

ORDINANCE NO. 4898

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLensburg, WASHINGTON, RELATING TO CABLE TELEVISION AND CHAPTER 11.43 OF THE ELLensburg CITY CODE, REPEALING AND REPLACING CHAPTER 11.08 OF THE ELLensburg CITY CODE RELATING TO THE FRANCHISE PREVIOUSLY GRANTED TO FALCON VIDEO COMMUNICATIONS, L.P., AND APPROVING A NEW NONEXCLUSIVE AND REVOCABLE FRANCHISE WITH SPECTRUM PACIFIC WEST, LLC, AN INDIRECT SUBSIDIARY OF CHARTER COMMUNICATIONS, INC. (HEREINAFTER REFERRED TO AS "CHARTER"), PURSUANT TO STATE AND FEDERAL LAW, AS SET FORTH HEREIN.

WHEREAS, by Ordinance No. 4112, the City of Ellensburg ("City") granted a ten-year franchise to King Videocable Company dba Continental Cablevision to operate and maintain a cable television system in the City ("Franchise"); and

WHEREAS, City Council Resolution 1997-25 transferred the Franchise from King Videocable Company D/B/A Continental Cablevision to TCI Cablevision of Vermont; and

WHEREAS, City Council Resolution 1998-16 transferred the Franchise from TCI Cablevision of Vermont to Falcon Communications, L.P ("Falcon"); and

WHEREAS, City Council Resolution 1999-24 authorized the transfer of control of Falcon Communications, L.P. to Charter Communications, Inc. ("Charter"); and

WHEREAS, Falcon transferred the Franchise to Spectrum Pacific West, LLC, both of which are owned by or under the control of Charter Communications, Inc.; and

WHEREAS, the City undertook a franchise fee audit in 2018 of Charter's franchise fee payments to the City, following which, pursuant to the direction of the City Council, City staff commenced informal negotiations with Charter for purposes of renewing the City's Franchise with Charter through adoption of a new franchise agreement; and

WHEREAS, City staff has negotiated a proposed new franchise agreement with Charter to enable Charter to continue to provide cable service in and throughout the City; and

WHEREAS, the City is a "franchising authority" in accordance with Title VI of the Cable Act (see 47 U.S.C. §522(10)) and Washington State law; and

WHEREAS, the City has considered the future cable-related needs and interests of the community, has considered the financial, technical and legal qualifications of Charter, and has determined that Charter's Cable System is adequate; and

WHEREAS, Charter has substantially complied with the material terms of the existing Franchise and with applicable law; and

WHEREAS, Charter's service, including signal quality, response to consumer complaints, and billing practices has been reasonable in light of community needs;

WHEREAS, the City has determined that the renewal or continuation of service through adoption of a new, nonexclusive cable franchise to Charter is consistent with the public interest; and

WHEREAS, the City and Charter have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions; and

WHEREAS, the City wishes to grant Charter a nonexclusive franchise to construct, install, maintain, extend and operate a cable telecommunications system in the franchise area as designated in this Franchise;

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington does hereby ordain:

Section 1. Repeal of Prior Franchise Ordinance. Ordinance No. 4662, which granted a cable franchise to Falcon Video Communications, L.P., locally known as Charter Communications, is hereby repealed in its entirety.

Section 2. Franchise Granted. Pursuant to applicable law, the City of Ellensburg hereby grants a nonexclusive franchise to Spectrum Pacific West, LLC, an indirect subsidiary of Charter Communications, Inc., according to the terms and conditions set forth in Exhibit A attached hereto and incorporated herein by this reference as if set forth in full.

Section 3. Franchise Agreement Term and Effective Date. Subject to the provisions therein, the term of the franchise shall be for a period of fifteen (15) years from the effective date of the Franchise, as defined in Exhibit A, and shall grant Charter the right, privilege and authority to construct, maintain, operate, and repair a cable system to provide cable services in, on, across, over, along, under, upon, through and below the public rights-of-way of the City of Ellensburg, all as provided in Exhibit A.

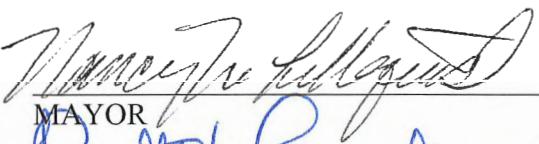
Section 4. Acceptance. As required by ECC 11.43.030(H), the Franchise granted by Section 2 of this ordinance shall be void and of no effect unless Charter files with the City Clerk written acceptance of the Franchise and all of its terms and conditions within thirty (30) days after the Effective Date of this ordinance and in a form satisfactory to the City Attorney.

Section 5. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions(s) of this ordinance.

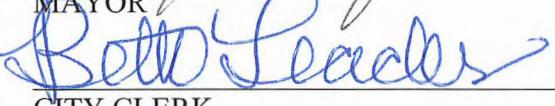
Section 6. Effective Date. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

Section 7. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 7th day of November, 2022.



MAYOR

ATTEST: 

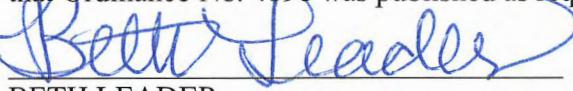
CITY CLERK

Approved as to form:



CITY ATTORNEY
Publish: 11-10-22

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4898 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4898 was published as required by law.



BETH LEADER

EXHIBIT A

CABLE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF ELLENSBURG
AND
SPECTRUM PACIFIC WEST, LLC

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1: DEFINITIONS.....	2
SECTION 2: GRANT OF FRANCHISE	5
2.1 GRANT OF AUTHORITY	5
2.2 TERM OF FRANCHISE.....	5
2.3 NON-EXCLUSIVITY	6
2.4 NO WAIVER OF RIGHTS	6
2.5 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS	7
SECTION 3: SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE	7
3.1 TECHNICAL REQUIREMENT	7
3.2 AREA TO BE SERVED.....	7
3.3 CABLE SYSTEM SPECIFICATIONS	8
3.4 TECHNICAL STANDARDS	8
3.5 EMERGENCY ALERT SYSTEM.....	8
3.6 REPAIRS AND RESTORATION.....	8
3.7 SERVICE AREA MAPS	9
3.8 DISCONNECTION AND RELOCATION.....	9
3.9 EMERGENCY REMOVAL OF EQUIPMENT.....	10
3.10 TREE TRIMMING	10
3.11 CONTINUITY OF SERVICE	10
3.12 PARENTAL CONTROL CAPABILITY	10
SECTION 4: CUSTOMER SERVICE STANDARDS	11
SECTION 5: REGULATION BY THE CITY	11
5.1 RIGHT TO INSPECT.....	11
5.2 RESERVED AUTHORITY.....	11
5.3 POLICE POWERS	11
5.4 NO LIMITATION ON TAXING OR FEE AUTHORITY	12
5.5 SUBSCRIBER COMPLAINT REPORTS	12
5.6 CONFIDENTIALITY.....	12
SECTION 6: COMPENSATION TO THE CITY	12
6.1 FRANCHISE FEES	12
6.2 QUARTERLY PAYMENTS.....	12
6.3 QUARTERLY REPORTS.....	13
6.4 FRANCHISE FEE AUDIT	13
6.5 BUNDLED SERVICES.....	14
SECTION 7: PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) PROGRAMMING	14
7.1 PEG CHANNEL	14
7.2 PEG CHANNEL RETURN LINE.....	14

7.3	ADDITIONAL PEG CHANNEL REQUIREMENTS	15
7.4	PEG CAPITAL GRANT	15
7.5	PEG COMPETITIVE EQUITY	16
SECTION 8: ENFORCEMENT, INSURANCE AND INDEMNIFICATION		16
8.1	VIOLATIONS AND OPPORTUNITY TO CURE.....	16
8.2	REVOCATION.....	17
8.3	OTHER PUBLIC HEARINGS.....	17
8.4	INSURANCE.....	18
8.5	INDEMNIFICATION.....	18
SECTION 9: MISCELLANEOUS		19
9.1	FORCE MAJEURE	19
9.2	REMOVAL OF SYSTEM.....	19
9.3	NOTICES.....	20
9.4	EQUAL EMPLOYMENT OPPORTUNITY	20
9.5	CAPTIONS	21
9.6	GOVERNING LAW; VENUE	21
9.7	TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL	21
9.8	ENTIRE AGREEMENT.....	22
9.9	SEVERABILITY	22
9.10	CHANGE OF LAW.....	22
9.11	COMPLIANCE WITH LAWS.....	22
9.12	THIRD-PARTY BENEFICIARIES	22
9.13	APPLICABILITY OF AGREEMENT	22

CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the "Agreement") is executed to be effective as of the 15th day of November, 2022 (the "Effective Date"), by and between the City of Ellensburg, located in Kittitas County, Washington (hereinafter referred to as the "City") and Spectrum Pacific West, LLC, an indirect subsidiary of Charter Communications, Inc. (hereinafter referred to as "Charter").

WHEREAS, pursuant to Title VI of the Communications Act of 1934, *as amended*, and the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC"), the City is authorized to grant and renew franchises to construct, operate and maintain Cable Systems utilizing Public Rights-of-Way and properties within the City's jurisdiction; and

WHEREAS, Charter's most recent cable franchise agreement with the City is dated January 31, 2014; and

WHEREAS, Charter has requested that the City renew Charter's franchise to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid Public Rights-of-Way; and

WHEREAS, the aforesaid Public Rights-of-Way used by Charter are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said Public Rights-of-Way is a valuable property right; and

WHEREAS, the City desires to protect and manage the aforesaid Public Rights-of-Way, establish standards of Subscriber service, receive Franchise Fees for Charter's use of the City's Public Rights-of-Way as provided by federal law, provide for the use of public, educational and governmental channels, provide legal protections for the City, and meet the current and future cable-related needs of its residents; and

WHEREAS, the City held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator's past performance and identifying the City's future cable-related community needs; and

WHEREAS, the City, after affording the public notice and opportunity for comment, has determined that Charter has the technical ability, financial condition, and character to operate and maintain a Cable System, and its plans for operating such system are adequate and feasible; and

WHEREAS, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

WHEREAS, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Charter's non-exclusive franchise according to the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Charter agree as follows:

SECTION 1

DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

- (a) **Affiliated Entity** - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Charter, but does not include affiliated entities that are not involved with the use, management, operation, construction, repair and/or maintenance of the Cable System.
- (b) **Basic Service** - The service tier that includes at least the retransmission of local broadcast television signals and, to the extent required by applicable law, any Public, Educational and Governmental ("PEG") access channel.
- (c) **Cable Act** - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.
- (d) **Cable Service** - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (e) **Cable System** - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming, and which is provided to multiple Subscribers within the City. Such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; and (5) any facilities of any electric utility used solely for operating its electric utility systems.
- (f) **Channel** - A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.
- (g) **Complaint** - Any written communication by a Subscriber expressing dissatisfaction with any aspect of Charter's operation of its Cable System that is within Charter's control and requires a corrective measure on the part of Charter, delivered to Charter pursuant to the instructions for filing a written unresolved complaint as set forth in the FCC annual notice provided to Subscribers by Charter and posted to Charter's corporate website.
- (h) **Communications Act** - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(i) Competing Video Provider - A provider of commercial video services in the City, which provider has facilities located wholly or partly in the Public Rights-of-Way (without regard to the technology used to deliver such services), but which is not a "cable operator" as such term is defined in the Cable Act.

(j) Drop - The connection between a home or building and the Cable System.

(k) Emergency - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable System in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(l) Franchise - The right granted by the City to construct, operate and maintain a Cable System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(m) Franchise Area - The geographic boundaries of the City and shall include any additions thereto by annexation or other legal means.

(n) Franchise Fee - The fee that Charter remits to the City for the use of the City's Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(o) Gross Revenues - All revenue received by Charter or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Charter's Cable System in the City to provide Cable Services as calculated in accordance with Generally Accepted Accounting Principles ("GAAP"). Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) Fees charged to Subscribers for any Cable Service tier other than Basic Service;
- (3) Fees charged for premium Cable Services;
- (4) Fees charged for video-on-demand Cable Services;
- (5) Fees charged to Subscribers for any optional, per-channel or per-program Cable Services;
- (6) Revenue from the provision of any other Cable Service;
- (7) Fees for installation, additional Outlets, relocation, disconnection, and reconnection for Cable Services;
- (8) Change-in-service fees for video programming;
- (9) Fees for service calls;
- (10) Service plan protection fees related to Cable Service;

- (11) Fees for payments made to customer service representatives directly;
- (12) Fees for Leased Access Channels;
- (13) Rental of all Cable Service equipment, including converters and remote-control devices;
- (14) Locally-derived advertising revenues less commissions paid to third parties that are not Affiliated Entities;
- (15) Revenues of commissions from locally-derived home shopping channels; and
- (16) Franchise Fees.

Gross Revenues shall not include bad debt, late payment fees related to Cable Service, program launch fees, investment income, refunded deposits, revenue from annexations prior to notice and implementation pursuant to Section 3.2(b), any taxes or fees on services furnished by Charter and imposed directly upon any Subscriber or user by the City, state, federal or other governmental unit, or any PEG fees recovered from Subscribers.

(p) Leased Access Channel - Any Channel on Charter's Cable System designated for use by any entity that is unaffiliated with Charter pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

(q) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(r) Normal Operating Conditions - Those service conditions within Charter's service department which are within the control of Charter. Those conditions that are not within the control of Charter include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions or other conditions of Force Majeure as provided in Section 9.1.

(s) Outlet - An interior receptacle that connects a television set or converter box to the Cable System.

(t) Person - An individual, partnership, association, organization, corporation, trust or governmental entity.

(u) Programming - Any video carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(v) Public, Educational and Governmental (PEG) Channel - An access channel on the Cable System that provides non-commercial public, educational and/or governmental programming.

(w) Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses as the same now or may thereafter exist, which are under the jurisdiction or control of the City.

(x) Service Interruption - The loss of picture or sound on one or more Channels.

(y) Standard Installation - Installations to residences and buildings that are located up to 125 feet from the point of connection to Grantee's existing distribution system.

(z) Subscriber - A person or entity who is billed for and authorized to receive Cable Services distributed by the Cable System in the Franchise Area.

SECTION 2 **GRANT OF FRANCHISE**

2.1 GRANT OF AUTHORITY

Pursuant to the Cable Act and the regulations of the FCC, the City hereby grants a non-exclusive and revocable Franchise to Charter. Subject to the terms and conditions contained herein, the City hereby grants to Charter the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other property and equipment as are necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way to provide Cable Services. Nothing in this Franchise shall be construed to prohibit Charter from offering any service over its Cable System that is not prohibited by federal or State law.

Notwithstanding this authority, Charter shall obtain all necessary generally applicable government permits for occupying or disturbing any public places and/or Public Rights-of-Way, which permits shall not be unreasonably delayed or denied. Prior to obtaining such permits, Charter shall provide the City with all reasonable information and documentation that the City requires of all users of the Public Rights-of-Way. No privilege or power of eminent domain is bestowed by this grant or by this Agreement. Charter shall not be required to obtain permits for Drops for individual Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb Public Rights-of-Way surface grade or impact vehicular traffic. Subject to applicable law, Charter shall pay any and all required permit fees.

2.2 TERM OF FRANCHISE

The term of this Agreement shall be for a period of fifteen (15) years commencing on the Effective Date, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

2.3 NON-EXCLUSIVITY

(a) This Franchise granted to Charter shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant other Franchises to construct, operate or maintain a Cable System.

(b) If any other provider of Cable Service (a "Competing Cable Operator") is lawfully authorized by the City to provide Cable Service using facilities located wholly or partly in the Public Rights-of-Way and if such authorization includes a material term or terms that are more favorable or less burdensome to the Competing Cable Operator than this Agreement is to Charter, or does not include a material term that is in this Franchise, then the City shall, within sixty (60) days following the City's receipt of a written request from Charter describing such material term or terms, agree to amend this Agreement to ensure that such material term or terms are no less favorable or more burdensome to Charter than those imposed on the Competing Cable Operator. Such amendment(s) shall be approved by both the City and Charter. If the parties are unable to reach agreement on such amendment(s) within this sixty (60) day period, then Charter shall have the right and may choose to have this Franchise with the City be deemed expired ninety (90) days after separate written notice to the City. Nothing in this Franchise shall impair the right of Charter and the City to terminate this Franchise and negotiate a renewal of this Franchise. Nothing in this Section 2.3(b) shall be deemed a waiver of any remedies available to Charter or the City under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

(c) If the City is legally allowed at any time during the term of this Franchise to require of or negotiate with a Competing Video Provider with respect to any material term or terms that are required of Charter under this Franchise, then Sections 2.3(b), 6.1(b) and 7.5 shall apply to such Competing Video Provider with respect to such material term or terms that are included, or not included, in the authorization between such Competing Video Provider and the City.

(d) If the City chooses to offer commercial video service at any time using facilities located wholly or partly in the Public Rights-of-Way, the parties agree that the City is allowed by law and has the ability and authority to impose upon itself the material terms included in this Agreement, and therefore the City shall be subject to the same material terms as required of Charter pursuant to this Agreement, and Sections 2.3(b), 6.1(b) and 7.5 shall apply to such material terms.

(e) The City shall provide Charter with written notice within thirty (30) days of receiving any application to use the Public Rights-of-Way from a Competing Cable Operator or a Competing Video Provider to which Section 2.3(c) applies, and provide written notice at least thirty (30) days in advance of the City's public consideration of offering service as set forth in Section 2.3(d).

2.4 NO WAIVER OF RIGHTS

No course of dealing between the City and Charter, nor any delay on the part of either party in exercising any rights hereunder, shall operate as a waiver of any such rights or acquiescence in the actions of the other party in contravention of such rights, except to the extent expressly waived by such party.

2.5 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state, and generally applicable and non-discriminatory local laws and regulations. This Franchise is further subject to all applicable ordinances and resolutions of the City, to the extent not inconsistent with the terms of this Franchise or applicable law. Without waiving any of its police powers, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City ordinance or regulation, this Agreement shall control.

SECTION 3 SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE

3.1 TECHNICAL REQUIREMENT

(a) Charter's Cable System shall provide or offer Cable Services to all Subscribers throughout the City, subject to Section 3.2(a). The Cable Service provided by the Cable System shall be delivered in accordance with FCC standards and the Cable Act. The Cable System shall meet or exceed applicable technical performance standards of the FCC, the National Electrical Safety Code and generally applicable laws, ordinances and construction standards of the City.

(b) Charter shall provide adequate standby power at the Cable System headend and on its Cable System to the extent consistent with Charter's normal operating standards. Standby power must activate automatically upon the failure of commercial utility power.

3.2 AREA TO BE SERVED

(a) Charter shall make Cable Service distributed over the Cable System available to every residence within the Franchise Area where there is a minimum density of at least thirty (30) residences per linear strand mile of aerial cable as measured from Charter's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for service (the "Service Area"). The Cable Service will be provided at Charter's published rate for standard installations if such residence is a Standard Installation. Notwithstanding the foregoing, Charter shall have the right, but not the obligation, to extend the Cable System into any portion of the Franchise Area where the minimum density requirement is not met. Charter shall not be obligated to provide service to any area where it is technically infeasible to do so. Charter at its discretion may make Cable Service available to businesses within the Service Area.

(b) In the event the City modifies the Franchise Area by annexation or any other means, the City shall publish notice in a newspaper of general circulation in the Franchise Area, and shall provide written notice to Charter pursuant to Section 9.3. In the event Charter is provided with written notice of the annexation by the City, Charter shall begin to collect Franchise Fees from Subscribers in any annexed area within ninety (90) days of such notice, or upon the effective date of the annexation, whichever occurs later. The City agrees to provide Charter address files (or parcel numbers if no address is assigned at the time notice is provided by the City), and maps in digital format if so requested.

(c) In areas where Charter provides Cable Service in accordance with the terms of this Franchise, the City has the authority to require Charter to place wires and/or equipment

underground in any new developments, provided that the City imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Charter shall be underground in those areas of the City where the wires and/or equipment of all similarly situated entities are underground; provided, however, that such underground locations are capable of accommodating Charter's facilities without technical degradation of the Cable System's signal quality. Charter shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals. In the event that public or private funds are made available to the City to pay for such project, the City shall reimburse Charter to the same extent that it reimburses other similarly situated entities that are required to place their wires and/or equipment underground. In the event that Charter is required to place existing aerial plant underground, Charter reserves its right to pass those costs through to Subscribers if, and to the extent, allowed by applicable law.

3.3 CABLE SYSTEM SPECIFICATIONS

(a) As of the Effective Date of this Agreement, the Cable System has been upgraded to 860 MHz with a capability of no fewer than one hundred fifty (150) video Channels in either high definition (HD) and standard definition (SD). The Cable System shall be capable of transmitting digital television services and signals and shall meet or exceed the technical performance standards of the FCC.

(b) Charter shall construct and maintain its Cable System using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

3.4 TECHNICAL STANDARDS

(a) Charter shall be responsible for ensuring that its Cable System is designed, installed and operated in a manner that fully complies with applicable FCC technical standards, Subpart K, 47 C.F.R. §§ 76.601-76.617, as amended.

(b) The rights and obligations of the City and Charter under this Section shall at all times be subject to applicable federal law and FCC regulation.

3.5 EMERGENCY ALERT SYSTEM

Charter shall comply with the Emergency Alert System requirements of the FCC.

3.6 REPAIRS AND RESTORATION

(a) Whenever Charter or any of its agents, including any contractor, takes up or disturbs any pavement, sidewalk or other improvement of any Public Right-of-Way, the same shall be replaced and the surface restored in a reasonably comparable condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. If Charter fails to repair, replace or otherwise correct a Public Right-of-Way following ten (10) days' written notice by the City, the City may complete any repair, replacement, restoration or other correction

and invoice Charter for the reasonable cost of such repair, replacement, restoration or other correction and be reimbursed for the same.

(b) Whenever Charter or any agent, including any contractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures and improvements in and along the routes authorized by the City. If required for the proper installation, operation and maintenance of such equipment, cable, or wires Charter shall promptly repair and restore any public property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(c) Charter's operation, construction, repair, and maintenance personnel, including all agents and contractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and generally applicable local laws and regulations. Charter shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any public utility serving the City.

3.7 SERVICE AREA MAPS

Upon written request, Charter shall make available for inspection by the City at a mutually convenient location a complete set of Charter service area strand maps of the City on which will be shown those areas in which its facilities exist and the location of all streets. The maps shall designate where the cable wires and other equipment are aerial and where they are underground. Charter shall permit the City to review maps within thirty (30) days after any written request by the City and after execution of an appropriate non-disclosure agreement in a timely fashion. All information provided shall be exclusive of Drops. The City agrees to treat as confidential such maps because they constitute proprietary information.

3.8 DISCONNECTION AND RELOCATION

(a) Charter shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, at no cost to the City, protect, support, temporarily disconnect, relocate in the same Public Rights-of-Way, or remove from any Public Rights-of-Way, any of its property as required by the City or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety and welfare. Charter shall be responsible for any costs associated with these obligations to the same extent all other users of the Public Rights-of-Way are responsible for the costs related to the relocation of their facilities.

(b) In requiring Charter to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Charter the same as, and require no more of Charter than, any other similarly situated entity, including but not limited to telephone, power and water. Charter shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

(c) If funds are available to any Person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse Charter in the same manner

in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make or support the application for such funds on behalf of Charter.

(d) Charter shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Rights-of-Way as necessary any property of Charter, provided that the expense of such is paid by any such Person benefiting from the relocation and Charter is given reasonable advance written notice to prepare for such changes. Charter may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ninety (90) days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

3.9 EMERGENCY REMOVAL OF EQUIPMENT

(a) If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Charter notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the City shall treat Charter the same as, and require no more of Charter than, any other similarly situated entity. Charter shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

3.10 TREE TRIMMING

Charter, or its agents, including subcontractors, shall comply with any generally applicable tree trimming ordinance of the Ellensburg City Code.

3.11 CONTINUITY OF SERVICE

Subscribers shall continue to receive Cable Service from Charter provided their financial and other obligations to Charter are honored. Subject to Force Majeure provisions in Section 9.1, Charter shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service. For the purpose of construction, routine repairing or testing of the Cable System, Charter shall use its best efforts to interrupt service only during periods of minimum use. Such periods shall, where reasonably practicable, be scheduled from midnight to 6 a.m., unless in the case of an Emergency.

3.12 PARENTAL CONTROL CAPABILITY

Charter shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System pursuant to Section 641 of the Cable Act.

SECTION 4 **CUSTOMER SERVICE STANDARDS**

Charter shall comply with the customer service standards in 47 C.F.R. § 76.309 of the FCC's Rules and Regulations, as may be amended from time to time. Such standards as of the Effective Date are set forth in Exhibit A to this Agreement. The requirement of 47 U.S.C. § 76.309(c)(1)(v) is met by Charter providing, or contracting with third party agents to provide, the opportunity for customers to exchange equipment and make payments at least during Normal Business Hours within the City.

SECTION 5 **REGULATION BY THE CITY**

5.1 RIGHT TO INSPECT

(a) The City shall have the option, upon thirty (30) business days written notice and during Normal Business Hours, to inspect all documents, records and other pertinent information maintained by Charter which relate to the provision of Cable Services to verify compliance with the terms and conditions of this Agreement and applicable law.

(b) In addition, Charter shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Upon thirty (30) days written request to Charter, the City may inspect the Cable System in the Public Rights-of-Way at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Cable System is constructed and maintained in a safe condition. The City may not conduct a physical inspection of the Cable System or open any vaults, pedestals or conduits without the express permission of Charter. The City may not inspect the Cable System on Charter's property other than for permitted work. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Charter, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within a reasonable time established by the City.

5.2 RESERVED AUTHORITY

Each party reserves any and all rights arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the City's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way, subject to Section 5.3.

5.3 POLICE POWERS

Charter's rights under this Agreement are subject to the police powers of the City to adopt and enforce generally applicable laws and regulations necessary for the safety and welfare of the public, provided such laws and regulations are reasonable and not materially in conflict with the privileges granted in this Franchise and are consistent with all federal and state laws, rules, regulations and orders.

5.4 NO LIMITATION ON TAXING OR FEE AUTHORITY

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability. Such taxes, fees or assessments shall be in addition to Franchise Fees to the extent consistent with applicable law. Nothing herein shall constitute a waiver of Charter's right to challenge the imposition of any fee as inconsistent with applicable law.

5.5 SUBSCRIBER COMPLAINT REPORTS

Within thirty (30) days of a written request, Charter shall submit to the City a report showing the number of Complaints originating from the City and received during the previous 12-month reporting period, the dates they were received, summary descriptions of the Complaints, and the dates the Complaints were resolved.

5.6 CONFIDENTIALITY

To the extent permitted under Washington law, the City shall maintain as confidential any information provided to it by Charter under the terms of this Franchise which Charter has designated in writing as confidential. In the event that the City believes at any time that it is required by law to disclose such information to a third party, the City will so notify Charter at a time prior to such disclosure that affords Charter a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.

SECTION 6 COMPENSATION TO THE CITY

6.1 FRANCHISE FEES

(a) Charter shall pay to the City an annual amount equal to five percent (5%) of the annual Gross Revenues derived from the operation of its Cable System to provide Cable Service in the City. Charter shall not deduct or otherwise credit against the Franchise Fee any tax, including property taxes and all other taxes, fees or assessments of general applicability unless allowed by applicable law.

(b) Notwithstanding Section 2.3(b), in the event any other franchise, agreement or authorization granted by the City to a Competing Cable Operator provides for a lesser franchise fee or more favorable franchise fee calculation than this Franchise, Charter's obligation to pay a Franchise Fee under this Franchise shall be immediately reduced to an equivalent amount.

6.2 QUARTERLY PAYMENTS

Franchise Fee payments to the City under this provision shall be calculated on an annual basis and paid at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 of the following calendar year (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due,

then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the City. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the City may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, Charter shall deposit the Franchise Fee payments electronically into an account as designated by the City.

6.3 QUARTERLY REPORTS

Each Franchise Fee payment shall be accompanied by a written report containing an accurate statement of Charter's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Charter's Cable System and showing the basis for the computation of fees. Upon request, Charter shall provide a more detailed report containing line items for sources of revenue received and the amount of revenue received from each source.

6.4 FRANCHISE FEE AUDIT

(a) Not more than once every three (3) years, the City shall have the right to conduct a Franchise Fee review or audit of Charter's records reasonably related to the sources, amounts and computation of Gross Revenues. Any such Franchise Fee review or audit shall occur within forty-eight (48) months from the date the City receives such payment, after which period any such payment shall be considered final. Within forty-five (45) days of a written request, Charter shall provide the City with copies of financial records related to the Franchise Fee review or audit.

(b) In the event of an alleged underpayment, the City shall provide Charter with a written statement indicating the basis for the alleged underpayment. Charter shall have forty-five (45) days from receipt of this notice regarding an alleged underpayment to provide the City with any written objection to the results of the Franchise Fee review or audit, including any substantiating documentation. Based on this exchange of information, the City shall make a final determination of the underpayment(s), if any, within thirty (30) days of Charter's objection and shall provide Charter with written notice of the determination.

(c) Any undisputed Franchise Fee payment due to the City as a result of the Franchise Fee review or audit shall be paid to the City by Charter within forty-five (45) days from the date the City notifies Charter of its final determination, or if the matter is submitted to mediation, arbitration, or litigation, within forty-five (45) days from the final disposition of such action. If any undisputed Franchise Fee underpayment is not made on or before the dates specified herein, Charter shall pay an interest charge, computed from the day in which payment was due, at the prime rate as published by the Wall Street Journal.

(d) Any entity employed by the City that performs a Franchise Fee audit or review shall not be permitted to be compensated on a success-based formula, e.g., payment based on underpayment of fees, if any.

6.5 BUNDLED SERVICES

If Cable Services subject to the Franchise Fee required under this Section 6 are provided to Subscribers in conjunction with non-Cable Services for a single aggregate price, the Franchise Fee shall be applied to the portion of the aggregate price attributed to Cable Services. It shall be the obligation of Charter to maintain its books and attribute the revenues to Cable Services consistent with GAAP and Charter shall not make such attribution to avoid Franchise Fees.

SECTION 7 **PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) PROGRAMMING**

7.1 PEG CHANNEL

(a) Subject to applicable law, Charter shall continue to provide to the City one (1) downstream PEG Channel on the Cable System for use by the City and/or any PEG administrator designated by the City. The City shall be responsible for the content, scheduling, administration, and all other programming aspects of the PEG Channel, and may delegate such functions, or a portion of such functions, to an appropriate designee. Charter shall not exercise any editorial control over PEG Channel programming except as permitted by applicable law.

(b) Once the Upgraded PEG Return Line is operational pursuant to Section 7.2(b), and subject to any necessary channel line-up changes, Charter shall make the PEG Channel available to Subscribers in high definition (“HD”) format (the “HD PEG Channel”). The HD PEG Channel will replace the existing PEG Channel described in Section 7.1(a), and will not constitute an additional PEG Channel. Charter shall provide written notice to the City and Subscribers at least thirty (30) days prior to the PEG Channel being made available in HD format.

7.2 PEG CHANNEL RETURN LINE

(a) As of the Effective Date, Charter is transporting standard definition PEG Channel programming that originates at City Hall located at 501 N. Anderson Street, Ellensburg, WA 98926 (“City Hall”) to Charter’s headend using a combination of facilities belonging to the City and facilities belonging to Charter (“Existing PEG Return Line”). The demarcation point between the City’s facilities and Charter’s facilities is located at approximately 47.002654-120.531499 DMM (“Demarcation Point”). Charter will continue to transport the standard definition PEG Channel programming originating from City Hall on the Existing PEG Return Line until the Upgraded PEG Return Line is operational pursuant to Section 7.2(b).

(b) Within six (6) months of the Effective Date, the City shall pay to Charter a one-time fee of \$10,542.87 for costs associated with installing the necessary equipment to allow HD PEG programming that is originated by the City at City Hall to be transported to Charter’s headend and transmitted over the Cable System in HD (“Upgraded PEG Return Line”). Charter shall provide the Upgraded PEG Return Line within six (6) months of receipt of such payment, subject to Section 9.1. Charter will own and maintain the equipment installed for the Upgraded PEG Return Line and the portion of the Upgraded PEG Return Line between the Demarcation Point to Charter’s headend in good working order, subject to Section 7.2(c).

(c) The City is responsible for (i) all costs and equipment required to produce the PEG programming in HD and maintain same in good working order; (ii) any repair or replacement costs necessarily incurred by Charter related to the Existing Return Line or Upgraded PEG Return Line (excluding routine maintenance); (iii) all costs associated with any portions of the Existing PEG Return Line or Upgraded PEG Return Line and related equipment that are between City Hall and the Demarcation Point and owned by the City; and (iv) all costs related to modifying, moving or any further upgrades of the Upgraded PEG Return Line, such as a future relocation of City Hall.

7.3 ADDITIONAL PEG CHANNEL REQUIREMENTS

(a) Charter shall deliver the PEG Channel signal at a level of technical quality as required by FCC regulations; provided, however that Charter shall have no responsibility to improve upon or modify the signal quality of any PEG Channel content provided to Charter by any PEG Channel programmer.

(b) In the event the City or its designee does not program the PEG Channel, Charter may request the use of this PEG Channel subject to prior written approval by the City. The City shall not unreasonably withhold its approval of Charter's use of a PEG channel. If the City requests the utilization of the PEG Channel being programmed by Charter, Charter shall relinquish such use no later than ninety (90) days after receipt of written notification from the City that it requires such channel for public, educational and/or government programming.

(c) Charter shall use its best efforts to maintain channel assignment for the PEG Channel as of the Effective Date. In the event Charter deems a change in the PEG Channel assignment to be necessary, Charter shall provide the City with at least thirty (30) days' advance written notice of such change.

(d) Charter shall cooperate with the City and the applicable third party to arrange for programming description information to be included on the electronic programming guide for the PEG Channel. Costs associated with use of the electronic programming guide shall be borne by the City.

7.4 PEG CAPITAL GRANT

Within ninety (90) days of the Effective Date, Charter shall provide to the City a capital grant of \$64,812 to be used by the City to purchase the PEG access production equipment set forth in Exhibit B (or similar or supplemental equipment), and which are treated as capital costs under Generally Accepted Accounting Principles. Charter may pass through such capital grant to Subscribers in accordance with applicable law. In addition, beginning ninety (90) days after the Effective Date, Charter will begin collecting three cents (\$.03) per Subscriber per month and remitting same to City by March 31 of each year for the previous calendar year (or portion thereof), to be used by the City to purchase PEG access production replacement or supplement equipment, and which are treated as capital costs under Generally Accepted Accounting Principles. This pass-through shall be reduced or terminated at any time upon request of the City and shall terminate no later than fifteen (15) years after the Effective Date. Upon receipt of a written request from Charter, the City shall provide Charter with a complete accounting of the use of all funds for the

prior calendar year granted pursuant to this Section 7.4. Any grant funds used for non-PEG capital purposes are subject to offset from the Franchise Fee in accordance with applicable law.

7.5 PEG COMPETITIVE EQUITY

Any PEG Channel requirements set forth in any other franchise, agreement or other authorization granted to a Competing Cable Operator shall be substantially similar to the PEG Channel requirements required under this Franchise, and any provisions for PEG access facilities, format, equipment and financial or in-kind support in such other franchise, agreement or other authorization shall be substantially similar when compared to this Franchise. If an authorization granted to a Competing Cable Operator contains PEG obligations (including financial and in-kind) that are more favorable or less burdensome to the Competing Cable Operator than this Section 7 is to Charter, or does not include substantially similar PEG obligations (including financial and in-kind) to those that are in this Section 7, then the procedures of Section 2.3(b) shall apply. Any related amendment agreed to by the City and Charter will include a deduction from future Franchise Fee payments to offset the difference in amount of any financial or in-kind PEG obligations already made by Charter under this Franchise and the obligations of the Competing Cable Operator, unless otherwise agreed to by the City and Charter.

SECTION 8 ENFORCEMENT, INSURANCE AND INDEMNIFICATION

8.1 VIOLATIONS AND OPPORTUNITY TO CURE

(a) If the City has reason to believe that Charter violated any provision of this Agreement, it shall notify Charter in writing by certified mail of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify Charter of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) Charter shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Charter must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that Charter shall have promptly commenced to cure and is taking reasonable steps to cure in the reasonable judgment of the City.

(c) If the violation is material and has not been cured within the time allowed under Section 8.1(b) and, in the City's judgment, Charter has not taken reasonable steps to cure the violation, then the City may initiate an action in law or equity in a court of competent jurisdiction or revoke the Franchise in accordance with Section 8.2.

(d) No violation shall be deemed to have occurred if the violation occurs without the fault of Charter or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1.

8.2 REVOCATION

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Charter practiced any fraud or deceit upon the City in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) Charter violates, after notice and opportunity to cure as set forth in Section 8.1, one or more of the material terms or conditions of this Agreement;

(b) Prior to revocation or termination of the Franchise, the City shall give written notice to Charter of its intent to revoke the Franchise on the basis of any of the violations described in Section 8.1 (a) above. The notice shall set forth the nature of the noncompliance with reasonable specificity. Charter shall have thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the City has not received a satisfactory response from Charter, it may then seek to revoke the Franchise at a public hearing. Charter shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the hearing, the City shall give Charter an opportunity to state its position on the matter and present evidence in accordance with the standards of a fair hearing applicable to administrative hearings in the State of Washington. After the public hearing, the City shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to Charter within ten (10) business days. The decision of the City shall be made in writing and shall be provided to Charter. Charter may appeal such determination to an appropriate court of competent jurisdiction. Notwithstanding the foregoing, nothing in this Agreement, including the enforcement provisions set forth in this Section 8.2, shall prevent Charter from filing at any time a legal action in any permissible court seeking a declaration or enforcement of Charter's rights or obligations under the Franchise. Charter may continue to operate the Cable System until all legal appeals procedures have been exhausted.

(c) Notwithstanding the above provisions, Charter reserves all of its rights under federal law or regulation.

(d) The parties agree that it is not the City's intention to subject Charter to revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the City or Subscribers within the Franchise Area.

8.3 OTHER PUBLIC HEARINGS

The City shall provide at least ten (10) days' advance written notice to Charter of any public meeting or hearing directly related to Charter or this Franchise that is not for the purposes set forth in Section 8.1 or 8.2. This notice requirement does not apply to any public meetings or hearings addressing generally applicable issues.

8.4 INSURANCE

(a) Charter shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an insurance company that is authorized to conduct business in Washington and which has an A.M. Best rating (or equivalent) no less than A-minus VII, indemnifying the City from and against all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable System by Charter in the following amounts:

(1) Commercial General Liability Insurance in an amount no less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars General Aggregate.

(2) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) Workers' Compensation Insurance in such form and amounts as required by state law.

The City, its officials and employees, shall be designated as additional insureds under each of the insurance policies required in this Section 8.4.

(b) Charter shall deliver to the City a Certificate of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, upon request by the City. Charter shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.4 and without submitting Certificates of Insurance to the City verifying that Charter has obtained such alternative insurance. Charter shall endeavor to cause its insurance carrier to notify the City thirty (30) days prior to the cancellation of such insurance policy if an equivalent policy will not be substituted.

8.5 INDEMNIFICATION

(a) Charter shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense to the extent caused by or connected with the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of Charter. The obligation to indemnify, defend, save and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, and penalties. If the City determines that it is necessary for it to employ separate counsel, in addition to that provided by Charter, the cost for such separate counsel shall be the responsibility of the City. Charter shall not indemnify the City for any claims, damages or liability to the extent resulting from acts of willful misconduct or negligence on the part of the City or its officials, officers, agents and employees.

(b) In order for the City to assert its right to be indemnified and held harmless pursuant to subsection (a) above, the City must (1) notify Charter of any claim or legal proceeding which gives rise to such right as specified in subsection (a) above within fifteen (15) days of notice of such a claim or legal proceeding; (2) afford Charter the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and (3) fully cooperate in the defense of such claim and make available to Charter all such information under its control relating thereto.

SECTION 9 **MISCELLANEOUS**

9.1 FORCE MAJEURE

If for any reason of Force Majeure, Charter is unable in whole or in part to carry out its obligations hereunder, Charter shall not be deemed in violation of this Agreement during the continuance of such inability. The term "force majeure" shall have the following meaning: acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or of the State of Washington or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections, riots, labor strikes; epidemics; landslides; lightning, earthquakes; hurricanes; volcanic activity; unusual storms; floods; washouts; unavailability of labor, materials or equipment; droughts; explosions; and partial or entire failure of utilities to service, maintain or monitor their poles or facilities to which Charter's Cable System is attached.

9.2 REMOVAL OF SYSTEM

(a) Upon lawful termination or revocation of this Agreement and Charter's exhaustion of all appeals, Charter shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the Public Rights-of-Way. If such removal is not completed within six (6) months of such lawful termination or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at Charter's cost.

(b) During the term of the Agreement, if Charter decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. Upon abandonment of the Cable System by Charter, the City shall have the right to either require Charter to remove the property; leave the property in place; remove the property itself and charge Charter with the costs related thereto; or transfer ownership of the property to the City's designee provided fair market value is paid to Charter.

(c) Notwithstanding the above, Charter shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Charter from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

9.3 NOTICES

Unless otherwise provided by federal, State or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express. Every notice or payment to be served upon or made to the City shall be sent to:

City Manager
City of Ellensburg
501 N. Anderson Street
Ellensburg, WA 98926

With a copy to:

City Attorney
City of Ellensburg
501 N. Anderson Street
Ellensburg, WA 98926

The City may specify any change of address in writing to Charter. Every notice to be served upon Charter shall be sent to:

Attn: Director, Government Relations
Charter Communications
222 NE Park Plaza Drive, Ste 231
Vancouver, WA 98684

With a copy to:

Attn: Vice President, Government Affairs
Charter Communications
601 Massachusetts Ave NW, Ste 400W
Washington, DC 20001

Charter may specify any changes of address in writing to the City. Each delivery to Charter or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

9.4 EQUAL EMPLOYMENT OPPORTUNITY

Charter is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment. Additionally, Charter shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

9.5 CAPTIONS

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

9.6 GOVERNING LAW; VENUE

This Agreement shall be governed and construed by and in accordance with the laws of the State of Washington and federal law. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested in the state courts of Washington, County of Kittitas, or in the United States District Court for the Eastern District of Washington.

9.7 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL

(a) Neither Charter nor its parent shall transfer or assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(b) Neither Charter nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City.

(c) Neither Charter nor its parent shall sell, convey, transfer, exchange or release more than fifty percent (50%) of its equitable ownership in the Cable System without the prior written consent of the City.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Charter in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity controlling, controlled by or under common control with Charter.

(e) Charter shall make written application to the City of any transfer, as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The City shall have thirty (30) days from the receipt of FCC Form 394 to notify Charter of any additional information it needs to make an informed decision on the transfer or assignment. The City shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding agreement stating that it shall be bound by all the terms and conditions contained in this Agreement, if requested in writing by the City.

9.8 ENTIRE AGREEMENT

This written instrument contains the entire agreement between the parties, supersedes all prior agreements, ordinances, or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Charter. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein. This Agreement may be amended only by the mutual consent of the City and Charter. Any amendment must be in writing and executed by the City and Charter. In the event of a conflict between this Franchise Agreement and any other local ordinance, law or regulation in effect at the time of this Agreement or thereafter, the terms and conditions of this Franchise Agreement shall control.

9.9 SEVERABILITY

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

9.10 CHANGE OF LAW

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the City or Charter may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and Charter may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and Charter, except that where such change is not waivable by the parties, this Agreement shall be deemed to be immediately amended to the extent necessary to comply with applicable law.

9.11 COMPLIANCE WITH LAWS

Subject to Sections 9.9 and 9.10 of this Agreement, Charter shall comply with all applicable federal, state and, to the extent not inconsistent with the terms of this Franchise, local laws and regulations.

9.12 THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

9.13 APPLICABILITY OF AGREEMENT

All of the provisions in this Agreement shall bind Charter, the City and their respective successors and assigns. This Agreement is authorized by Ordinance No. 4898 dated November 7, 2022 of the City Council.

WITNESS our hands and official seals to this Cable Franchise Agreement.

CITY OF ELLENSBURG

By: _____

Name: _____

Title: _____

Date: _____

SPECTRUM PACIFIC WEST, LLC

By: Charter Communications, Inc., its Manager

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

CUSTOMER SERVICE STANDARDS
CODE OF FEDERAL REGULATIONS
TITLE 47 – TELECOMMUNICATION
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER C -- BROADCAST RADIO SERVICES
PART 76--CABLE TELEVISION SERVICE

§ 76.309 Customer Service Obligations

(a) A cable franchise authority may enforce the customer service standards set forth herein against cable operators.

(b) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable System office hours and telephone availability.

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty four (24) hours a day, seven (7) days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than twenty four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers.

(i) Refunds. Refund checks will be issued promptly, but no later than either -

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions.

(i) Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

(ii) Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(iii) Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable Channels.

CODE OF FEDERAL REGULATIONS
TITLE 47 – TELECOMMUNICATION
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER C -- BROADCAST RADIO SERVICES
PART 76--CABLE TELEVISION SERVICE

§ 76.1619 Information on subscriber bills.

(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days. The required response may be delivered by email, if the consumer used email to make the request or complaint directly to the cable operator, or if the consumer specifies email as the preferred delivery method in the request or complaint.

EXHIBIT B*

		Description/Model
Broadcast Server w/ Bulletin		Leightronix UltraNEXUS-HD
PTZ Cameras		Panasonic PTZ Camera with HD-SDI Output (AW-UE50KP)
PTZ Camera		Panasonic PTZ Camera with HDMI Output (AW-UE40KP)
Dias Microphone System		Shure Supercardioid Desktop Gooseneck Microphone (12") (MX412D/S)
Handheld Microsophone System		Shure Dual-Channel Wireless Handheld Microphone System (BLX288/SM58)
Audio Mixer		Shure Digital IntelliMix Automatic 8-Channel Mixer
Video Switcher		Blackmagic Design ATEM 2 M/E Production Studio 4K (SWATEMPSW2ME4K)
Video Hub		Blackmagic Videohub CleanSwitch 12x12
Editing Computer Software	+	Apple 24" iMac with M1 Chip (Mid 2021, Silver) (Z12Q000NR)
Hard Drive Storage		G-RAID 12TB 2-Bay Thunderbolt 3 RAID Array (2 x 6TB)(0G05753-1)
Field Use: Community Producer Cameras		Sony PXW-Z190 4K 3-CMOS 1/3" Sensor XDCAM Camcorder
Field Use: Wireless Body Pack Microphone		Sennheiser EW 112P G4
Field Use: Shotgun Microphone		Sennheiser MKE 600
Field Use: Light Kit, including Stand & Battery		TBD

*PEG access production equipment (or similar or supplemental equipment) to be purchased by the City.