

# CLARK COUNTY STAFF REPORT



**DEPARTMENT:** City/County Cable TV Office

**DATE:** December 8, 2015

**REQUESTED ACTION:**

On December 8, 2015, subject to public hearing, approve a resolution granting a non-exclusive cable television franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink.

\_\_\_ Consent    X Hearing    \_\_\_ County Manager

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**BACKGROUND**

On March 10, 2015, the County received an application from CenturyLink seeking a cable franchise to provide cable services in the County. Staff negotiated a proposed franchise with CenturyLink with terms that will meet the needs and interests of the community and the competitive equity requirements of the existing cable franchise with Comcast of Washington V, LLC. The Commission conducted a public hearing and adopted Findings and Recommendations (attached), unanimously recommending that the County award a cable franchise to CenturyLink to be effective January 1, 2016, through December 31, 2020, with extensions per the agreement. The Commission finds the new proposed cable franchise reflects the cable-related needs of the County and that CenturyLink has the legal, technical and financial qualifications to own and operate the proposed cable services system.

The Commission finds that the proposed franchise agreement meets the identified community needs and interests as follows:

1. Franchise term of 5 years, effective January 1, 2016 – December 31, 2020, with extensions if company expands its network;
2. CenturyLink will pay five percent of gross revenues in franchise fees to the County;
3. CenturyLink will collect \$1/month per residential subscriber PEG Fees to support capital **and operational** needs of Public, Education and Government (“PEG”) channels and the Institutional Network (“I-NET”);
4. All key PEG Access commitments in the Comcast franchise are contained in the CenturyLink franchise;
5. PEG channels will be available to all cable subscribers;
6. CenturyLink will provide HD simulcast of six (6) PEG channels;
7. CenturyLink will provide 24 hours of Video-On-Demand (“VOD”) for PEG programming.

**COUNCIL POLICY IMPLICATIONS**

None.

**ADMINISTRATIVE POLICY IMPLICATIONS**

None.

**COMMUNITY OUTREACH**

The Commission held a work session regarding the CenturyLink franchise on October 7, 2015, and a public hearing on November 4, 2015.

**BUDGET IMPLICATIONS**

YES	NO	
X		Action falls within existing budget capacity.
		Action falls within existing budget capacity but requires a change of purpose within existing appropriation
		Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

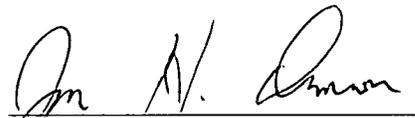
**BUDGET DETAILS**

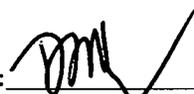
Local Fund Dollar Amount	
Grant Fund Dollar Amount	
Account	General fund
Company Name	

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 \_\_\_\_\_  
 Jim Demmon  
 City/County Cable TV Manager

APPROVED:   
 \_\_\_\_\_  
 CLARK COUNTY, WASHINGTON  
 BOARD OF COUNTY COUNCILORS

DATE: 12-8-15

SR#                     

APPROVED: \_\_\_\_\_  
 Mark McCauley, Acting County Manager

DATE: \_\_\_\_\_

# BUDGET IMPACT ATTACHMENT

## Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

## Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
<b>Total</b>						

II. A – Describe the type of revenue (grant, fees, etc.)

## Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
<b>Total</b>							

III. B – Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
<b>Total</b>						

RESOLUTION NO. 2015-12-04

**A RESOLUTION relating to cable television, granting a nonexclusive and revocable franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink, a corporation organized under the laws of the State of Delaware (“QBSI”), pursuant to state and federal law, and CCC 36.04A.100, to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing cable service, subject to the terms and conditions set forth in the Franchise Agreement.**

1           WHEREAS, Clark County (“County”) desires to promote competition in the  
2 delivery of cable services available to its residents; and

3           WHEREAS, Qwest Broadband Services, Inc. d/b/a CenturyLink, a Delaware  
4 corporations (“QBSI”), seeks to provide competitive cable services to the residents of  
5 Clark County; and

6           WHEREAS, on March 10, 2015, QBSI submitted an application and the seven  
7 thousand five hundred dollar (\$7,500.00) application fee, as required by Clark County  
8 Code (CCC) 36.04A.080(a)(1) and (2), to the County seeking a cable franchise to provide  
9 cable services in the County; and

10           WHEREAS, Qwest Corporation (“QC”), an affiliate of QBSI, will be primarily  
11 responsible for the construction, installation, and maintenance of the facilities which will  
12 be utilized by QBSI to provide cable services; and

13           WHEREAS, Chapter 36.04A CCC, consistent with Article 11, Section 11 of the  
14 State Constitution and state law at RCW 35.22.280, RCW 35.22.570 and RCW  
15 35.27.280, and with the Cable Communications Policy Act of 1984, the Cable Television  
16 Consumer Protection and Competition Act of 1992 and any amendments thereto,  
17 including those contained in the Telecommunications Act of 1996 (collectively, the

18 “Cable Acts”), authorizes the Board of County Councilors of Clark County (“Board”) to  
19 issue franchises to use the rights-of-way of county streets and highways for the  
20 construction and maintenance of cable television lines and other cable television  
21 facilities; and

22 WHEREAS, the Board has adopted Chapter 36.04A CCC, which sets forth  
23 comprehensive and detailed regulations relating to the granting of cable television  
24 franchises and the provision of cable television and related services; and

25 WHEREAS, the Vancouver-Clark Telecommunications Commission  
26 (“Commission”) is established by CCC 36.04A.220 to, among other duties, review and  
27 make recommendations on all applications for franchises to provide cable television  
28 service within the county and the city, and in such connection hold public hearings  
29 thereon and to make written reports and recommendations to the Board; and

30 WHEREAS, the Commission established a process for franchise negotiations with  
31 QBSI which provided for public education as well as ascertainment of the community’s  
32 future cable-related needs and interests; and

33 WHEREAS, telecommunications staff, working with the guidance of the  
34 Commission, negotiated a proposed franchise agreement with QBSI with terms that will  
35 meet the needs and interests of the community and the competitive equity requirements  
36 of existing cable franchise agreements; and

37 WHEREAS, the Commission received the proposed draft franchise agreement on  
38 November 4, 2015; and

39 WHEREAS, in a public meeting on November 4, 2015, the Commission  
40 unanimously adopted Resolution 2015 - 05, which included Findings and  
41 Recommendations regarding a proposed franchise agreement with QBSI; and

42 WHEREAS, Commission Resolution 2015 - 05 concludes that the “proposed  
43 franchise agreement with QBSI meets or exceeds the criteria established by federal law;  
44 meets or exceeds the requirements established by Chapter 36.04A of the CCC; meets or  
45 exceeds the Commission’s identified priorities for a franchise agreement with QBSI; and  
46 meets or exceeds the special and unique future cable-related needs of the  
47 Vancouver/Clark County community;” and

48 WHEREAS, the Board has considered all the testimony and arguments, both oral  
49 and written, and the Commission’s Findings and Recommendations as contained in  
50 Commission Resolution 2015 - 05 including study of all the records, and has analyzed all  
51 of these on the basis of the standards and criteria of federal and state law, and local  
52 ordinance, and the Board has also relied on its own understanding and judgment as to the  
53 future cable television-related needs of the county; now, therefore,

54 BE IT ORDERED AND RESOLVED by the Board of County Councilors of  
55 Clark County, State of Washington, as follows:

56 **Section 1. Findings.** Based upon the detailed and unanimous Findings and  
57 Conclusions contained in the report from the Commission dated November 4, 2015,  
58 contained in Commission Resolution 2015 - 05, which findings and conclusions are  
59 hereby adopted and incorporated herein as EXHIBIT A by this reference, and upon the  
60 testimony and argument presented to the Board at public hearing on this Franchise  
61 Resolution, the Board finds and concludes that the proposed Franchise Agreement with

62 QBSI provides for a cable television system that meets or exceeds the special and unique  
63 future cable-related needs of the Clark County community.

64 **Section 2. Franchise Award.** There is hereby granted to QBSI, pursuant to  
65 state and federal law, and Chapter 36.04A CCC, the nonexclusive and revocable  
66 authorization to make reasonable and lawful use of the streets of the County to construct,  
67 operate, maintain, reconstruct, and repair a cable system for the purpose of providing  
68 Cable Service and to provide related I-NET for data, as set forth in, and subject to the  
69 terms and conditions of, the Franchise Agreement incorporated herein by reference.

70 **Section 3. Franchise area.** The rights and privileges granted herein shall  
71 apply within the jurisdictional boundaries of the County where CenturyLink QC provides  
72 local exchange service.

73 **Section 4. Incorporation of Franchise Agreement.** The Franchise  
74 Agreement agreed to and attached hereto as EXHIBIT B is incorporated herein by this  
75 reference as if fully set forth as part of this ordinance. A copy of the Franchise  
76 Agreement is and shall be maintained on file in the office of the Clerk to the Board and  
77 the City/County Cable Television Office.

78 **Section 5. Cable Television Ordinance.** In addition to other applicable  
79 ordinances, laws and regulations, this franchise shall be subject to the terms and  
80 provisions of Chapter 36.04A CCC, as existing or amended.

81 **Section 6. Effective Date of Ordinance and Term of Franchise.** Subject to  
82 the provisions of Section 7 of this resolution, this resolution and the franchise awarded  
83 hereby shall go into effect January 1, 2015. The term of the franchise awarded hereby

84 shall extend from such effective date for five years through and including December 31,  
85 2020, unless otherwise terminated or extended as provided by the Franchise Agreement.

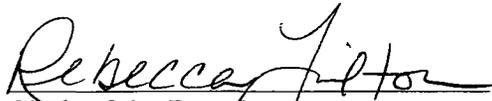
86 **Section 7. Acceptance of Franchise.** Pursuant to Chapter 36.04A  
87 CCC and the Franchise Agreement, QBSI shall, within 30 (thirty) days of approval by the  
88 County of award of this franchise, file with the Commission its written and sworn  
89 unconditional acceptance and promise to comply with all terms of the franchise and shall  
90 post with the Commission the security required by the Franchise Agreement, or this  
91 resolution and the franchise granted hereby shall become null and void and any and all  
92 rights of QBSI to own or operate a cable system within the County under the Franchise  
93 Agreement shall be terminated.

94

ADOPTED on this 8<sup>th</sup> day of December, 2015.

Attest:

BOARD OF COUNTY COMMISSIONERS  
FOR CLARK COUNTY, WASHINGTON

  
Clerk of the Board

  
David Madore, Chair

APPROVED AS TO FORM ONLY:  
Anthony F. Golik, Prosecuting Attorney

\_\_\_\_\_  
Jeanne E. Stewart, Councilor

By:   
Christine Cook  
Sr. Deputy Prosecuting Attorney

\_\_\_\_\_  
Tom Mielke, Councilor

## City/County Telecommunications Commission

## RESOLUTION 2015 - 05

**Regarding Findings and Recommendations to the Vancouver City Council and the Board of Clark County Councilors Regarding Approval of a New Franchise Agreement With Qwest Broadband Services, Inc. d/b/a CenturyLink ("QBSI")****Section 1. Findings**

- 1.1 On March 10, 2015, the City of Vancouver ("City"), Washington and Clark County ("County"), Washington each received applications from Qwest Broadband Services, Inc. d/b/a CenturyLink, seeking a cable franchise to provide cable services in the City and in the County.
- 1.2 Under Chapter 5.19 of the Vancouver Municipal Code ("VMC"), the City Council has adopted comprehensive and detailed regulations relating to the granting of cable television franchises and the provision of cable television and related services.
- 1.3 Under Chapter 36.04A of the Clark County Code ("CCC"), the Board of Clark County Councilors has adopted comprehensive and detailed regulations relating to the granting of cable television franchises and the provision of cable television and related services.
- 1.4 The Vancouver/Clark County Telecommunications Commission ("Commission") was established to, among other duties, review and make recommendations on all applications for franchises to provide cable television service within the City or the unincorporated County, and in such connections to hold public hearings thereon and to make written reports and recommendations to the Vancouver City Council ("Council") and the Board of Clark County Councilors ("Board").
- 1.5 VMC 5.19.080(b) and CCC 36.04A.080 set forth a list of considerations the City and County will consider. Among other things, this list includes the applicant's past record in other communities, the nature of the proposed facilities and services, proposed area of service, proposed rates, and whether the proposal would adequately serve the public needs and the overall interest of the citizens of the city and county.
- 1.6 City and County staff, working with the guidance of the Commission, negotiated a proposed franchise agreement with QBSI with terms that will meet the needs and interests of the community and the competitive equity requirements of existing cable franchise agreements. See, Exhibit 1, Draft of Cable Television Franchise Agreement.
- 1.7 On October 7, 2015, the City and County staff and a representative from QBSI briefed the Commission about the proposed CenturyLink Cable Franchise.
- 1.8 On October 19, 2015, the City and County staff and a representative from QBSI briefed the City Council about the proposed CenturyLink Cable Franchise.

- 1.9 On October 21, 2015, the City and County staff and a representative from QBSI briefed the Board of County Councilors about the proposed CenturyLink Cable Franchise.
- 1.10 Comcast of Washington V, LLC currently has a cable franchise with both the City and County. The key terms of the proposed franchise agreement with QBSI is comparable to the current Comcast franchise agreement. See Exhibit 3, Cable Franchise Comparison, which is hereby adopted and incorporated herein by this reference.
- 1.11 The Commission finds the new proposed cable franchises reflect the cable-related needs of the City and County, and that CenturyLink has the legal, technical and financial qualifications to own and operate the proposed cable services system.
- 1.12 Based upon the foregoing findings, the Commission concludes that the proposed cable franchise agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink as detailed in the cable franchise draft meets or exceeds the criteria established by City and County ordinances, and meets or exceeds the special and unique future cable-related needs of the Vancouver/Clark County community.

**NOW, THEREFORE BE IT RESOLVED:**

**Section 2.**

- 2.1 The Vancouver/Clark County Telecommunications Commission adopts the findings and recommendations as presented in Section 1 above, including all attachments, and incorporations by reference regarding a proposed franchise agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink.
- 2.2 The Commission unanimously recommends that after all appropriate and required public hearings that the Vancouver City Council and the Board of Clark County Councilors respectively award Qwest Broadband Services, Inc. d/b/a CenturyLink a cable franchise effective January 22, 2016, for the City of Vancouver and January 1, 2016, for Clark County, through December 31, 2020, with extensions per the agreement, by ordinance to be based upon the proposed franchise agreements set forth in Exhibits 1 and 2 and these findings.
- 2.3 The Commission is confident of its recommendation; however it realizes that the final decision will be made by the legislative bodies after hearings and realizes that this Resolution will only be one factor in the final decisions of the Council and Board and that they are not bound by the findings and/or conclusions herein, which are advisory only.
- 2.4 The Commission directs staff to immediately forward a copy of this Resolution 2015 – 05 and its attachments to the Vancouver City Council and Board of Clark County Councilors.

Approved (Date): 11/4/2015, 2015

A handwritten signature in black ink, appearing to read "Paul Dicker", written over a horizontal line.

**Vice Chair, Paul Dicker, City/County Telecommunications Commission**

**Exhibits:**

- Exhibit 1** – Draft of Cable Television Franchise Agreement with City of Vancouver and Qwest Broadband Services, Inc. d/b/a CenturyLink
- Exhibit 2** – Draft of Cable Television Franchise Agreement with Clark County and Qwest Broadband Services, Inc. d/b/a CenturyLink
- Exhibit 3** - Cable Franchise Comparison

Exhibit B

**CABLE TELEVISION SYSTEM  
FRANCHISE AGREEMENT**

**Between**

**Clark County, WASHINGTON**

**and**

**Qwest Broadband Services, Inc. (QBSI) d/b/a CenturyLink**

As approved xx/xx/2015 by Ordinance M-xxxx.

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS	1
SECTION 2. GRANT OF FRANCHISE	5
2.1 Grant	5
2.2 Use of Public Streets and Ways	6
2.3 Duration	6
2.4 Franchise Term Extension	6
2.5 Effective Date	7
2.6 Franchise Nonexclusive	7
2.7 Grant of Other Franchises – Competitive Equity	7
2.8 Non-Discrimination	8
2.9 Police Powers	9
2.10 Relations to Other Provisions of Law	9
2.11 Effect of Acceptance	9
SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS	10
3.1 Franchise Fee	10
3.2 Payments	10
3.3 Acceptance of Payment and Recomputation	10
3.4 Quarterly Franchise Fee Reports	10
3.5 Annual Franchise Fee Reports	10
3.6 Audits	10
3.7 Interest on Late Payments	11
3.8 Alternative Remedies	11
3.9 Additional Commitments Not Franchise Fees	11
3.10 Costs of Publication	11
3.11 Tax Liability	12
3.12 Payment on Termination	12
SECTION 4. ADMINISTRATION AND REGULATION	12
4.1 Authority	12
4.2 Rates and Charges	12
4.3 Filing of Rates and Charges	12
4.4 Time Limits Strictly Construed	13
4.5 Performance Evaluation Sessions	13
SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS	13
5.1 Insurance Requirements	14
5.2 Deductibles and Self-Insured Retentions	14
5.3 Indemnification	15
5.4 Faithful Performance Bond	16
SECTION 6. CUSTOMER SERVICE	17

6.1	Customer Service Standards	17
6.2	Subscriber Privacy	17
6.3	Local Office	17
6.4	Emergency Broadcast	17
<b>SECTION 7.</b>	<b>REPORTS AND RECORDS</b>	<b>17</b>
7.1	Open Records	17
7.2	Confidentiality	18
7.3	Copies of Federal and State Documents	18
7.4	Complaint File and Reports	19
7.5	Inspection of Facilities	19
7.6	False Statements	20
<b>SECTION 8.</b>	<b>PROGRAMMING</b>	<b>20</b>
8.1	Broad Programming Categories	20
8.2	Parental Control Device	20
8.3	Leased Access Channels	21
8.4	Continuity of Service	21
8.5	Service for Disabled	21
<b>SECTION 9.</b>	<b>PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS</b>	<b>21</b>
9.1	General Definitions	21
9.2	Management and Control of Access Channels	22
9.3	Channel Capacity and Use	22
9.4	HD Channels	23
9.5	Grantee's Use of Mosaic Channel	23
9.6	PEG Access Program Listings on Cable Systems Digital Channel Guide	24
9.7	PEG Access Interface with Grantee Video-on-Demand Capabilities	24
9.8	Connection of PEG Access Headend	25
9.9	Changes in Technology	25
9.10	Technical Quality	25
9.11	Additional Permanent Live Origination Points	25
9.12	PEG Fee	26
9.13	Access Support Not Franchise Fees	27
9.14	Access Channels on Lowest Tier	28
<b>SECTION 10.</b>	<b>GENERAL STREET USE AND CONSTRUCTION</b>	<b>28</b>
10.1	Construction	28
10.2	Location of Facilities	29
10.3	Relocation	29
10.4	Restoration of Streets and Property	30
10.5	Maintenance and Workmanship	31
10.6	Reservation of Grantor Street Rights	31
10.7	Street Vacation	32
10.8	Discontinuing Use of Facilities	32
10.9	Hazardous Substances	32
10.10	Undergrounding of Cable	32
10.11	Codes	33
10.12	Standards	33
10.13	Tree Trimming	34

<b>SECTION 11. SYSTEM DESIGN</b>	<b>34</b>
11.1 Subscriber Network	34
11.2 Institutional Network	34
<b>SECTION 12. TEST AND COMPLIANCE PROCEDURE</b>	<b>35</b>
<b>SECTION 13. SERVICE EXTENSION, CONSTRUCTION AND INTERCONNECTION</b>	<b>35</b>
13.1 Equivalent Service	35
13.2 Service Availability	35
13.3 Connection of Public Facilities	36
<b>SECTION 14. STANDBY POWER</b>	<b>36</b>
<b>SECTION 15. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE</b>	<b>36</b>
15.1 Procedure for Remediating Franchise Violations	36
15.2 Revocation	38
15.3 Liquidated Damages	39
15.4 Removal	40
15.5 Receivership and Foreclosure	40
15.6 No Recourse Against Grantor	41
15.7 Nonenforcement by Grantor	41
15.8 Relationship of Remedies	41
<b>SECTION 16. ABANDONMENT</b>	<b>41</b>
16.1 Effect of Abandonment	41
16.2 What Constitutes Abandonment	41
<b>SECTION 17. FRANCHISE RENEWAL AND TRANSFER</b>	<b>42</b>
17.1 Renewal	42
17.2 Transfer of Ownership or Control	42
<b>SECTION 18. SEVERABILITY</b>	<b>43</b>
<b>SECTION 19. MISCELLANEOUS PROVISIONS</b>	<b>44</b>
19.1 Preferential or Discriminatory Practices Prohibited	44
19.2 Notices	44
19.3 Binding Effect	44
19.4 Authority to Amend	45
19.5 Governing Law	45
19.6 Captions	45
19.7 Construction of Agreement	45
19.8 Force Majeure	45
19.9 Attorneys' Fees	45
19.10 Survival	46

## CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT

This Cable Television System Franchise Agreement ("Agreement") is entered into in Clark County, Washington, this 1st day of January, 2016, by and between **Clark County** ("Grantor" or "County"), and Qwest Broadband Services, Inc. d/b/a CenturyLink ("Grantee").

WHEREAS, the Grantor is authorized to grant one or more nonexclusive Franchises to construct, operate and maintain a cable television system within the municipal boundaries of the County; and

WHEREAS, the Grantor has considered the financial condition, technical ability and legal qualifications of Grantee; and

WHEREAS, the Grantor, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the financial, technical and legal qualifications of Grantee to provide cable television service within the County; and

WHEREAS, the Grantee is willing to accept this Agreement subject to such terms and conditions, and to abide by those terms and conditions; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's application to provide cable television service within the County;

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

### SECTION 1. DEFINITIONS

For the purposes of this Agreement and all exhibits attached hereto, 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 directory.

**1.1** "**Access**" means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video, Cable Service, and signals as permitted under applicable law, including, but not limited to:

(A) "**Public Access**" which means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users;

(B) "**Educational Access**" which means Access where Schools, colleges and universities are the primary users of programming and service;

(C) **“Governmental Access”** which means Access where governmental institutions or their designees are the primary users of programming and service; and

(D) **“PEG Access”** which means Public Access, Educational Access, and Governmental Access, collectively.

1.2 **“Access Center”** means a facility or facilities where Public, Educational, or Governmental use signals are managed and delivered to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

1.3 **“Access Channel”** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.

1.4 **“Affiliate”** when used in connection with Grantee means any corporation, Person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 **“Basic Service”** means any service tier which includes the retransmission of local television broadcast signals and Public, Educational and Governmental Access Channels, or as such service tier may be further defined by federal law.

1.6 **“Cable Act”** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996, and any future federal cable television legislation.

1.7 **“Cable Operator”** means any Person or groups of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

1.8 **“Cable Service”** means the one-way transmission of video programming or other programming service to Subscribers, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.9 **“Cable System”** shall have the meaning set forth in the Cable Act.

1.10 **“Telecommunications Commission”** means the Telecommunications Commission which advises the City/Clark County on matters pertaining to cable television.

1.11 **“Channel”** means a portion of the electromagnetic spectrum which is used in a Cable System and is capable of delivering a television Channel, as television Channel is defined by the FCC in other applicable regulations.

1.12 **“Designated Access Provider”** means the entity or entities designated by the Grantor to

manage or co-manage Public, Educational or Governmental use Channels and facilities. The Grantor may be a Designated Access Provider.

**1.13** “Downstream” means the transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

**1.14** “FCC” means the Federal Communications Commission.

**1.15** “Franchise” means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.

**1.16** “Franchise Area” means the area within the jurisdictional boundaries of the County where CenturyLink QC provides local exchange service.

**1.17** “Gross Revenues” means all amounts earned by the Grantee and derived from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area in accordance with Generally Accepted Accounting Principles. "Gross Revenues" shall include, without limitation, amounts for all Cable Services, premium services, advertising, revenues on sales of goods or services by third parties such as home shopping networks, installations, revenue received from programmers as payment for programming content cablecast on the cable system, and all other revenues derived from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area, regardless of whether initially recorded to an Affiliate.

“Gross Revenues” shall also include any amounts received or earned by any Affiliate of the Grantee in whatever form and from all sources, derived from the operation of the Grantee’s Cable System to provide Cable Services within the Franchise Area. However, “Gross Revenues” shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute “Gross Revenues” of both the Grantee and the Affiliate, shall be counted only once for purposes of determining “Gross Revenues.”

The definition of “Gross Revenues” includes those revenues collected as franchise fees and paid to the Grantor unless otherwise instructed by the Grantor. “Gross Revenues” shall exclude revenues from high speed cable modem service unless it is determined to be a Cable Service under federal law or regulation, any amounts received for managed I-Net from the Grantor or Institutional Subscriber, programming launch fees, reimbursements by programmers of marketing costs incurred by Grantee for introduction of new programming pursuant to written marketing agreements, 3<sup>rd</sup> party ad sales commissions, bad debt written off by Grantee in the normal course of business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected, and any taxes of general applicability collected from subscribers and paid to a governmental entity.

**1.18** “Headend” means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and

all other related equipment and facilities.

**1.19** “Institutional Network” or “I-NET” means the institutional network connecting Grantor’s public facilities and Institutional Subscribers within the Franchise Area all as described in greater detail in this Agreement.

**1.20** “Leased Access Channel” means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public.

**1.21** “Living Unit” means a distinct address as tracked in the QC network inventory, used by CenturyLink to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

**1.22** “Origination Point” means a location other than an Access Center, where Public, Educational or Governmental use programming is delivered to the Grantee for Upstream transmission.

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

**1.24** “QC” means Qwest Corporation d/b/a CenturyLink (“QC”), an Affiliate of Grantee.

**1.25** “Qualified Living Unit” means a distinct address in the QC network inventory database, including but not limited to single family homes, multi-dwelling units, and business locations, which meet the minimum technical qualifications defined by Company for provision of Cable Service.

**1.26** “School” means any accredited educational institution public or private primary and secondary schools.

**1.27** “Street” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, planter areas not including moveable planter boxes, easements, rights-of-way and similar public property and areas.

**1.28** “Subscriber” means any Person who elects to subscribe to, for any purpose, 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.

(A) “Residential Subscriber” which means any Subscriber who receives Cable Service delivered to single or multiple dwelling units, excluding such multiple dwelling units billed on a bulk-billing basis. For the purpose of this definition, “dwelling unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation

CenturyLink Agreement November 2015

- final

and sleeping, and that is lawfully occupied for residential purposes and is a Qualified Living Unit. Buildings with more than one set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

**1.29** “**Upstream**” means the carrying of 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) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Streets within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing only Cable Services and to provide related I-NET for data, subject to the terms and conditions set forth in this Agreement.

(B) This Agreement is intended to convey limited rights and interests only as to those Streets 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 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. This Agreement does not deprive the Grantor of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the Grantor's Streets covered by this Agreement, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

(C) This Agreement is subject to the general lawful police power of Grantor affecting matters of municipal concern and not merely existing contractual rights of Grantee. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor.

(D) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6), as amended and to provide related I-NET for data as described in Section 11.2. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions, including additional compensation conditions for use of the rights-of-way should Grantee provide service other than Cable Service and the I-NET as described herein. However, this Agreement shall not be read as a concession by Grantee that it needs authorization to provide service other than Cable Service and the I-NET described herein.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliated Entity of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the ownership, management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise. However, the parties acknowledge that Qwest Corporation (“QC”), an affiliate of Grantee, will be primarily responsible for the construction and installation

of the facilities in the Streets which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the County, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Streets is governed by Applicable Law. Grantee is responsible for all provisions in this Agreement related to: 1) its offering of Cable Services in the Franchise Area; and 2) the operation of the Cable System regardless of what entity owns or constructs the Facilities used to provide the Cable Service.

## **2.2 Use of Public Streets and Ways**

Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public Streets, including rights-of-way and public easements within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter, and must obtain any and all necessary permits from the Grantor prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable Grantor codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement.

## **2.3 Duration**

(A) *Term of Franchise.* This Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall expire on December 31, 2020 unless terminated sooner as provided in this Franchise or extended as provided in Section 2.4

## **2.4 Franchise Term Extension.**

- (A) The term of the Franchise under Section 2.3 hereof, and all rights, privileges, obligations and restrictions pertaining thereto, shall be extended:
- (B) An additional three (3) years to December 31, 2023 if, by December 31, 2018, Grantee offers Cable Services to twenty percent (20%) or more of the Living Units in the Franchise Area and duly notifies Grantor with reasonable documentation; and
- (C) An additional two (2) years to December 31, 2025 if, by December 31, 2021, Grantee offers Cable Services to thirty percent (30%) or more of the Living Units in the Franchise Area and duly notifies Grantor with reasonable documentation.

- (D) The extension of the term of this Franchise under Section 2.4(B). and 2.4(C) shall not become effective until after the Grantor has accepted Grantee's documents substantiating that Grantee has completed the requirements of Section 2.4(B) or Section 2.4(C), as applicable. Grantee shall submit reasonable documentation regarding achievement of the targets set forth in Section 2.4, 180 days prior to expiration of the initial or extended term of the Franchise as applicable.

## **2.5 Effective Date**

The effective date of this Agreement shall be January 1, 2016, unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by the date specified by Grantor's approving ordinance, in which event this Agreement shall be null and void, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Agreement are hereby terminated.

## **2.6 Franchise Nonexclusive**

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, right-of-way, easement, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may at any time grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional Franchises for Cable Systems as Grantor deems appropriate, upon such terms and conditions as Grantor deems appropriate.

## **2.7 Grant of Other Franchises Competitive Equity**

(A) The Grantee acknowledges and agrees that the Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises to provide Cable Service within the Franchise Area. If any additional competitive franchise is granted by the Grantor to provide Cable Service in the Grantee's Franchise Area pursuant to the Cable Act, which franchise is for an area where services have been extended by the Grantee and which contains material terms and conditions that are more favorable or less burdensome than the terms or conditions of this Franchise Agreement, then, the Grantor agrees that it shall amend this Franchise to ensure that, the material provisions of such other franchises and this Franchise are, taken together, materially equivalent or to the extent as may be required by law. "Material terms and conditions" include, but are not limited to: franchise fees; system build-out requirements; performance bonds or similar instruments; public, education and government access channels and PEG capital support; I-Net requirements; customer service standards; required reports and related record keeping; 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. The parties agree that, notwithstanding any provision of this subsection, the Grantor shall not be obligated to comply with the provisions of this subsection to the extent doing so would cause the Grantor to violate applicable laws or FCC rules. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of

CenturyLink Agreement November 2015

- final

this Section so long as Grantor does not have lawful authority to regulate such wireless broadband networks within the Franchise Area.

(B) In the event that a competitive franchise is granted by Grantor as described in Section 2.7(A) above which contains material terms and conditions that are more favorable or less burdensome than the terms of this Franchise, and notice thereof is duly provided to Grantee, the Grantee shall submit to Grantor in writing (1) the basis for Grantee's belief that certain provisions of its Franchise place Grantee at a competitive disadvantage; (2) the provisions of this Franchise to be amended; and (3) specific language modifying any such Franchise provisions. Grantor and Grantee shall negotiate in good faith such amendments to the Franchise within ninety (90) days, unless otherwise agreed to by the parties. If the parties fail to reach agreement in informal negotiations, either party may initiate mediation and the other agrees to participate in mediation in good faith. Each party shall bear its own cost for mediation. In the event the parties are not able to reach agreement in informal negotiations or mediation, Grantee may exercise its rights under Subsection (C) below.

(C) Grantee's notice to Grantor under this Subsection (C) shall be deemed to be Grantee's renewal notification pursuant to Section 626 of the Cable Act. Grantee may elect at any time prior to the commencement of the Grantee's thirty-six (36) month renewal window provided by 47 USC §546 to file a written notice indicating an election to shorten the term of this Franchise, and thereafter the term of Grantee's Franchise shall, ninety (90) days from the Grantee's written notice, be shortened so that the Franchise shall be deemed to expire on a date thirty six (36) months from the first day of the month following the date of Grantee's notice. Grantee shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the Grantor required. The Grantor and Grantee shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The Grantor and Grantee shall have all rights and obligations provided under said Section 626 (47 U.S.C. Section 546).

## **2.8 Non-Discrimination**

Grantee shall comply with applicable federal, state or local laws relating to non-discrimination. Grantee shall offer and provide Cable Services to all Persons within Qualified Living Units in the Franchise Area under non-discriminatory terms and conditions. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any Person, on the basis of race, religion, color, sex, marital status, familial status, national origin, age, disability, sexual orientation, income level or source of income.

Grantee shall not arbitrarily refuse to provide Cable Services to any Person within the Franchise Area. Grantee's designation of any Qualified Living Unit shall not be based upon race, religion, color, sex, marital status, familial status, national origin, age, disability, sexual orientation, income level or source of income.

Grantee's rates and charges shall be published, and shall be nondiscriminatory as to all Persons of similar classes, under similar circumstances and conditions.

Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of Subscriber's race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, disability, income source, or geographic location within the Franchise Area. Nothing in this Section shall be construed to prohibit:

The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens;

Grantee establishing different and nondiscriminatory rates and charges and classes of services for commercial subscribers, or Grantee from establishing reduced bulk rates for Subscribers.

## **2.9 Police Powers**

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

## **2.10 Relations to Other Provisions of Law**

This Franchise Agreement and all rights and privileges granted under the Franchise are subject to, and the Grantee must exercise all rights in accordance with, applicable law, including the Cable Ordinance, as amended over the Franchise term. However, this Franchise is a contract, subject only to the Grantor's exercise of its police and other powers and applicable law. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. In the case of any conflict between the express terms of this Franchise Agreement and the express terms of the Cable Ordinance and other ordinances, this Franchise Agreement shall govern. Grantee does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. The Franchise issued and the Franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein.

## **2.11 Effect of Acceptance**

By accepting the Agreement, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary. Notwithstanding the provisions of Section 5.3, the Grantee shall not be obligated to indemnify Grantor in a proceeding affecting the Cable System in which the Grantor chooses to intervene.

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

### **3.1 Franchise Fee**

As compensation for the benefits and privileges granted under this Agreement and in consideration of permission to use Grantor's Streets, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues derived from the operation of the Cable System to provide Cable Service in the Franchise Area. Accrual of such Franchise fees shall commence as of the effective date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes or payments of general applicability that the Grantee may be required to pay under any federal, state or local law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge or tax.

### **3.2 Payments**

Grantee's Franchise fee payments to Grantor shall be computed quarterly. Each quarterly payment shall be due and payable no later than forty-five (45) days after the last day of the preceding quarter.

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

No acceptance of any payment shall be construed as an accord by 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 Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

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

Each payment shall be accompanied by a written report to Grantor, 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**

Grantee shall, no later than one-hundred twenty (120) days after the end of each calendar year, furnish to Grantor a certified statement by an officer or designee of the company stating the total amount of Gross Revenues and all payments, deductions and computations for the period covered by the payments.

### **3.6 Audits**

On an annual basis, upon thirty (30) days' prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Agreement, in accordance with generally accepted

CenturyLink Agreement November 2015

- final

accounting principles. The Telecommunications Commission may hire for both the Grantor and the City of Vancouver an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that Franchisee fees have been underpaid by four percent (4%) or more, Grantee shall pay the reasonable cost of the combined audit up to \$15,000.

### **3.7 Interest on Late Payments**

In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the interest rate specified for judgments entered in the Superior Court of the State of Washington.

### **3.8 Alternative Remedies**

If any Section, subsection, paragraph, term or provision of this Franchise Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term or provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other Section, subsection, paragraph, term or provision hereof. Under such a circumstance, the Grantee shall, upon the Grantor's request, meet and confer with the Grantor to consider amendments to the Franchise Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within sixty (60) days, either party may either (1) resort to litigation to amend the Agreement; or (2) shorten the Agreement to 36 months, at which point either party may invoke the renewal procedures under 47 U.S.C. subsection 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

### **3.9 Additional Commitments Not Franchise Fees**

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees to Grantor. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under any federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

### **3.10 Costs of Publication**

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to the renewal of this Agreement and any amendments thereto, as such notice or publication is reasonably required by applicable law.

### **3.11 Tax Liability**

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

### **3.12 Payment on Termination**

If this Agreement 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, 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 a performance bond or other security provided by the Grantee.

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

### **4.1 Authority**

Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.

### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.

### **4.3 Filing of Rates and Charges**

(A) Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement. 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 provided that Grantee shall make reasonable efforts to notify Grantor in writing in advance of such promotions.

(B) Grantee shall provide upon request from Grantor 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.

### **4.4 Time Limits Strictly Construed**

Whenever this Agreement 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

CenturyLink Agreement November 2015

- final

allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. If Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by events beyond the reasonable control of Grantee, such as acts of God (for example, floods, tornadoes, earthquakes or unusually severe weather conditions), non-employer initiated work stoppage, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for such obligation which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

#### **4.5 Performance Evaluation Sessions**

(A) Grantor may hold performance evaluation sessions every two (2) years on the anniversary date of the effective date of this Agreement. All such evaluation sessions shall be conducted by Grantor.

(B) Special evaluation sessions related to potential franchise violations may be held at any time by Grantor during the term of this Agreement.

(C) All performance evaluation sessions shall be open to the public and announced at least one week in advance in the Franchise Area.

(D) Evaluation sessions shall deal with the Grantee's performance of the terms and conditions of the Franchise and compliance with state and federal laws and regulations.

(E) As part of the performance evaluation, Grantee shall make available to the Grantor a plant survey report, or map, acceptable to the Grantor which includes, but is not limited to, a publicly available description of the portions of the Franchise Area that are cabled and have all Cable Services available. Such report shall also include the number of miles and location of overhead and underground cable plant, and the number of miles (overhead and underground). If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, retains the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.

(F) During evaluations under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation.

### **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

#### **5.1 Insurance Requirements**

(A) General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property

CenturyLink Agreement November 2015

- final

which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.

(B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor from time to time. The Grantee shall obtain policies for the following initial minimum insurance limits:

(1) Commercial General Liability: Two-million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two-and-one-half million dollars (\$2,500,000) aggregate limit;

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

(3) Employer's Liability: Two-million dollars (\$2,000,000).

## 5.2 Deductibles and Self-Insured Retentions

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The Grantor, its officers, officials, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;

(b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, employees, and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) All policies shall contain, or shall be endorsed so that:

(a) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company

CenturyLink Agreement November 2015

- final

except after forty-five (45) days prior written notice, return receipt requested, has been provided to Grantor's representative pursuant to Section 19.2.

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

(C) Verification of Coverage. Within 30 days of a fully executed Franchise Agreement, Franchisee shall deliver to Grantor Certificates of Insurance showing evidence of the required coverage.

### **5.3 Indemnification**

(A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the design, construction, operation, maintenance or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement provided, however, the Grantee will not be obligated to indemnify Grantor for damage or injury resulting from the negligence or willful negligence of Grantor. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

- (1) To Persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees, or agents, or to which the Grantee's negligence shall in any way contribute;
- (2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels by Grantor and/or Designated Access Providers;
- (3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies; and
- (4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or unlawfully discriminatory manner. This provision shall only apply after the third party has pursued all contractual rights it may have

pursuant to any agreement it has, if any, with the Grantor.

(B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorneys' fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorneys' fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

#### **5.4 Faithful Performance Bond**

(A) The Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor, in a form approved by the Grantor, with good and sufficient surety approved by the Grantor in the total sum of one hundred fifty thousand dollars (\$150,000.00), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Such bond shall be posted as provided in Section 2.4 and by the Grantee throughout the term of this Franchise.

(B) Grantee shall pay all premiums charged for any bond required under Section 5.4 (A), and unless the Grantor specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:

- 1) The remaining term of this Franchise; or
- 2) If required by the Grantor, the removal of all of Grantee's system installed in Grantor's Streets and Public Ways.

(C) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first given to the Grantor. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the Grantor. Notice shall be given in conformity with section 19.2 of this Franchise Agreement.

(D) In a form approved by the Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the Grantor in all material respects the same rights and guarantees provided by a faithful performance bond.

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

CenturyLink Agreement November 2015

- final

## **6.1 Customer Service Standards**

The Grantee shall meet or exceed any customer service standards adopted by the FCC and, to the extent the same are stricter or address different matters, those lawfully adopted by ordinance in the future by the Grantor.

## **6.2 Subscriber Privacy**

Grantee will comply with privacy rights of Subscribers in accordance with federal, state and local law.

## **6.3 Local Office**

Throughout the Agreement term, the Grantee must maintain, at a minimum, one (1) customer service center conveniently located in the City of Vancouver Franchise Area which will be open during normal business hours, as defined by the FCC, to provide Subscribers the opportunity for the receipt and pickup of Subscriber equipment and for bill payments and complaints. Grantee shall install telephones and other equipment so that customer complaints and service requests can be received by Grantee on a 24-hour basis at a toll-free telephone number. Grantee shall have the option to substitute the service center requirement by providing for pick up or drop off of equipment free of charge in any one of the following manners: (a) by having Grantee representative going to the customer's residence, or (b) by using a prepaid mailer. Grantee also has the option to provide payment drop off locations within the Franchise Area. Grantee shall provide Grantor and Subscribers with at least sixty (60) days notice of election to discontinue the service center.

## **6.4 Emergency Broadcast**

Grantee will activate the Emergency Alert System (EAS) in compliance with the provisions and amendments of FCC Regulations Part 11, the Washington State EAS plan, and the local area EAS plan that applies to Clark County.

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

### **7.1 Open Records**

- (A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliated entities which are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, affiliated entity or a third party. 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 copy of all reports and records required under this or any other Section shall be furnished to 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 request, in writing within ten (10) days, that Grantor inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local area office and not made available in copies to Grantor upon written request as set forth above, and if Grantor determines that an examination of such records is necessary or appropriate to the performance of any of Grantor's duties, administration or enforcement of this Agreement, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee.

(B) Grantee shall at all times maintain and allow Grantor access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the Streets, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium agreed upon by the Grantor and the Grantee.

## **7.2 Confidentiality**

Grantor agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously marking or identifying as "Confidential" on each page that contains confidential or proprietary information. If Grantor believes it must release any such books and records marked or identified as "Confidential" in the course of enforcing this Agreement, in response to a public record request, subpoena or other court order, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time so Grantee may take appropriate steps to protect the information from disclosure.

## **7.3 Copies of Federal and State Documents**

Upon request, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. Grantee may claim such information and documents are confidential, privileged or proprietary consistent with applicable public records law.

## **7.4 Complaint File and Reports**

(A) Grantee shall keep an accurate and comprehensive file of any and all complaints

regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those files shall remain open to Grantor during normal business hours. Upon written request, Grantee shall provide an executive summary report quarterly (within 45 days of the end of the preceding quarter) to Grantor, which shall include the following information:

- (1) Nature and type of customer complaints;
- (2) Number, duration, general location and customer impact of unplanned service interruptions;
- (3) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System;
- (4) Average response time for service calls;
- (5) Phone activity report that includes use of automated response unit or voice response unit in answering and distributing calls from Subscribers at all call centers whether the calls are answered by a live representative, by an automated attendant or abandoned after 30 seconds of call waiting;
- (6) New areas constructed and available for Cable Service, including multiple dwelling units;
- (7) Video programming changes (additions/deletions);
- (8) Subscriber reports indicating the total number of Subscribers by service categories in such format as Grantee customarily prepares such reports; and
- (9) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.

(B) Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards, as referenced in Section 6.1. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance. Grantee reserves the right to object to any request made under this Section as unnecessary, unreasonable or inappropriate under the circumstances.

## **7.5 Inspection of Facilities**

Grantor may inspect upon request any of Grantee's facilities and equipment to confirm performance under this Agreement at any time upon at least twenty-four (24) hours notice, or, in case of an emergency, upon demand without prior notice.

## **7.6 False Statements**

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a material violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise.

## **SECTION 8. PROGRAMMING**

### **8.1 Broad Programming Categories**

Grantee's cable television system shall provide the widest diversity of programming possible. Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;
- (2) Washington State news and information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children/family-oriented;
- (6) Arts, culture and performing arts;
- (7) Foreign language;
- (8) Science/documentary;
- (9) Weather information;
- (10) Programming addressed to diverse ethnic and minority interests in the Franchise Area;
- (11) National, state, and local government affairs; and
- (12) Local programming regarding the City/Clark County, as well as regional issues, events and affairs.

### **8.2 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters 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.

### **8.3 Leased Access Channels**

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

### **8.4 Continuity of Service**

(A) 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 satisfied. Subject to the *force majeure* provisions of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.

(B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

### **8.5 Service for the Disabled**

Grantee shall comply with the Americans with Disabilities Act, any amendments thereto and any other applicable federal, state or local laws or regulations.

## **SECTION 9: PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

### **9.1 General Definitions**

With respect to purposes of this section, the following definitions will apply with respect to Public, Educational and Governmental use of the Cable Channels as provided herein.

(A) The term “channel”, as used in this Section, referencing access channels, refers to the channels designated for Public, Educational and Governmental (PEG) access use. The channels can be used to transmit signals in any format, and can be used to transmit audio only, video, or other information (including, by way of example and not limitation, secondary audio, text, digital information, high definition signals and compressed signals). A non-standard NTSC use shall be subject to the Grantee’s prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other channels. Such uses must be in furtherance of PEG uses. Additionally, there shall not be any lease of such PEG capacity without the express written permission of the Grantee.

(B) The term “Access Center” refers to a facility or facilities listed in Exhibit A where Public, Educational or Governmental use signals are managed and delivered to the Grantee for Downstream transmission to Subscribers, or to other Access Centers via a dedicated connection.

(C) “Designated Access Providers” refers to the entity or entities designated by the Grantor to manage or co-manage Public, Educational and Governmental use channels. The Grantor can be a Designated Access Provider.

(D) The term “Origination Point” refers to a location listed in Exhibit A, other than an Access Center, where Public, Educational and Governmental use programming is delivered to the Grantee for Upstream transmission.

(E) The term “PEG” refers to “Public, Educational and Governmental.”

## **9.2 Management and Control of Access Channels**

All PEG Access Channels provided for herein shall be administered by the Grantor or its designee. Grantor or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, 47 U.S.C. §531. Grantee shall cooperate with Grantor or its designee in the use of the Cable System for the provision of PEG Access Channels.

## **9.3 Channel Capacity and Use**

In order to ensure universal availability of Public, Educational and Government programming, Grantee shall provide Grantor, within one hundred twenty (120) days of the Effective Date of this Agreement or another agreed upon date if the location is not finalized at the execution of this agreement, six (6) dedicated Public, Educational, and Government Access Channels (“PEG Access Channels”). These six channels are shared by the City of Vancouver and Clark County. Grantee shall not be required to distribute to its Subscribers a greater number of PEG Access Channels than those distributed by other franchised Cable Operators providing Cable Service within the Franchise Area. All PEG Access Channels will be on the Basic Service Tier and will be fully accessible to Subscribers, consistent with FCC regulations. Grantee shall ensure that the signal quality for all PEG Access Channels is in compliance with all applicable FCC technical standards. Upon written notification from the Grantor that the incumbent cable provider is adding an additional PEG channel, Grantee shall work with Grantor to add the same channel to Grantee’s PEG lineup in the same manner as all other PEG channels, including placement on the Mosaic channel.

Grantee will use equipment and procedures that will minimize the degradation of signals that do not originate with the Grantee. Grantee shall provide regular and routine maintenance and repair/replacement of transmission equipment it supplies necessary to carry a quality signal on the PEG Access Channels and from any Origination Points provided for herein.

Within ten (10) days after the Effective Date of this Agreement, Grantor shall inform Grantee of the general nature of the programming to be carried on the initial PEG Access Channels set aside by Grantee. Grantor and Affected Jurisdictions authorize Grantee to transmit such programming within and outside the Franchise Area. Grantee shall assign the PEG Access Channels on its channel line-up as set forth in the notice from Grantor to the extent such channel assignments do not interfere with Grantee’s existing or planned channel line-up. Grantee may make PEG channels available via a multi view or mosaic display. If Grantor later changes the programming carried on a PEG Access Channel(s), Grantor shall provide Grantee with at least ninety (90) days notice of the change(s).

If a PEG Access Channel provided under this Article is not being utilized by Grantor, Grantee may utilize such PEG Channel, in its sole discretion, until such time as Grantor elects to utilize the PEG Access Channel for its intended purpose.

Grantee is not responsible for the content on the PEG channels.

#### **9.4 HD Channels**

Existing Access Channels: Grantee shall provide up to six (6) high definition (“HD”) Downstream Channels for distribution on Grantee’s Basic Service level of Public, Educational, and Governmental Access Programming provided the originating entity provides Grantee with an HD signal. Grantee does not relinquish its ownership of or ultimate right of control over Cable System capacity or a Channel position by initially designating it for PEG Access use.

(A) Grantee shall place the Access Channels under this Franchise on consecutive channel numbers in Grantee’s channel lineup where other commercial standard definition (SD) format channels are carried or, for the high definition (HD) format Access Channels, where other commercial HD format channels are carried.

(B) Grantee shall notify the County and the Designated Access Providers of the Access Channel assignments at least 60 days prior to Grantee making the Access Channels available to Subscribers.

If Grantee reassigns Access Channel numbers, Grantee shall provide at least 60 days advance notice to the County and the Designated Access Providers. Grantee shall also use the customer messaging function of its set-top unit to provide Subscribers the new channel assignments at least 30 days prior to the change and for at least 30 days after the change. In conjunction with any reassignment of any Access Channel, Grantee shall provide a minimum of \$5,000 compensation to a Designated Access Provider for costs associated with the change. Compensation shall be paid on a per-event basis, regardless of the number of channels affected by the change.

#### **9.5 Grantee’s Use of Mosaic Channel**

(A) Grantee may make PEG channels available via a multi view or mosaic display. If so, Grantee shall use Channel 21 in its channel lineup as a means to provide ease of access by Subscribers to the Access Channels placed on channel numbers significantly higher than the access channels have historically been placed under other cable services franchises in the County. Grantee refers to this type of channel as a “Mosaic Channel.” As used in this Section 9.5(A), “Mosaic Channel” means a channel which displays miniaturized media screens and related information for a particular cluster of channels with common themes. The Mosaic Channel serves as a navigation tool for subscribers, which displays the cluster of Access Channels on a single channel screen and also provides for easy navigation to a chosen Access Channel in the cluster.

(B) Grantee shall use its Channel 21 Mosaic Channel to display all Access Channels required under this Franchise, Grantee shall not include any other channel on the Channel 21 Mosaic Channel unless the County provides advance written consent.

(C) The Mosaic Channel mechanism shall allow subscribers to navigate directly from Channel 21 to the requested Access Channel in a single operation without any intermediate steps. When using the Channel 21 Mosaic Channel, Subscribers shall be directed to the requested Access Channel in a high definition (HD) format if appropriate to the Subscriber's level of service; otherwise, the Subscriber shall be directed to the standard definition (SD) Access Channel.

(D) Grantee shall consult with the Designated Access Providers to determine the Access Channels information displayed on the Channel 21 Mosaic Channel. However, the information shall be, at a minimum, reasonably commensurate with Grantee's display of commercial channels on Mosaic Channels.

#### **9.6 PEG Access Program Listings On Cable System's Digital Channel Guide.**

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow Grantor or the Designated Access Providers to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Grantor or the Designated Access Providers will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service. The cost for this service may be funded by the PEG fee as set forth below.

#### **9.7 PEG Access Interface with Grantee Video-On-Demand Capabilities.**

No later than twelve (12) months after the Effective Date, Grantee shall include up to 24 hours, at any given time, of high definition (HD) format Access programming on its video-on-demand ("VOD") platform to be accessible free of charge to Cable Services Subscribers on the same basis as commercially offered VOD content. Grantee shall downconvert HD format Access programming to a standard definition format when necessary to provide VOD Access programming to Subscribers without access to HD format VOD programming. Grantee agrees to work in good faith with the Designated Access Providers to establish a mutually agreeable process for placing Access programming on the VOD platform, including but not limited to, an efficient online, electronic method for provision of HD format programming to Grantee including encoding specifications for programming format. Grantee shall include Access VOD program information in its VOD program guides. Designated Access Providers are responsible for selecting the Access programming and providing it to Grantee in a high definition (HD) format. Grantee and the County recognize that future development of VOD technology may allow for the Designated Access Providers and Grantee to agree on a mutually acceptable alternative to including Access programming on Grantee's VOD platform and increasing the amount of Access programming available to Subscribers

## **9.8 Connection of PEG Access Headend:**

Grantor shall provide suitable video signals for the PEG Access Channels to Grantee at Grantor's PEG Access Headend located at Clark/Vancouver Television 415 W. 6<sup>th</sup> Street, Vancouver, WA 98660; TV ETC 2500 NE 65<sup>th</sup> Ave, Vancouver WA 98661; and Vancouver Community Access Television 1011 Main Street, Vancouver WA 98660 Upon receipt of a suitable video signal, Grantee shall provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Grantee's obligation with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Grantee, of suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and such cooperation of Grantor as is reasonably necessary for Grantee to fulfill such obligations. The Grantee shall, at Grantee's expense, provide connection, including all necessary terminal equipment for the transmission, of all PEG Access Channels required in this Agreement to and from the PEG Access Headend as of the Effective Date of this Agreement. If the Grantor designates new Access providers, or if a current Designated Access Provider moves its site or location at its own instigation after the Effective Date of this Agreement, the direct costs to construct the Cable System from the new site or location to the nearest distribution point of the Cable System shall not be the responsibility of Grantee and may be funded from the PEG fee set forth below.

## **9.9 Changes in Technology.**

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's Signal delivery technology, which directly or indirectly affects the Signal quality or transmission of Access services or Programming or requires Grantor to obtain new equipment in order to be compatible with such change for purposes of transport of and delivery of any Access Channels Grantee shall, at its own expense and free of charge to Grantor and the Designated Access Providers, take necessary technical steps or provide necessary technical assistance, including the purchase or acquisition and maintenance of all necessary equipment, and training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change

## **9.10 Technical Quality.**

The Grantee shall maintain all Upstream and Downstream Access services, Programming and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including transmitters/receivers, associated cable and equipment, necessary to carry a quality Signal to and from demarcation at Grantor's facilities.

## **9.11 Additional Permanent Live Origination Points**

Additional Permanent Live Origination Points requested by the Grantor in writing shall be provided by Grantee as soon as reasonably possible at the expense of Grantor. Such costs may be paid for from the PEG fee set forth below. There shall be no charge to the Grantor, to the

CenturyLink Agreement November 2015

- final

Commission, to any other Access program, or to any other Person for the use of the Upstream Capacity from the program origination locations described in this Section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

#### **9.12 PEG Fee**

(A) Except as otherwise provided herein, during the term of this Agreement, Grantee shall provide a maximum of one dollar (\$1.00) per month, per Residential Subscriber (the "PEG Fee") for Public, Educational and Governmental Access. The PEG Fee may be used for operational or capital support of PEG programming. At no time shall the monthly, per subscriber PEG Fee exceed the PEG Fee paid by any other franchised cable provider in the County. The PEG Fee shall be payable by Grantee to Grantor after (1) the approval of Grantor, if required, to the inclusion of the PEG Fees on the bills of Residential Subscribers, including any requirements for approval pursuant to 47 C.F.R. Section 76.922, (2) notice to Grantee's Residential Subscribers of such inclusion, and (3) the collection of the PEG Fee from such Residential Subscribers. Grantee shall make payments quarterly, following the effective date of this Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Grantor shall have discretion to allocate such payments for Access costs in accordance with applicable law.

Grantor may submit to Grantee a business plan for the expansion or improvement of PEG access facilities and equipment with information such as costs and timetable for implementation. Grantee shall review the business plan in good faith and shall consult with Grantor within 60 days of receipt of the plan. Grantor agrees to provide Grantee additional information and documentation reasonably requested by Grantee. At the request of Grantee, Grantor shall conduct a public hearing for the purpose of receiving public comment on the expansion or improvement of PEG access facilities and associated costs. Should Grantee and Grantor agree to terms and conditions through good faith negotiations regarding the expansion or improvement of PEG access facilities, the PEG Fee shall be adjusted to an amount up to a maximum of one and one-half percent (1.50%) of Gross Revenues from Cable Services provided to Residential Subscribers. Grantee shall implement the new PEG Fee no later than ninety (90) days after the effective date of the written agreement between Grantor and Grantee, provided such PEG Fee is applied at the same rate for all other cable providers in the County.

(B) The Grantor shall provide a report annually to the Grantee on the use of the funds provided to the Grantor under Section 9.12 (A). The first such report under this Franchise shall be submitted to the Grantee no later than January 1, 2017. Subsequent reports shall be submitted to the Grantee within one-hundred-twenty (120) days of the close of the Grantor's fiscal year. Grantee may review records of the Grantor and Designated Access Providers regarding the use of funds described in such report. Grantor agrees that the report shall document that, for each dollar (\$1.00) spent on PEG support for Access, an equivalent amount will be spent, in aggregate, by Grantor and Designated Access Providers on operating support for PEG Access.

(C) Grantee may conduct a financial review or audit for the purpose of verifying whether use of the PEG fee is in accordance with this Franchise. The Grantee shall notify the Grantor in writing at least thirty (30) days prior to the date of an audit or review and identify the

relevant financial records of Grantor and the Designated Access Provider that Grantee wants to review. The time period of the review or audit shall be for PEG fee payments received no more than thirty-six (36) months prior to the date the Grantee notifies the Grantor of its intent to perform an audit or review. The Grantor and recipients of the PEG fee shall make such documents available for inspection and copying. Documents shall be reviewed during normal business hours at a time and place made available by the Grantor or the Designated Access Provider.

Grantee shall promptly provide the Grantor with written notice of the audit or review's conclusions and reasons therefore. The Grantor shall have sixty (60) days to provide a written response. If the Grantor disputes Grantee's conclusions, the parties shall attempt in good faith to reach a mutually acceptable resolution. If the parties are unable to agree, either party may submit the issue to non-binding mediation or pursue any legal remedies.

(D) If Grantee believes that the PEG Fee as been spent on an impermissible purpose, it shall notify Grantor of its objection within 60 days of its receipt of the annual report or notice of request for financial review or audit. If it is determined that any PEG Fee has not been used in accordance with this Franchise, then within 30 days, one of the following actions shall occur:

(1) If the Grantor determines that the recipient has access to sufficient unrestricted funds, the Grantor may require either:

(a) That the recipient expend its unrestricted funds to achieve the stated purposes of the original PEG funding not spent in accordance with this Franchise; or,

(b) Upon demand, the recipient shall return the full amount of the PEG funding amount not spent in accordance with this Franchise to the PEG funding account.

(2) If the Grantor determines that the recipient does not have access to sufficient unrestricted funds, the Grantor may decide to either:

(a) Directly reimburse the PEG funding account for the amount not spent in accordance with this Franchise; or,

(b) Allow the Grantee to reduce future PEG payments by the amount not spent in accordance with this Franchise.

(3) The decision as to which of these options to exercise, under this Section shall be at the Grantor's sole discretion.

### **9.13 Access Support Not Franchise Fees**

(A) Grantee agrees that financial support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to Grantor. Grantee agrees that although the sum of Franchise Fees and the payments set forth in this Section may total more than five percent (5%) of

CenturyLink Agreement November 2015

- final

Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Agreement.

(B) Grantor recognizes franchise fees and certain additional commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Franchise and Grantee has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

#### **9.14 Access Channels On Lowest Tier**

All Access channels provided to Subscribers under this Agreement shall be included by Grantee on its lowest tier available to Subscribers.

### **SECTION 10. GENERAL STREET USE AND CONSTRUCTION**

#### **10.1 Construction**

(A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Franchise, Grantee, may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all Grantee's facilities within Streets incidental to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.

(B) Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Franchise and all applicable Grantor Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or 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 as far as possible the number of Street cuts.

(C) If the Grantee proposes street excavations or borings in order to install maintain, or alter its facilities, then Grantee shall apply for utility-street/right-of-way permit. If Grantee damages Grantor's underground facilities, then Grantee, at Grantee's cost, shall immediately repair the damaged facilities to as good as prior condition.

#### **10.2 Location of Facilities**

In doing work in the Street, Grantee shall comply with all applicable statutes, including but not limited to contacting the Utility Notification Center established pursuant to Chapter 19.122 RCW. Grantee shall further comply with applicable ordinances, standards, rules,

CenturyLink Agreement November 2015

- final

regulations and ordinances of Grantor when excavating in the Street.

### 10.3 Relocation

(A) **Relocation Within Streets.** Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Streets, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

If public funds, which Grantor received, are available to any other user of the Streets (except for Grantor) for the purpose of defraying the cost of relocating or removing facilities and Grantee relocates or removes its facilities as required by Grantor under this Franchise, the Grantor shall notify Grantee of such funding and will reimburse Grantee for such costs to the extent permitted or allowed by the funding source or applicable state law.

(B) **Movement of Cable System For and By Grantor.** The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the public right-of-way or on any other property of the Grantor in the case of fire, disaster, or other emergency, or when a project of the Grantor's makes the removal, replacement, modification or disconnection necessary. Except during an emergency, the Grantor shall attempt to provide reasonable notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action. Following notice by the Grantor, Grantee shall remove, replace, modify or disconnect any of its facilities or equipment within any Street, or on any other property of the Grantor, except that the Grantor shall provide at least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the Grantor's satisfaction, the Grantor may cause such work to be done and bill the reasonable cost of the work to the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Grantor. If in response to a request by the Grantor the Grantee removes or replaces any portion of its Cable System at its own expense in order to accommodate the installation or repair of a communications system used by the Grantor to provide commercial services in competition with Grantee, then Grantor shall reimburse Grantee for the reasonable expense of the removal or replacement.

(C) **Movement for Other Franchise Holders.** If any removal, replacement, modification or disconnection is requested by another franchise holder to accommodate the construction, operation or repair of the facilities or equipment of such other franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee and such other franchise holder shall determine how costs associated with the removal or relocation shall be allocated.

(D) **Movement for Other Permittees.** At the request of any Person holding a valid over legal load or structure move permit issued by Grantor, 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 permit holder, and Grantee may require a reasonable deposit of the estimated payment or payment of the full amount in advance.

#### **10.4 Restoration of Streets and Property**

(A) **Disturbance of Street Surface.** Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street in accordance with applicable ordinances, standards, rules, and regulations of Grantor. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to Grantor.

(B) **Street Excavations.** If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration in accordance with applicable ordinances, standards, rules, and regulations of Grantor within the area affected by the excavation. Grantor may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, perform any required work, or remove or repair any work done by Grantee which, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section in particular, shall be done in compliance with applicable rules, regulations and ordinances of Grantor. Prior to making any Street or right-of-way cuts or openings, Grantee shall obtain the required construction permit from Grantor.

(C) **Protection, Repair and Restoration of Property.**

(1) The Grantee shall protect public and private property from damage in connection with construction, maintenance and repair of its Cable System. If damage occurs the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(2) If public or private property is disturbed or damaged, the Grantee shall restore the property to as good as the former condition, normal wear and tear excepted. Streets or other Grantor property shall be restored, in a manner consistent with applicable ordinances, standards, rules and regulations of Grantor. If restoration of Street or other property of the Grantor is not satisfactorily performed within a reasonable time, the Director of Public Works may, after prior notice to the Grantee, or without notice where the disturbance or damage may create an immediate risk to public health or safety, or cause delay or added expense to a public project, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. If suit is brought upon Grantee's failure to pay for repair or restoration, and if judgment in such a suit is entered in favor of the Grantor, then the Grantee shall pay all of the Grantor's actual costs and

expenses resulting from the non-payment, including damages, interest from the date the bill was presented, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than seventy-two (72) hours except for circumstances beyond Grantee's control.

(D) **Notice – Private Property.** Prior to entering onto private property to construct, operate or repair its Cable System, Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work unless such work is being performed pursuant to a service order placed with the Grantee. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.

### **10.5 Maintenance and Workmanship**

(A) 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 Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, Grantor's authority.

(B) Grantee shall provide and use any equipment necessary to control and carry Grantee's cable television signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

### **10.6 Reservation of Grantor Street Rights**

(A) Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing or repairing sewers; grading, paving, repairing or altering any Street; constructing, repairing or removing water mains, sewers, surface water or storm sewers; or constructing, repairing, 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.

(B) However, if any of Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including, but not limited to construction, repair or removal of a water mains, sewers, surface water or storm sewers, Grantee shall remove or replace Grantee's Cable System in the manner Grantor shall direct. Should Grantee fail to remove, adjust or relocate its facilities within a reasonable period of time established by Grantor in its written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay. Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System on account of the removal, adjustment or relocation of Grantee's facilities pursuant to this subsection.

## **10.7 Street Vacation**

If any Street or portion thereof used by Grantee is vacated by Grantor during the term of this Agreement, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to Grantor, remove its facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by Grantor. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Street, Grantor may do such work or cause it to be done, and the reasonable cost thereof shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Agreement.

## **10.8 Discontinuing Use of Facilities**

Whenever Grantee intends to discontinue using any facility within the Streets, Grantee shall submit for 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 Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. 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 Grantor. Until such time as Grantee removes or modifies the facility as directed by 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 Street, 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, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental, or educational purposes.

## **10.9 Hazardous Substances**

(A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Streets.

(B) Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Streets 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 Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

## **10.10 Undergrounding of Cable**

(A) Wiring.

Where all electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, Grantee's Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other wire line service at no additional expense to the Grantor. Related Cable System equipment such as pedestals must be placed in accordance with applicable ordinances, standards, rules, and regulations of Grantor. However, nothing in this Franchise shall be construed to require Grantee to place underground its pedestals, appurtenances and equipment. In areas where 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.

(B) Poles, Conduit and Equipment.

(1) The Grantee shall utilize existing poles and conduit wherever possible.

(2) This Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the County or any other Person without their permission. Grantor may request copies of agreements for use of poles, conduits or other utility facilities upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

### **10.11 Codes**

Grantee shall adhere to all applicable building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question.

### **10.12 Standards**

(A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules 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, the Grantee must comply with applicable National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

(B) Grantee shall ensure that the drops are properly bonded to the electrical power ground at the home, consistent with the applicable requirements of the National Electric Code and the National Electrical Safety Code. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

### **10.13 Tree Trimming**

Subject to acquiring prior written permission of the Grantor, the Grantee shall have the authority to trim trees that overhang a Street of Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

## **SECTION 11. SYSTEM DESIGN**

### **11.1 Subscriber Network**

Where Grantee chooses to activate its Cable System, said System infrastructure 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 no less than 110 Channels of digital video programming services to Subscribers, provided that the Franchisee reserves the right to use the bandwidth in the future for other uses based on market factors.

### **11.2 Institutional Network**

(A) Grantee acknowledges that the County has acquired I-Net capacity, facilities, interconnection, services and resources from existing franchised cable service providers to design, construct and operate an Institutional Network and to facilitate PEG Institutions' uses of the I-Net. The parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities or services provided under other cable services franchises.

(B) The Parties may mutually agree on future I-Net capacity, Interconnect, facilities and/or services to be provided by Grantee to meet identified I-Net needs of Grantor and/or PEG Institutions. Grantee may deduct the agreed upon Incremental, direct costs of providing such I-Net capacity, facilities and/or services from I-Net funds.

(C) I-Net Not Common Carrier. Nothing in this Franchise or Section 11.2 hereof shall be deemed by the Grantor or Grantee to subject Grantee's operations, or I-Net Services provided by Grantee under authority of this Franchise, if any, to regulation as a common carrier within the meaning of applicable state or federal law.

Notwithstanding any provision to the contrary, if at any time it is determined by a court or agency or legislature of competent and controlling jurisdiction that the use or provision of the I-Net constitutes a Telecommunications Service, or that the provision of the I-Net by Grantee in accordance with this Franchise is unlawful, such use or provision of the I-Net shall be terminated, amended, or otherwise transitioned to another provider as may be agreed upon by the parties. For the purpose of this Section, "Telecommunications Service" means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

## **SECTION 12. Test and Compliance Procedures**

Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Tests may be witnessed by representatives of Grantor, and written test reports may be made available to Grantor upon request.

As required by FCC Rules, Grantee shall conduct proof of performance tests to demonstrate compliance with FCC requirements. Grantee shall provide Grantor summary written reports of the results of such tests.

## **SECTION 13. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION**

### **13.1 Equivalent Service**

It is Grantee's general policy that all Qualified Living Units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Service to any Person that is in a Qualified Living Unit within its Franchise Area.

### **13.2 Service Availability**

Provision of Cable Service in General. Subject to the provisions of this Franchise, Grantee is authorized to provide Cable Services within the Franchise Area

In General. Except as otherwise provided herein, where Grantee chooses to activate its network Grantee shall provide Cable Service within seven (7) days of a request by any Person in a Qualified Living Unit within the County. For purposes of this subsection, 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. Grantee shall provide such service at non-discriminatory monthly rates for Residential Subscribers, consistent with applicable law.

(A) Subject to Section 2.8 (non-discrimination), while Grantee is granted a franchise to serve within the County, subject to the provisions of this subsection, the parties acknowledge that Grantee shall have the sole discretion to determine where and when to activate its network and offer Cable Services to Subscribers.

(B) Service to Multiple Dwelling Units. The Grantee shall offer the individual units of a Multiple Dwelling Unit, that are Qualified Living Units, all Cable Services offered to other Dwelling Units in the County and shall individually wire units upon request, and appropriate payment, from the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit and receiving appropriate payment from the property owner or other authorized person on behalf of the property owner or tenant. The

County acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Extension of Service. Following the Service Date, Grantee shall provide Cable Services upon request from any Person in the Franchise Area who resides in a Qualified Living Unit. Grantee shall provide information to the County upon request identifying additional Qualified Living Units in the County.

### **13.3 Connection of Public Facilities**

Upon request, Grantee shall provide without charge the Basic Service Tier, an expanded programming service Tier and one standard outlet to any County owned and occupied buildings, schools and public libraries that are Qualified Living Units located in areas where Grantee provides Cable Service, provided that such facilities are not already receiving such service from another cable provider. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of County buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.*, golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes.

## **SECTION 14. STANDBY POWER**

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks. In addition, throughout the term of this Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours.

## **SECTION 15. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE**

### **15.1 Procedure for Remediating Franchise Violations**

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

(1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection C below; or

(2) Cure the violation; or

(3) Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, because of the nature of the violation and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (B) below.

(B) In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor or its designee may set a public hearing within thirty (30) days of Grantor's receipt of such notice to review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found to be reasonable, the same shall be approved by the Grantor, who may waive all or part of the liquidated damages for such extended cure period in accordance with the criteria set forth in subsection (E) of this section.

(C) In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor or designee pursuant to subsection (B), the Grantor or designee shall set a public hearing to determine what sanctions shall be applied. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (A)(1) above, the Grantor or designee shall set a public hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what sanctions shall be applied.

(D) In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Grantor shall also hear any other Person interested therein.

(E) The liquidated damages set forth in Section 15.3 of this Agreement may be reduced at the discretion of the Grantor or designee, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (1) Whether the violation was unintentional;
- (2) Whether substantial harm resulted;
- (3) Whether there is a history of prior violations of the same or other requirements;
- (4) Whether there is a history of overall compliance; and/or
- (5) Whether the violation was voluntarily disclosed, admitted or cured.

(F) If, after the public hearing, Grantor or designee determines that a violation exists, Grantor or designee may utilize one or more of the following remedies:

(1) Order Grantee to correct or remedy the violation within a reasonable timeframe as Grantor or designee shall determine;

(2) Establish the amount of liquidated damages set forth in Section 15.3, taking into consideration the criteria provided for in subsection (E) of this Section; provided that amounts in excess of fifty thousand dollars (\$50,000) shall be subject to Subsection (G) of this Section;

(3) Revoke this Agreement, subject to subsection (G) of this Section; and/or

(4) Pursue any other legal or equitable remedy available under this Franchise or any applicable law.

(G) This Agreement shall not be revoked nor shall liquidated damages in an amount in excess of fifty thousand dollars (\$50,000) be imposed except by Grantor's designated appropriate authority after notice and hearing as set forth in this Section.

(H) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law. Such court shall be in the Superior Court of the State of Washington, Clark County or the appropriate federal court in the Western District of Washington.

## **15.2 Revocation**

(A) In addition to all other rights and powers retained by the Grantor under this Franchise or otherwise, the Grantor reserves the right to revoke this Franchise and all rights and privileges of the Grantee hereunder, in whole or in part, in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to, the following:

(1) Violation of any material provision of this Franchise, or any material rule, order, regulation or determination of the Grantor or authorized agent made pursuant to this Franchise;

(2) Attempt to evade any material provision of this Franchise or to practice any fraud or deceit upon the Grantor or its Subscribers;

(3) Failure to restore service after forty-eight (48) consecutive hours of interrupted service system-wide, except when approval of such interruption is obtained from the Grantor or designee or;

(4) Material misrepresentation of fact in the application for or negotiation of CenturyLink Agreement November 2015

this Franchise.

### 15.3 Liquidated Damages

(A) Amounts. Because the Grantee's failure to comply with provisions of the Agreement will result in injury to the Grantor, and because it will be difficult to estimate the extent of such injury in certain instances, the Grantor and the Grantee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury.

(1) For failure to extend Cable Service within the Franchise Area as required in this Franchise: two-hundred fifty dollars (\$250) per incident per day.

(2) For failure to provide for Public, Educational, and Governmental Access Channels required in this Franchise: five-hundred dollars (\$500) per incident per day.

(3) For violation of applicable customer service standards: two hundred fifty dollars (\$250) per incident per day.

(4) For all other material violations of this Franchise, other than those specified in this section, for which actual damages may not be ascertainable: one-hundred fifty dollars (\$150) per incident per day for such material provision of this Franchise that is violated.

For the purposes of this Section, the term "per incident" means a single occurrence of a material violation without regard to number of customers.

(B) Date of Violation, Notice and Opportunity to Cure. The date of violation will be the date of the event and not the date the Grantee receives notice of the violation, provided, if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation. The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall decide whether to accept or reject the remedial plan presented by the Grantee. Liquidated damages occur only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the remedial plan. The procedures provided in Section 15, shall be utilized to impose any liquidated damages.

(C) Collection of Liquidated Damages. The collection of liquidated damages by the Grantor shall in no respect affect:

(1) Compensation owed to Subscribers; or

(2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or

(3) Equitable remedies available to the Grantor, provided that collection of liquidated damages shall be the exclusive monetary remedy for the particular incident for which it is imposed other than reasonable attorney fees and costs if applicable.

#### **15.4 Removal**

(A) In the event of revocation of this Franchise, pursuant to Section 15.2 of this Franchise, or expiration, following the renewal process pursuant to Section 17.1 of this Franchise, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Street-use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by 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 Streets, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.

(B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs or Grantor may recover the costs through the Performance Bond provided by Grantee.

#### **15.5 Receivership and Foreclosure**

(A) At the option of Grantor, subject to applicable law, this Agreement 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 receiver(s) or trustee(s) have, within one-hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement, and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked sixty (60) days after service of such notice, unless:

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

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

### **15.6 No Recourse Against Grantor**

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, as provided by applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under federal, state or local law.

### **15.7 Nonenforcement by Grantor**

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

### **15.8 Relationship of Remedies**

The remedies provided for in this Agreement are cumulative and not exclusive except as provided in Section 15.3 hereof; the exercise of one remedy shall not prevent the exercise of another, or any rights of the Grantor at law or equity.

## **SECTION 16. ABANDONMENT**

### **16.1 Effect of Abandonment**

If the Grantee abandons its System during the Agreement 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 Agreement 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.

### **16.2 What Constitutes Abandonment**

The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:

(A) The Grantee fails to provide Cable Service in accordance with this Agreement over a substantial portion of the Franchise Area for forty-eight (48) consecutive hours, unless the Grantor authorizes a longer interruption of service; or

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

## **SECTION 17. FRANCHISE RENEWAL AND TRANSFER**

### **17.1 Renewal**

(A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Acts, 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) In addition to the procedures set forth in said Section 626(a), the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. 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 the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Acts.

### **17.2 Transfer of Ownership or Control**

(A) Except as otherwise set forth herein, the Cable System and this Agreement 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, 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 not be unreasonably withheld.

(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. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to

CenturyLink Agreement November 2015

- final -

cancellation unless and until the Grantor shall have consented 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 law and the Grantor.

(D) The Grantor shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all requested information. 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.

(E) 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.

(F) 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, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.

(G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

(H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage 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 provisions of the Agreement. No consent shall be required for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

## **SECTION 18. SEVERABILITY**

If any Section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement.

## SECTION 19. MISCELLANEOUS PROVISIONS

### 19.1 Preferential or Discriminatory Practices Prohibited

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

### 19.2 Notices

Throughout the term of the Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such addresses shall be:

- (1) Qwest Broadband Services, Inc (d/b/a CenturyLink  
Attn: Public Policy  
1801 California Street, 10<sup>th</sup> floor  
Denver, Colorado 80202

With copy to: Qwest Broadband Services  
Attn: Public Policy  
310 SW Park Ave, 11<sup>TH</sup> Floor  
Portland, Oregon 97205

All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such address shall be:

City of Vancouver  
Cable TV Office  
P.O. Box 1995  
Vancouver, WA 98668-1995

With copy to:  
Clark County Prosecuting Attorney's Office  
Civil Division, P.O. Box 19955000  
Vancouver, WA 98668-5000

### 19.3 Binding Effect

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

#### **19.4 Authority to Amend**

This Agreement may be amended at any time by written agreement between the parties.

#### **19.5 Governing Law**

This Agreement shall be governed in all respects by the laws of the State of Washington.

#### **19.6 Captions**

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

#### **19.7 Construction of Agreement**

The provisions of this Agreement shall be liberally construed to promote the public interest.

#### **19.8 Force Majeure**

(A) For purposes of this Franchise, the term "Force Majeure" shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, strikes, non-employer initiated work stoppages, explosions, lockouts or other industrial disturbances, insurrections, public riots, partial or entire failure of utilities, documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and other similar events which are not reasonably within the control of the distressed party.

(B) If either party is wholly or partially unable to carry out or perform its obligations under this Franchise as a result of Force Majeure, the distressed party shall not be deemed in violation or default during the duration of the Force Majeure. The distressed party shall take immediate and diligent steps to comply as soon as possible under the circumstances, and shall take all necessary corrective steps to remedy as expeditiously as possible the non-compliant responsibilities and duties affected by the Force Majeure. The distressed party shall give prompt notice of such Force Majeure, describing the same in reasonable detail. The distressed party's obligations under this Franchise shall not be deemed in violation or default for the duration of the Force Majeure.

#### **19.9 Attorneys' Fees**

In the event of litigation between the parties, the prevailing party in such action shall be entitled to recover, in addition to damages, injunctive relief, reasonable costs and expenses, including, but not limited to, reasonable attorney fees, court costs and expert witness fees subject to court approval. Such costs such shall include reasonable attorney fees, costs and expenses incurred at trial and appeal.

**19.10 Survival**

The provisions of Sections 3.12 - Payment on Termination, 5.3 – Indemnification, 7.2 – Confidentiality, 10.3 – Relocation, 10.8 - Discontinuing Use of Facilities, 15.3 Liquidated Damages, Section 15.4 Removal, and 16 - Abandonment and of any other indemnity provisions elsewhere contained in this Agreement shall survive the expiration or earlier revocation of this Agreement.

AGREED TO THIS 8<sup>th</sup> DAY OF Dec ~~2016~~ <sup>2015</sup>.

CLARK COUNTY, WASHINGTON

QWEST BROADBAND SERVICES, INC.  
d/b/a CENTURYLINK

BOARD OF COUNTY COUNCILORS  
FOR CLARK COUNTY, WASHINGTON

By:   
David Madore, Chair

By: \_\_\_\_\_

By: \_\_\_\_\_  
Jeanne Stewart, Councilor

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Tom Mielke, Councilor

APPROVED AS TO FORM ONLY:

Anthony F. Golik, Prosecuting Attorney

By:   
Christine Cook, Sr. Deputy Prosecuting Attorney