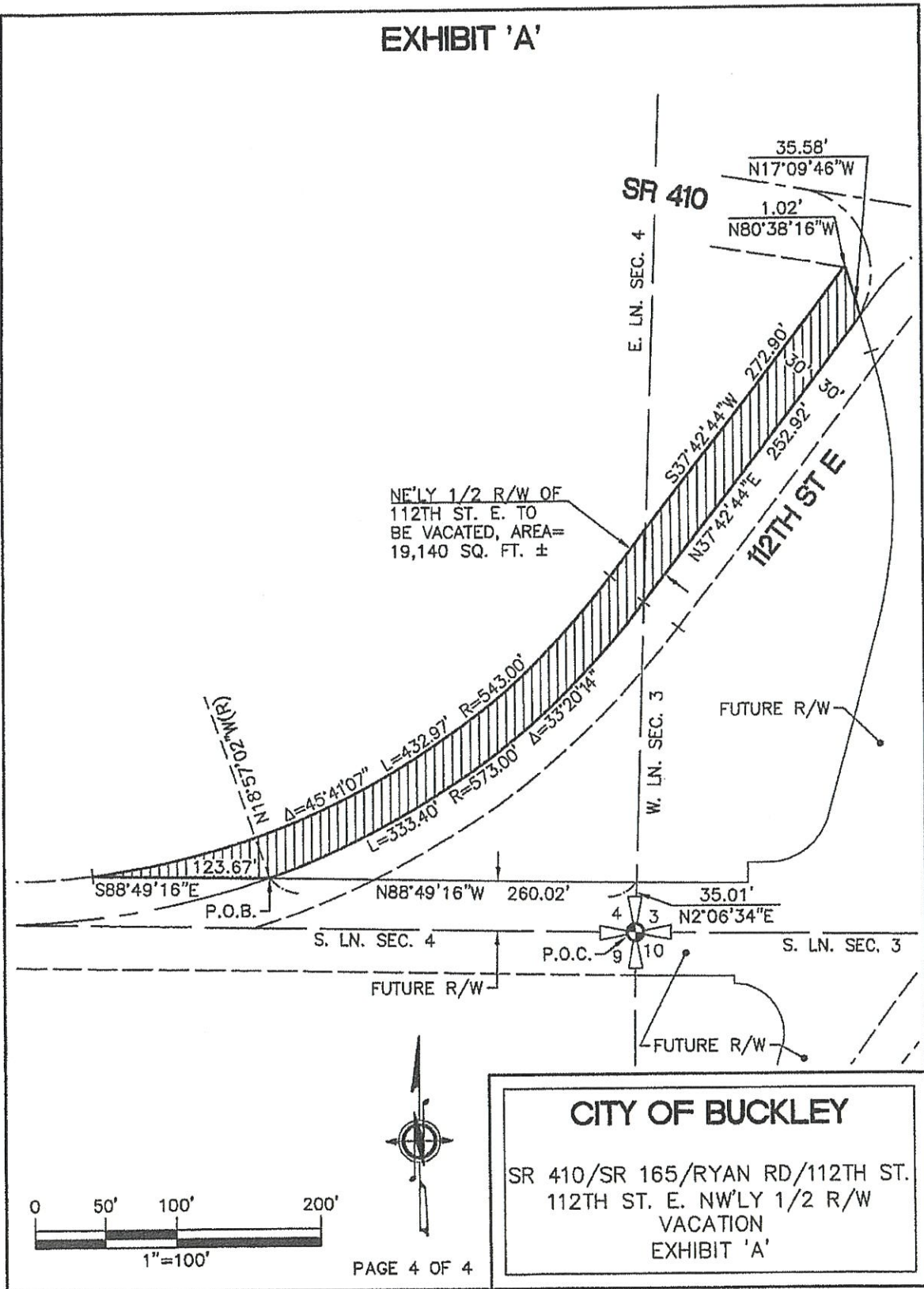
**Owner: City of Buckley  
112<sup>th</sup> Street East  
Northwesterly R/W Vacation**

THAT PORTION of the 112th Street East Right of Way lying within Sections 3 and 4, Township 19 North, Range 6 East, Willamette Meridian, described as follows:

COMMENCING at the monument common to Sections 3, 4, 9, and 10 of said Township 19 North, Range 6 East;  
THENCE North 02°06'34" East a distance of 35.01 feet along the East line of said Section 4 to a line parallel with and 35.00 feet Northerly, measured at right angles from the South line of said Section 4;  
THENCE North 88°49'16" West a distance of 260.02 feet along said parallel line to its intersection with the centerline of said 112th Street East Right of Way and the POINT OF BEGINNING, said point being the beginning of a 573.00 foot radius non-tangent curve to the left, the center of which bears North 18°57'02" West;  
THENCE Northeasterly along the arc of said curve and said centerline a distance of 333.40 feet, through a central angle of 33°20'14";  
THENCE North 37°42'44" East a distance of 252.92 feet along said centerline;  
THENCE North 17°09'46" West a distance of 35.58 feet to the Southerly Right of Way line of State Route 410;  
THENCE North 80°38'16" West a distance of 1.02 feet along said Southerly Right of Way line to its intersection with the Northwesterly Right of Way line of 112th Street East;  
THENCE South 37°42'44" West a distance of 272.90 feet along said Northwesterly Right of Way line to the beginning of a 543.00 foot radius curve to the right;  
THENCE Southwesterly along the arc of said curve and said Northeasterly Right of Way line a distance of 432.97 feet, through a central angle of 45°41'07" to the aforesaid line that is parallel with and 35.00 feet Northerly, measured at right angles from the South line of said Section 4;  
THENCE South 88°49'16" East a distance of 123.67 feet along said parallel line to the POINT OF BEGINNING.  
Contains: 19,140 Square Feet, more or less.



# EXHIBIT 'A'





# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Authorization for one (1) new full-time Firefighter position</b>	<b>Agenda Date: February 27, 2024 AB24-017</b>		
	Department/Committee/Individual	Created	Reviewed
	Mayor		
	City Administrator	X	X
	City Attorney		
	City Engineer		
	City Clerk		X
	Finance Dept		
	Building Official		
	Fire Dept		X
	Parks & Recreation		
	Police Dept		
Municipal Court			
PW/Utilities			
<b>Staff Contact: Courtney Brunell, City Administrator</b>			
<b>Attachments:</b> February 6, 2024 study session memo			
<b>SUMMARY STATEMENT:</b> On February 6, 2024 the City Council received a presentation from the Buckley Fire Chief outlining the emergent need for additional staff. Today the Buckley Fire Department has one full time firefighter and is recruiting one additional position for a total of two (2) full time firefighters. During the meeting, Council agreed to fund one (1) additional firefighter position using a combination of General Fund (001) and EMS (105) funds for the remaining months of 2024 for a total of three (3) full time firefighter positions in 2024.  This motion is to authorize hiring the additional Firefighter as discussed on February 6 <sup>th</sup> using the existing fund balance from funds 001 & 105 in 2024 only.  Also during the February 6 <sup>th</sup> study session Council discussed using the Cumulative Reserve (003) Fund in 2025 & 2026 to fund the new, third firefighter position. The estimated cost for one full-time firefighter is \$130,000, the City has limited remaining fund balance in the General Fund and hopes to pass an EMS levy to support the costs of existing and future staff. <i>Summary continued on next page....</i>			
<b>COMMITTEE REVIEW AND RECOMMENDATION: None</b>			
<b>RECOMMENDED ACTION: Move to authorize the hiring of one additional full-time firefighter for 2024 for an estimated cost of \$76,000 to be paid from the General Fund and EMS Fund.</b>			
<b>RECORD OF COUNCIL ACTION</b>			
<b>Meeting Date</b>	<b>Action</b>	<b>Vote</b>	



*Summary Continued:*

The future decision to use the Cumulative Reserve will be part of the 2025-2026 Biennial budget proposal before Council later this year. The estimated cost that cannot be funded by the General and EMS funds and would need to come from the Cumulative Reserve to fund the third position is approximately \$75,000 per year or \$150,000 for the biennium.

As part of the 2025-2026 budget request, Council can expect a request for one additional firefighter, for a total of (4) full time firefighters. The cost of the 4<sup>th</sup> full time firefighter would need to come from the Cumulative Reserve at a preliminary cost of \$265,000 for the biennium. Total anticipated cost for (4) full time firefighters would be \$415,000 (\$150k+265k) from the Cumulative Reserve for the biennium. The remaining costs of the existing staff and third firefighter would be paid from the general fund and EMS.

The Cumulative Reserve 2024 ending fund balance is \$5,034,074 which is 68% of the City's General Fund 2024 total expenditures. For reference, below is a snapshot of regional general fund reserve policies from MRSC, the City of Buckley intends to establish a reserve policy this year:

City	General Fund Reserve Policy
Bothell	15%
<b>Burien</b>	20%
Des Moines	12%
Edmonds	up to 18%
Lakewood	12%
Lynnwood	Approx. 13%
Puyallup	15%
Redmond	12.5%
Sammamish	10%
Sea Tac	25%
Shoreline	22%



## CITY OF BUCKLEY FIRE DEPARTMENT STAFF REPORT



February 6, 2024

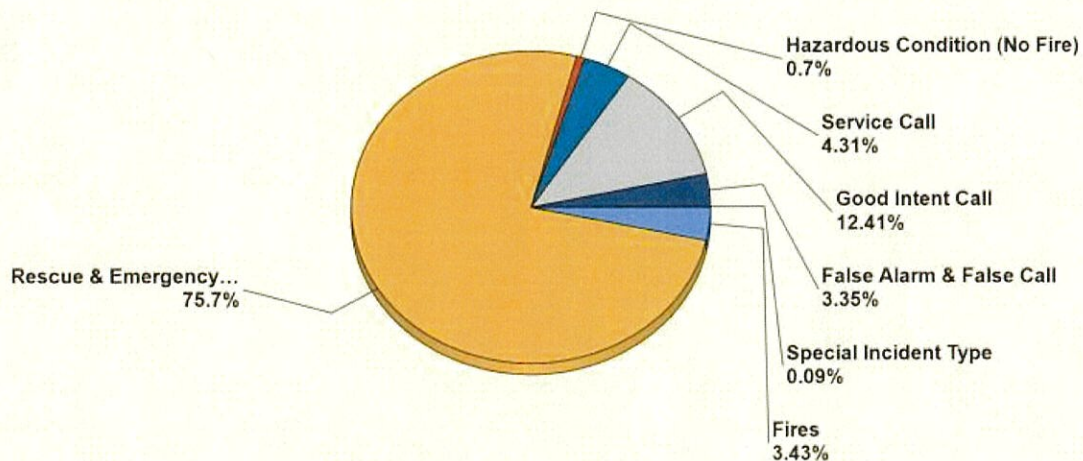
To: Mayor and City Council  
Fr: Eric Skogen, Fire Chief  
Cc: Courtney Brunell, City Administrator  
Re: 2023 Activity Report

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The City of Buckley Fire Department finished the year 2023 with 1,530 calls for service. This represents a 9.5% increase in calls for service compared to the year 2022.

Emergency Medical Services continues to make up the bulk of our call-volume at 75% of total runs.

On November 1<sup>st</sup> we moved to a new Records Management System that acquired our former vendor. We are working with our new vendor to build and run statistical reports. We anticipate the ability to track and report on average response times on a routine basis as we have in the past under our new records management system.



The New Year started with our first call at 12:08AM and we have seen a higher-than-normal call volume since then. In the month of January, we responded to 147 incidents. Several factors likely contributed to this including severe Winter weather, Ski Season, respiratory viruses, etc. It is too early to predict trends for the remainder of the year, but our current average is 5 calls per day.

This does not sound like a lot considering there are 24 hours in a day, however we can safely assume that the majority of these calls are EMS related. If each EMS call results in an Ambulance Transport, it is an average of 2 hours from the time of dispatch until the crew is back in quarters.

### Calls by Time of Day and Day of Week

From

01 / 01 / 2023

To

12 / 31 / 2023

Filter by Alert Type

All

DOWNLOAD REPORT

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	
00:00	4	2	6	5	4	5	6	00:00
01:00	8	6	8	1	2	5	8	01:00
02:00	3	5	9	6	2	4	7	02:00
03:00	1	2	0	4	2	2	3	03:00
04:00	1	5	4	3	2	6	3	04:00
05:00	6	7	2	3	3	4	2	05:00
06:00	3	4	5	4	6	10	6	06:00
07:00	4	9	6	6	9	7	4	07:00
08:00	10	17	10	14	10	10	4	08:00
09:00	17	19	13	11	17	10	13	09:00
10:00	13	13	24	11	21	20	15	10:00
11:00	19	20	11	21	11	9	16	11:00
12:00	15	18	23	8	20	15	22	12:00
13:00	15	17	12	11	25	10	15	13:00
14:00	16	11	21	14	19	19	20	14:00
15:00	11	23	22	20	29	25	23	15:00
16:00	16	14	25	20	18	18	16	16:00
17:00	11	14	16	20	19	18	20	17:00
18:00	20	7	13	11	16	13	16	18:00
19:00	10	12	15	12	26	19	12	19:00
20:00	7	11	16	10	13	16	11	20:00
21:00	9	21	21	21	17	24	18	21:00
22:00	5	7	10	13	9	15	6	22:00
23:00	2	5	5	9	8	9	8	23:00

Key

90th percentile

80th percentile

70th percentile

60th percentile

50th percentile

40th percentile

30th percentile

20th percentile

10th percentile

1st percentile



## 2020-2023 Call Volume

