CITY OF STANWOOD
FINANCE COMMITTEE STAFF REPORT

ITEM NUMBER: 2

DATE: August 21, 2014

SUBJECT: Review and Cable Television Franchise Agreement and Proposed Cable TV Regulations

CONTACT PERSON: Greg Thramer, Finance Director

ATTACHMENTS:

A – Proposed Draft Cable TV Franchise Agreement with WAVEDIVISION I, LLC (08/08/2014 Draft)

B – Proposed Cable TV System Regulations (7/21/2014 Draft with Staff Comments)

ISSUE

1. Should the city move forward with the process negotiating a ten (10) year cable TV franchise agreement with Wave and adopting new cable TV regulations?

SUMMARY

On January 18, 2007, the city council adopted Ordinance No. 1199 which granted a cable TV franchise agreement to Wave within the city limits of Stanwood. This agreement ran for seven (7) years and expired on January 29, 2014.

Since staff needed more time to negotiate with Wave for the next cable TV franchise agreement, council recently adopted Ordinance 1367, which extends the current 7-year cable TV franchise agreement with Wave until the later of September 30, 2014 or such time that the franchise is renewed in writing by mutual agreement of the parties.

City staff has been working with its consultant , Bob Duchen of River Oaks Communications, and the city attorney to negotiate a new ten (10) year cable TV

franchise agreement (Attachment A) and a new set of updated cable TV regulations (Attachment B).

DISCUSSION

Presented below for finance committee review and discuss are the current draft versions of a proposed ten (10) year cable TV franchise agreement with Wave Cable, along with proposed new cable TV regulations for finance committee review and discussion. Based on input from finance committee, Bob Duchen, Grant Weed, city staff and Wave Cable, staff expects to bring forward updated versions of each document for council review and approval at a future council meeting.

FINANCIAL IMPACT

Under the current franchise agreement, the city currently receives a franchise fee from Wave which is 5% of gross revenues. The franchise fee ($54,751.20 in 2013) is deposited in the general fund.

Under the Cable Act, a franchising authority may not charge more than 5% of gross revenues, so the city is maxed out on the rate.

FINANCE COMMITTEE OPTIONS

1) Approve proposed cable TV franchise agreement and regulations in their current draft form and direct staff to work with River Oaks Communications Corporation, the city attorney and Wave to prepare final documents to bring forward to the full city council for approval at a future meeting.

2) Do not approve proposed cable TV franchise agreement and regulations in their current draft form and direct staff to work with River Oaks Communications Corporation, the city attorney and Wave to prepare final documents to bring forward to the full city council for approval at a future meeting.

3) Do not approve proposed cable TV franchise agreement and regulations in their current draft form and direct staff to address specific finance committee questions or areas of concern.

FINANCE COMMITTEE MOTION

"I move to approve proposed cable TV franchise agreement and regulations in their current draft form and direct staff to work with River Oaks Communications Corporation, the city attorney and Wave to prepare final documents to bring forward to the full city council for approval at a future meeting."

Attachment A

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ORDINANCE NO. ~~1199~~ ____

AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, GRANTING A ~~SEVEN (7)~~ TEN (10) YEAR FRANCHISE TO PROVIDE CABLE TELEVISION SERVICE WITHIN THE CITY OF STANWOOD TO ~~WAVE DIVISION HOLDINGS IV~~ WAVEDIVISION I, LLC, dba WAVE BROADBAND, SETTING FORTH THE TERMS AND CONDITIONS OF SAID SERVICE~~, ESTABLISHING PENALTIES,~~ AND FIXING AN EFFECTIVE DATE.

WHEREAS, WaveDivision I, LLC dba Wave Broadband ~~(previously Northland Cable)~~ has been operating a Cable Television System within the City of Stanwood ("City") pursuant to a previously granted cable television franchise; and

~~WHEREAS, the City has repealed the former franchise ordinance under which Wave Broadband and Northland Cable were operating and has~~ adopted ~~a new Master Cable Ordinance No. 1156~~ new Cable System Regulations (hereinafter referred to as the ~~"Master Ordinance"~~ "Cable System Regulations"), regulating the provision of cable television ~~and open video systems~~ within the City ~~of Stanwood~~; and

WHEREAS, ~~the~~ Wave Broadband has requested that it be granted a cable franchise ~~following the expiration of~~ to replace its previous franchise (Ordinance No. 1199); and

WHEREAS, the City has analyzed and considered the technical ability, financial condition, legal qualification, and general character of Wave Broadband and has determined that it is in the best interest of the City and its residents to grant ~~the~~ this cable Franchise in accordance with the ~~Master Ordinance~~ Cable System Regulations; and

WHEREAS, Wave Broadband and the City have agreed to be bound by the conditions hereinafter set forth;

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

Section F1: Franchise Granted.

A. Grant. The City~~ of Stanwood (hereinafter referred to as the "City")~~ hereby grants to~~ Wave Division Holdings IV~~ WaveDivision I, LLC dba Wave Broadband~~ (previously Northland Cable)~~ (hereinafter referred to as the "Operator" or "Wave") a ~~C~~cable ~~T~~television ~~F~~franchise, in accordance with the provisions of the~~ Master Ordinance~~ Cable System Regulations and this Franchise Agreement (hereinafter also referred to as the ~~"Franchise Ordinance" or~~ "Franchise" or "Agreement"), authorizing the Operator to construct, reconstruct, upgrade, maintain and operate a Cable~~ Television~~ System in, along, among, upon, across, above, over, under, or in any manner connected with the streets and public rights-of-way within the Franchise area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any street or public right-of-way such Facilities and equipment as may be necessary or appurtenant to the Cable~~ Television~~ System.

B. Other Ordinances. The Operator agrees to comply with the terms of the~~ Master Ordinance~~ Cable System Regulations and any other lawfully adopted generally applicable City ordinance, as provided in~~ Section M6 of~~ the~~ Master Ordinance~~ Cable System Regulations.

C. Police Powers. Operator's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary for the safety, health and welfare of the public, and Operator agrees to comply with all such applicable laws, ordinances and regulations lawfully enacted pursuant to the police powers of the City, or hereafter enacted in accordance therewith,

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by the City. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, provided that such ordinances shall be reasonable and not destructive of the rights granted in this Franchise. Operator shall pay those costs (in accordance with applicable law) associated with moving its System within the Right-of-Way as a result of the City's lawful exercise of its police powers.

~~C~~D. Definitions. ~~The words used in this Franchise that are defined in Section M1 of the Master Ordinance shall have the meanings provided therein.~~ For the purposes of this Franchise and the Appendices attached hereto, the following terms, phrases, words and their derivations shall have the meanings 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.

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

"Basic Service" means any cable service tier that includes, at a minimum, the retransmission of local television broadcast signals and local Access channels.

"Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without

using any public Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. 573 and federal regulations; or (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, Cable System refers to Operator's Cable System in the Franchise Area.

"Expanded Basic Service" means the tier of optional video programming services which is above "Basic Service," and does not include "premium services."

"Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of the Franchise.

"Gross Revenues" means any and all revenue derived directly or indirectly by the Operator, or by Operator's Affiliates, from the operation of Operator's Cable System to provide Cable Services in the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Service, Expanded Basic Service, other tiers of Cable Service, Premium Services, Pay-Per-View, Pay-Per-Event, Video On Demand, High Definition; Cable Service installation, disconnection, reconnection, trip charges related to Cable Service and change-in-service fees, Leased Access Channel fees, Cable Service lease payments to the Cable System, late fees, convenience fees and administrative fees; payments or other consideration received by the Operator from programmers for carriage of Cable Services on the Cable System and accounted for as revenue under GAAP; revenues from rentals of converters or other Cable System equipment, advertising sales

revenues; the fair market value of consideration received by the Operator for use of the Cable System to provide Cable Service and accounted for as revenue under GAAP; revenues from electronic program guides, revenue from Cable Internet Service to the extent that service is considered a Cable Service under federal or State law, any device used to facilitate Cable Service, additional outlet fees, Franchise Fees, FCC user fees, revenue from interactive services to the extent they are considered Cable Services under federal or State law, revenue from the sale or carriage of other Cable Services, and revenues from home shopping. Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Operator which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Operator on behalf of said governmental unit. The Franchise Fees are not such a tax, and are therefore included in Gross Revenues.

"Institutional Network" or "I-Net" means that part of a Cable System's facilities or capacity designated for noncommercial communications to, from and among the City, police, fire, government agencies, schools and library via cable, owned by the Operator.

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~~D. Cost Reimbursement. Pursuant to Section M35 of the Master Ordinance, the Operator shall reimburse the City for its out-of-pocket costs associated with the franchising process within 30 days of receipt of appropriate invoice from the City, which amount shall include the City's reasonably necessary franchise processing costs such as consulting fees and expenses and fees associated with publishing notices and ordinances.~~ ***[Concept moved.]***

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Section F2: Length of Franchise.

The length of this Franchise shall be for a term of ~~seven~~ ten years, unless terminated sooner as provided under the terms of ~~the Master Ordinance~~ this Franchise.

Section F3: Franchise Area

The Operator's service area shall be the entire incorporated area of the City, in its present incorporated form or in any later reorganized, consolidated, enlarged through annexation, or re-incorporated form ("Franchise Area").

Section F4: Franchise Fee.

The Operator shall pay to the City quarterly, on or before the thirtieth (30th) day after the end of each quarter (March, June, September, December), a sum equal to five percent (5%) of Gross Revenues ~~as defined in the Master Ordinance,~~ for the preceding three calendar months.

The City may amend this Franchise by ordinance to modify the Franchise Fee, if so permitted by federal and state law. Prior to implementation of any modification in Franchise Fees, the Operator may request a public hearing by the City Council to discuss said modification.

A. Late Payment. Any quarterly Franchise Fee not paid by the Operator within 45 days of the end of a quarter shall bear interest at 12%, from the date due until paid.

B. Financial Reports. Each Franchise Fee payment shall be accompanied by a financial report in a form approved by the City, showing the basis for the Operator's computation, including, revenues received by the Operator within the City from such items as Basic Service, Expanded Basic Service, pay TV service, other applicable sources of revenue, and such other information directly related to confirming the amount of the Operator's Gross Revenues as may be reasonably required by the City.

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C. Audit by City. The City may, upon seven (7) days advance notice, inspect the books and records of the Operator during normal business hours, for the purpose of confirming the actual Gross Revenues collected by the Operator for the previous year. In the event that such audit discloses a discrepancy of more than ten percent (10%) between the financial report submitted by the Operator with a quarterly payment and the actual quarterly Gross Revenues collected by the Operator, the Operator agrees to pay to the City for the actual cost of the audit. In the event that such audit results in a determination that additional Franchise Fees are due the City, the Operator further agrees to pay interest as required for late payments on such additional Franchise Fees computed from the date on which such additional Franchise Fees were due and payable.

D. Non-Waiver. Acceptance of any Franchise Fee payment by the City shall not be construed as an agreement by the City that the Franchise Fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Ordinance.

E. Taxes. Nothing in this Section shall limit the Operator's obligation to pay applicable local, state, or federal taxes.

F. Additional Commitments Not Franchise Fees. No term or condition in this Franchise shall in any way modify or affect Operator's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Operator's Gross Revenues in any 12-month period, Operator agrees that the additional commitments herein are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers.

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Section F5: General Right-of-Way Use and Construction

A. Right to Construct. Subject to generally applicable laws, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Operator may perform all construction in the Rights-of-Way for any facility needed for the maintenance, upgrade or extension of Operator's Cable System.

B. General Standard. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be durable and installed in accordance with good engineering practices.

C. Joint Trenching/Boring. Whenever it is possible and reasonably and financially practicable to joint trench or share bores or cuts, Operator shall work with other providers (such as, but not limited to, telecommunications, gas and electric companies), licensees, permitees and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Franchise Area.

D. Movement of Facilities During Emergencies. During emergencies, the City may move Operator's facilities without prior notice.

E. One Call. Operator will maintain membership in good standing with the Utility Coordinating Council or other similar or successor organization which is designated to coordinate underground equipment locations and installations. Operator shall abide by the State's "Underground Utilities" statutes and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

F. Permits Required for Construction. Prior to doing any work in the Right-of Way or other public property, Operator shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are

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necessary for the purpose of protecting any structures in such Rights-of-Way, and in providing for the proper restoration of such Rights-of-Way and to protect the public and the continuity of pedestrian or vehicular traffic. Operator shall pay all generally applicable fees for the requisite City permits.

G. Emergency Permits. In the event that emergency repairs are necessary, Operator shall immediately notify the City of the need for such repairs. Operator may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

H. Compliance with Applicable Codes.

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1. City Codes. Operator shall comply with all applicable City codes, including, without limitation, construction codes, building codes, the Fire Code, ~~Public Works~~ Street and Utility Standards and zoning codes and regulations as they now read or are hereinafter amended.

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2. Regulations and Safety Codes. Operator shall comply with all applicable federal, State and City safety requirements, rules, regulations, laws and practices. By way of illustration and not limitation, Operator shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

I. GIS. Upon thirty (30) days written request by the City, Operator shall provide a map of those portions of the Cable System that are located within the Public Right-of-Way in both a digital format for use in GIS, either shapefile or geodatabase format, and in a hard copy format. The data shall indicate locations of overhead cables and underground cables. Operator warrants the map and information supplied as accurate, and agrees to update the map and information timely with any changes made in the Cable System in the Right-of-Way. Operator

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agrees to save, indemnify and hold harmless City from any claim, damages, or cause of action arising from work in the Right-of-Way commenced or stopped because of inaccuracies in the map or information, including, but not limited to, costs of re-design, costs of relocation, costs of delay or otherwise. This indemnity shall include all City costs and reasonable attorneys' fees incurred by City in defending a claim, or cause of action brought against the City for damages, and for the City's costs and reasonable attorneys' fees incurred by City in enforcing this indemnity.

J. Least Interference. Work in the Right-of-Way, or on other public or private property, shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Operator's Cable System shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Operator's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to unreasonably interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with travel and use of public places by persons during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such unreasonable interference, the City may require the removal or relocation of Operator's lines, cables, equipment and other appurtenances from the property in question at Operator's expense.

K. Prevent Injury/Safety. Operator shall provide and use any equipment and facilities necessary to control and carry Operator's signals so as to prevent injury to the City's

property or property belonging to any Person. Operator, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Operator in the Rights-of-Way shall be properly safeguarded to ~~for the~~ prevent~~ion of~~ accidents.

L. Notice to Private Property Owners. Except in the case of an emergency involving public safety or an outage, or service interruption to a large number of Subscribers, Operator shall give reasonable advance notice to private property owners or tenants of work on or adjacent to such private property.

M. Underground Construction and Use of Poles.

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1. The Operator shall utilize existing poles and conduit wherever possible.

2. In areas where either electric or telephone utility wiring is aerial, the Operator 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.

3. Where electric and telephone lines are underground at the time of Cable System construction or upgrade, or when such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers. Related Cable System equipment, such as pedestals or power supplies, must be placed in accordance with the City's applicable code and permit requirements and rules.

4. This Franchise does not grant, give or convey to the Operator the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or of any other Person.

5. The Operator and the City recognize that situations may occur in the future where the City may desire to place its own fiber optic cable in trenches or bores opened by

the Operator. The Operator agrees to cooperate with the City in any construction that involves trenching or boring, provided that the City has first provided reasonable notice to the Operator in some manner that it is interested in sharing the trenches or bores in the area where the Operator's construction is occurring. The Operator shall allow the City to lay City conduit and fiber optic cable in the Operator's trenches and bores, provided the City shares pro rata in the cost of the trenching and boring with Operator. The City shall be responsible for maintaining its respective conduit and fiber optic cable, which is buried in the Operator's trenches and bores.

N. Restoration of Property.

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1. The Operator shall protect public and private property from damage. If damage occurs, the Operator shall promptly notify the property owner within twenty-four (24) hours.

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

3. Operator shall warrant any restoration work performed by or for Operator in the Right-of-Way or on other public property or private property for one (1) year, unless a longer period is required by the City Code or any generally applicable ordinance or resolution of the City. If restoration is not satisfactorily performed by the Operator within a reasonable time, the City may, after prior notice to the Operator, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Operator. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Operator shall pay the City.

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4. Upon completion of the work that caused any disturbance or damage, Operator shall promptly commence restoration of property, and will use its best efforts to complete the restoration within twenty-four (24) hours, considering the nature of the work that must be performed.

O. Discontinuing Use. Whenever Operator intends to discontinue using any facility within the Rights-of-Way, Operator shall notify the City of its intention. Operator may remove the facility or request that the City permit it to remain in place. Notwithstanding Operator's request that any such facility remain in place, the City may require Operator to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, or convenience, or otherwise serve the public interest. The City may require Operator to perform a reasonable combination of modification and removal of the facility. Operator shall complete such removal and/or modification respectively in accordance with a schedule reasonably set by the City. Until such time as Operator removes or modifies the facility as reasonably directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to use, construct and/or maintain such facility, Operator shall retain all liability for such facility and be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use.

P. Movement of Cable System Facilities For City Purposes.

1. The City shall have the right to require Operator to relocate, remove, replace, modify or disconnect Operator's facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when necessary to protect or further the health, safety or welfare of the general public, and such work shall be performed at

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Operator's expense. Except during an emergency, the City shall provide reasonable notice to Operator, not to be less than ten (10) business days, and allow Operator the opportunity to perform such action. In the event of any capital improvement project exceeding $150,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Operator's facilities or equipment, the City shall provide at least sixty (60) days written notice to Operator. Following notice by the City, Operator shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Operator to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Operator with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Operator shall be entitled to its pro rata share of such funds.

2. If the Operator fails to complete the above work within the time prescribed and to the City's reasonable satisfaction, the City may cause such work to be done and bill the reasonable cost of the work to the Operator, including all reasonable costs and expenses incurred by the City due to Operator's delay. In such event, the City shall not be liable for any damage to any portion of Operator's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Operator shall pay the City.

Q. Movement of Cable System Facilities for Other Franchise Holders. If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Operator shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity. Operator may require that the costs associated with the removal, replacement, modification or disconnection of the Cable

System be paid by the benefited party, and Operator may require a reasonable deposit of the estimated payment in advance.

R. Temporary Changes for Other Permitees. At the request of any Person holding a valid permit and upon reasonable advance notice, Operator 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 Operator may require a reasonable deposit of the estimated payment in advance.

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S. Reservation of City Use of Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Operator's Cable System.

T. Tree Trimming. Operator may prune or cause to be pruned, using proper pruning practices, any tree in the Rights-of-Way which interferes with Operator's Cable System. Operator shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Operator may not prune trees at a point below thirty (30) feet above sidewalk grade until ~~one (1) week~~ten (10) business days written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this ~~one (1) week~~ten business day period. If the owner or occupant fails to do so, Operator may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Operator's facilities from imminent danger only.

U. Inspection of Construction and Facilities. The City may inspect any of Operator's facilities, equipment or construction within the Rights-of-Way and on other public property upon at least twenty-four (24) hours notice, or, in case of an emergency, upon demand without prior notice. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Operator, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City

establishes. The City has the right to inspect, repair and correct the unsafe condition if Operator fails to do so, and to reasonably charge Operator therefor.

V. Stop Work.

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

2. The stop work order shall:

a. Be in writing;

b. Be given to the person doing the work, or be posted on the work site;

c. Be sent to Operator by overnight delivery at the address given herein;

d. Indicate the nature of the alleged violation or unsafe condition; and

e. Establish conditions under which work may be resumed.

W. Work of Contractors and Subcontractors. Operator's contractors and subcontractors shall be licensed and bonded in accordance with the City's generally applicable ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Operator. Operator shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is

Operator's responsibility to ensure that contractors, subcontractors or other Persons performing work on Operator's behalf are familiar with the requirements of this Franchise and applicable laws governing the work performed by them.

Section F~~5~~6: Technical Standards

A. ~~Subject to federal, state and local law, t~~The Operator shall comply with federal, state and local law~~FCC rules, Part 76, Subpart K, Section 76.601 through 76.610 as set forth in and as may be hereafter amended by the FCC,~~ and, at ~~the~~ a minimum, the following:

1. Applicable City, state and national/federal codes and ordinances;
2. Applicable Utility Joint Attachment Practices;
3. The National Electric Safety Code~~; ANSI C2~~ and the National Electrical Code;
4. City Utility Code Requirements;
5. City rights-of-way procedures;

The Operator shall notify the City prior to the date of the semi-annual FCC Proof of Performance Test so that the City, as is its right under the pertinent FCC regulations, may, at its option, monitor the taking of such tests. The Operator shall provide a copy of the results of the system evaluation to the City upon request.

B. The Cable System must have back-up power supplies capable of providing power to the system for four hours in the event of an electrical outage.

C. The Operator shall comply with FCC closed captioning rules and regulations.

D. The Operator must have TDD/TTY (or equivalent) equipment at the company office, and a telephone number listed on Subscriber bills, in local telephone directories and with

directory assistance for such equipment, that will allow hearing impaired customers to contact the company.

E. Active and passive devices in the Cable System shall be capable of passing a minimum of 750 MHz and capable of delivering more than 110 Channels of high quality analog or digital video signals meeting, or exceeding, FCC technical quality standards. Cable System Nodes shall be designed for future segmentation as necessary to maximize shared bandwidth.

Section F~~6~~7: Technical Evaluation

(1) If deemed necessary by the City, the City may review the Cable System's technical performance on an annual basis and as otherwise provided in this Section~~ and in Section M17 of the Master Ordinance~~. During such evaluations, the Operator shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may require to determine the Operator's compliance with this Franchise~~. The City recognizes that certain house wiring may not comply with current ordinances, as the requirements may have been changed from time to time. Assuming prior wiring was done under the ordinance in existence at that time, the City shall not deem the Operator out of compliance for such item unless such wiring does not comply with Section M10 of the Master Ordinance.~~

(2) The City may retain an independent consultant to conduct an analysis of the Cable System and its performance and to submit a report of such analysis to the City. The City or its consultant shall provide thirty (30) days prior written notice to the Operator of any requested testing of the Cable System~~, in accordance with federal law~~. The Operator shall be required to conduct testing on the thirtieth day, counted from the date of Operator's receipt of the request unless another date is chosen by mutual agreement, and the City has the right to be

present during the test. The report prepared by the consultant in response to the City's request for a System evaluation may include but not be limited to the following:

(a) A description of the technical problem in the Cable System performance which precipitated the special tests;

(b) Which Cable System components were tested;

(c) The equipment used and procedures employed in testing;

(d) The results of the testing and system evaluation, including a description of any problem(s) found;

(e) The method, if any, by which specific performance problems may be resolved;

(f) Any other information pertinent to said tests and analyses that may be required by the City.

(3) If the tests indicate that the Cable System is not in material compliance with FCC Technical Standards or the requirements of the Franchise or applicable law, the Operator shall correct such deficiency and shall reimburse the City for its reasonable out of pocket costs involved in conducting such tests.

Section F~~7~~8: Cable System ~~Architecture and~~ Review.

~~(1) Prior to the effective date of this Franchise, the Operator completed an upgrade of its Cable System as required under the previous franchise. Concurrently, the Operator modified its Cable System from a traditional "christmas tree architecture" to a Hybrid Fiber-Coaxial, fiber-to-the-Node system architecture, with fiber-optic cable deployed from the Headend to the Node and coaxial cable deployed from the Node to Subscribers' homes.~~

(~~2~~1) Within six (6) months of the ~~fourth~~ fifth anniversary of the effective date of this Franchise, the City may conduct a review of the Franchise and Cable System, which review shall include the need for technical updating of the Cable System. The purpose of the review is to ensure, with the benefit of full opportunity for public comment, that the Operator continues to effectively serve the public in light of new developments in cable technology together with related developments in cable law and regulation and community needs and interests, with consideration of all financial, technological and operation impacts that may affect the Operator. As part of this review the City may require the Operator to participate in and jointly fund a statistically valid survey of Subscribers by a third party. Survey topics may include, but not be limited to, programming categories, cable-related community needs and interests, satisfaction with Cable Services offered, and customer service, with specific questions jointly determined. The final questions and topics to be covered in the survey shall be determined by mutual agreement between the City and the Operator. Both the City and the Operator agree to make a full and good faith effort to participate in the review.

(~~3~~2) If, after completion of the review and survey, the City and the Operator agree that the public interest will be served by modifying certain Franchise obligations, ~~and~~ then the City, with the written agreement of the Operator, may modify the obligations.

Section F~~8~~9: Annual Reports.

On or before April 30th of each year, the Operator shall furnish a report including the following:

1. Most recent corporate annual report, if any.
2. A copy of the 10-K Report, if required.
3. The number of homes for which cable is available.

4. The number of Subscribers with Basic Service.
5. The number of residents subscribing to each additional Tier of Service.
6. The number of Subscribers with Premium Services.
7. The number of Pay-per-View purchases.
8. The number of Installations in the period.
9. The number of disconnects in the period.
10. Total number of miles of cable in the City.
11. Total number and summary of all written complaints received by category, length of time taken to resolve and action taken to provide resolution.
12. Copy of the Annual FCC Proof of Performance Report.
13. A statement of its current billing practices and a sample copy of the bill format.
14. A current copy of its Subscriber work order.
15. A current copy of its Installation packet.
16. Such other information with respect to its local operation, affairs, transactions or property that may be appropriate for City purposes and are permitted by law.
17. Service area map consistent with expansion of eCity limits.
18. Requests for system expansion.
19. Number of requests for service the Operator was unable to fulfill.

If the Operator is unable to provide any of the above listed items, the Operator shall notify the City of such, in writing, no less than 30 days prior to the due date of the reports. In those instances, the City may agree to modify the Operator's obligation to

provide such information, provided that the City deems the Operator to have shown good cause therefor.

Section F~~9~~10: Customer Service.

~~The Operator shall at all times be in compliance with FCC~~ Customer Service Standards, 47 CFR Part 76.309, ~~Subpart H,~~ as they may be amended, which standards are incorporated into this Franchise by reference ("~~FCC~~ Federal Customer Service Standards") ~~and are summarized in the FCC Fact Sheet that is attached hereto as Appendix A and is incorporated herein by this reference~~. The City reserves the right to enact and enforce any customer protection law, containing more stringent standards, to the extent not specifically preempted by applicable law.

The Operator shall maintain a local, toll-free or collect call telephone line for taking customer's calls. This line must be available 24 hours a day, 7 days a week. During normal business hours, company representatives must be available to respond to customer inquiries. After normal business hours, the Operator may use an answering service or machine. A trained company representative must respond to inquiries received after normal business hours on the next business day. Normal business hours are the hours during which most similar businesses in the community are open to serve customers. These hours must include some evening hours at least one night per week and~~/or~~ some weekend hours.

Section F1~~0~~1: Telephone Response.

In order that the City may be informed of the Operator's success in achieving satisfactory customer service in its telephone answering functions, should the City request, the Operator shall, within thirty (30) days of the end of each calendar quarter, provide a summary report of calls handled at the Customer Sales and Service Center facility taking calls from customers. Due to centralized or regional call centers, in the event the report does not solely cover the customers

within the City, the Operator reserves the right to provide a regional report. This report will provide the following:

1. Percentage of calls answered within 30 seconds;
2. Number of calls received;
3. Average handle time;
4. Number of calls abandoned by the caller;
5. Average speed of answer;
6. Percentage of time all lines busy.
7. Comparison of above data with the minimum customer service standards of ~~the FCC~~ Federal law then in effect.

Section F1~~1~~2: Failure to Improve Customer Service.

~~The City or its designee shall review telephone response and customer service information with the Operator. The Operator shall correct any areas of non-compliance from the previous reporting period. Failure to do so may result in imposition of penalties~~ damages in accordance with enforcement action under ~~Sections F19 and F20 or revocation pursuant to Section M30 of the Master Ordinance~~ this Franchise.

Unsatisfactory customer service information may also be made part of ~~an exhibit~~ a renewal proceeding under Section 626~~(c)(1)(A) and (B)~~ of the Cable Act, alleging that such practices have failed to conform with renewal requirements as stated therein.

Section F1~~2~~3: Periodic Meetings.

Upon request, and with thirty (30) days prior written notice from the City, the Operator shall meet with designated City officials and/or its designated representative(s) to review the performance of the Operator under this Franchise for the preceding reporting period. The

subjects may include, but are not limited to, those items covered in the periodic reports and performance tests.

Section F1~~3~~4: Refunds for Outages.

After notification from a Subscriber of an outage, the Operator will credit the Subscriber's account, provided a request by the Subscriber for such refund is made within thirty (30) days of the reported outage and the length of the outage was in excess of six (6) hours.

Section F14~~5~~: ~~PEG~~ Access Channels

A. ~~Public~~ Governmental Access~~:~~. At the request of the City at any time during the ~~f~~Franchise term, the Operator shall provide a channel on its ~~Expanded~~ Basic tier of service for exclusive use by the City ~~of Stanwood~~. The channel will provide the City a means to access Wave's Broadband system to communicate with City residents.

In addition to provision of the above noted channel, Wave will provide the following:

- Wave will provide connectivity from Stanwood City Hall and Fire Station to Wave's ~~Camano Island~~ nearest Headend and provide the infrastructure needed to accomplish this.
- Wave will provide distribution of the City ~~of Stanwood~~ channel throughout the ~~f~~Franchise ~~a~~Area to all customers subscribing to ~~Expanded~~ Basic service.
- Wave will provide a ~~Digital Signage system (a "~~Character Generator~~")~~ with future expandability~~, a reasonably comprehensive assortment of file type support and page capacity, as well as video pass-through~~. Wave will select the equipment to be purchased, provided that the equipment shall meet or exceed the standard of the cable television industry.
- Wave will purchase the Character Generator, associated bundled software required by the vendor for its operation, and an administrative ~~P.C.A. administrative~~ computer device.

- Wave will ~~purchase and~~ deploy the Character Generator required to deliver the service.
- Wave will provide training for the City's designated channel administrator in the use of the equipment provided by Wave.

City personnel will perform administration and programming.

B. Additional Equipment. The City may request that Wave provide additional equipment, such as equipment necessary for video production by the City, schools, or other public or governmental entities. Wave shall provide such equipment in accordance with terms agreed upon by the parties.

C. Additional Channel~~s~~. One additional Channel shall be made available when the initial Access Channel required above is used for ~~a~~Access purposes with programming (excluding Character Generated and filler programming, e.g. NASA, AM/FM radio programming) during ~~seventy~~ fifty percent (~~7~~50%) of the hours between 10:00 am and 10:00 PM, during any consecutive ten (10) week period. Except for Character Generated announcement, the programming of additional Channels required shall be distinct and non-repetitive of the previous Channel. Based upon this criteri~~on~~a, the Operator shall, within six (6) months following a written request by the City, provide another designated Access Channel for this purpose.

D. Channel Reversion. If, at ~~4 year~~ the time of Franchise review, the Channel~~(s)~~ Activated under the terms of paragraph C is not programmed at least twenty-five percent (25%) of the hours between 10:00 a.m. and 10:00 p.m., the Channel shall then revert to the Operator for its unrestricted use within the terms and conditions of this Franchise Ordinance. The Operator shall give the City a minimum of six (6) months notice of its intention to withdraw any such Channel~~s~~. The Channel, however, shall not revert if, during this caution period, the Channel

fulfills the requirements as discussed above. The reversion will be for a minimum of two (2) years. After this period, the City may ~~re-acquire~~ reacquire such Channel~~(s)~~ upon demonstrated demand that it will fulfill the conditions of programming usage.

E. Capital Contribution.

1. Upon written request of the City, Operator shall provide a capital contribution to the City for Access and/or I-Net capital costs ("Capital Contribution") in an amount not to exceed $~~0.75~~1.00 per Subscriber per month throughout the term of this Franchise. Operator shall not be responsible for paying the Capital Contribution with respect to gratis or bad debt accounts. Within ninety (90) days after the end of each year, Operator shall provide a report to the City regarding such gratis or bad debt accounts, which report may be included as part of another report. The City can inquire as to the status of any such accounts, and the Operator agrees to meet with the City, upon request, to discuss such matters as necessary. To the extent allowed by federal law, the Capital Contribution may be treated as an external cost by Operator and itemized on Subscribers' bills. The City shall have discretion to allocate the Capital Contribution in accordance with applicable law, provided upon the request of the Operator the City shall submit a summary of expenditures, and remaining reserve balance, from the Capital Contribution to Operator within ninety (90) days of the end of each calendar year. To the extent the City makes Access and/or I-Net capital investments using City funds prior to receiving Capital Contribution funds, the City is entitled to apply subsequent Capital Contribution payments from Operator toward such City capital investments.

2. The City and Operator agree that any Capital Contribution shall be referred to on Subscribers' bills as an "EG fee", "I-Net fee" or language substantially similar thereto.

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Operator shall not change such reference on the Subscribers' bills without the prior written consent of the City, which consent shall not be unreasonably withheld.

Section F15~~5~~6: Complimentary Cable Service ~~For Public Buildings~~.

The Operator, upon request, shall provide without charge, a standard Installation and one outlet of Basic Cable Service and Expanded Basic Service to those administrative buildings owned and occupied by the City, fire station(s), police station(s), library and K-12 public school(s) that are passed by its Cable System. Any new public buildings shall be upgraded to fiber by the Operator to the exterior of the building. Operator shall have no obligation to provide interior wiring or terminal devices. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Operator. The Cable Service provided shall not be used for commercial purposes. The City shall hold the ~~Grantee~~ Operator harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Operator shall not be required to provide an outlet to such buildings where a non-standard Installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-standard Installation~~s~~. A list of current locations is attached as Appendix ~~B~~A.

Section F16~~7~~7: Institutional Network (I-Net).

A. The Operator may, during the term of this Franchise, plan an upgrade~~, beyond the recognized upgrade described in Section F7,~~ of its Cable System requiring construction of coaxial cable and fiber-optic lines in the public rights-of-way. Prior to commencing design of such upgrade, the Operator shall notify the City in writing of its plans to upgrade and its ability to include capacity for non-commercial City communications as a part of the upgrade project. At any time during this Franchise ~~Agreement~~, upon receipt of ~~the~~ notice, the City and the Operator

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shall meet to discuss the Institutional Network communications needs of the City and the ability of the Operator to accommodate them. I-Net design shall be based upon the Cable System architecture, taking into account the needs of the City and current available technology.

B. Within two (2) weeks of design determination, the Operator shall provide to the City in writing, a firm estimate of the incremental cost of I-Net construction. Within four (4) weeks of receipt of the cost estimate, the City shall respond to the Operator with an acceptance or rejection of the I-Net project. If the City accepts the project, the Operator will proceed with construction. Upon completion of construction, the Operator will invoice the City for construction costs in an amount not to exceed the estimate and payable within one-hundred twenty (120) days. At the discretion of the City, these costs may be treated as external costs under ~~47 CFR 76.922~~ federal law.

C. The City shall have an exclusive right of use of the I-Net capacity for non-commercial private network communications, which right cannot be revoked by the Operator, or successor companies, if any, during the term of this Franchise or any renewals or extensions thereof. However, the Operator shall at all times own and maintain the aerial and underground Fiber Optic cable (fiber backbone) and associated Facilities and equipment up to said termination points where physically connected to City-owned optronics.

D. Internet Alternative. In lieu of providing the Institutional Network capacity specified above, the City may elect to accept access to the Internet to accomplish these objectives. In this case the Operator shall provide, without charge, one cable modem per site, and any software necessary for access to such service. This will also include access to the Internet. There shall be no charge for unrestricted usage for communications between City facilities and with Snohomish County. The using facility shall be responsible for the provision,

maintenance, updating and replacing as necessary any other hardware such as a personal computers and related equipment required for access to such service, as well as the cost of installing additional outlets if so requested. Further, the Operator shall not be obligated to provide such service to any using facility unless the using facility agrees, on a form as approved by the City, to take reasonable precautions to prevent any inappropriate or illegal use of such service and agrees to hold the Operator harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of use of such service within the using facility, including, but not limited to, reasonable attorneys' fees and costs.

Section F~~17~~8: Coverage.

The Operator shall provide Cable Service in the entire Franchise area. If Cable Service does not now exist within its present Franchise Area, the Operator shall complete such wiring and be in a position to offer Cable Service to all residents in areas with a density of 25 homes per strand mile of potential cable plant, within six (6) months of the effective date of the Franchise. Areas subsequently annexed shall be provided with Cable Service within twelve (12) months of annexation.

Section F~~18~~9: Extraordinary Installation Charges.

All residents requesting Cable Service and living within one hundred fifty (150) feet of existing cable distribution or trunk lines shall have the cable installed by the Operator at the prevailing published Installation rate.

In the event a request is made for service and the residence is more than one hundred fifty (150) feet from an existing cable distribution or trunk line, such Installation shall be completed by the Operator on a time and material cost basis for that portion of the service line extending beyond one-hundred fifty (150) feet.

Section F~~19~~20: Non-Compliance.

In the event the City believes that the Operator has not complied with the terms of the Franchise, the City shall notify the Operator in writing by certified mail. The notice shall state the specific nature of the perceived deficiency in the operation of the Cable System, or the Operator's failure to comply with material conditions of the Franchise, and shall set forth a cure period of no less than thirty (30) days. During the cure period, the Operator will be allowed to rectify the alleged improper condition, to respond to the City contesting the assertion of noncompliance, or, in the event that by the nature of default such default cannot be cured within the period set by the City, to initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected completion date ~~that they will be completed~~.

If the Operator fails to respond to the notice of non-compliance from the City in accordance with the procedures set forth above, or the alleged default is not remedied within the cure period, or the City believes the remedy proposed by the Operator is unreasonable and the City intends to continue its investigation into the default, then the City shall schedule a public hearing. The City shall provide the Operator at least ten (10) days prior written notice of the hearing, which notice shall specify the time, place and purpose of the hearing, and shall provide the Operator the opportunity to be heard.

Section F2~~0~~1: Enforcement.

(1) Subject to applicable federal and state law, if the City determines, after following the procedures set forth above, that the Operator is in default with any provision of the Franchise, the ~~Master Ordinance~~ Cable System Regulations or any other ordinance of the City, the City may require specific performance or assess monetary remedies as set forth herein

(2) The City may require specific performance by the Operator of any provision, which reasonably lends itself to such remedy, as an alternative to damages, for the following defaults:

(a). Failure to conform to customer service standards~~ as required by Section F11~~;

(b). Failure to provide~~ PEG~~ Access Channel allocations~~ as required by Section F14~~;

(c). Failure to provide Cable Service to the existing Franchise area and future annexed areas~~ as required in Section F18~~;

(d). Failure to comply with any material provision of this Franchise or the ~~Master Ordinance~~ Cable System Regulations.

(3) The City may assess monetary~~ penalties~~ charges, sanctions, and damages against the Operator as provided in this Subsection. If the violation has not been cured within the time allowed under Section~~ F19~~___, then the Operator shall be liable to the City in the following amounts for the following violations:

(a) Failure to provide and maintain requested Cable Service to any household within the Franchise Area as required by this Franchise: $~~0.15100~~200.00 per day ~~per affected household~~; provided, however, in no event shall the aggregate amount for all such violations exceed $~~5~~10,000.00 per year.

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(b) Failure to promptly provide bonds, insurance or reports, records, filings or other data to the City, in accordance with this Franchise~~ and the Master Ordinance~~: $~~1~~200.00~~ dollars~~ per day; provided, however, in no event shall the aggregate amount for all such violations exceed $~~5~~10,000.00 per year.

(c) Failure to provide resources and an Access Channel in strict compliance with this Franchise~~ and the Master Ordinance~~: $~~1~~200.00~~ dollars~~ per day; provided, however, in no event shall the aggregate amount for all such violations exceed $~~5~~10,000.00 per year.

(d) Failure to comply with lawful City requirements concerning construction in the Public Rights-of-Way: $~~1~~200.00~~ dollars~~ per day; provided, however, in no event shall the aggregate amount for all such violations exceed $~~5~~10,000.00 per year.

The Operator agrees that each of the foregoing failures shall result in injuries to the City and its citizens and institutions, the compensation for which would be difficult to ascertain and to prove. Accordingly, the Operator agrees that the foregoing amounts are to be considered liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term "franchise fee" provided by federal law at 47 U.S.C. 542~~ (g) (2) (A-D)~~ and therefore are in no way part of the compensation paid to the City pursuant to~~ Section F4~~_____.

If the Operator fails to make full and complete monetary payments as required by this Subsection within ten (10) business days after receipt of written notice from the City, then the City may immediately take steps to withdraw without further notice to the Operator the amount thereof from the bond or other security required under this Franchise~~ and the Master Ordinance~~. Liability for monetary payments shall accrue from whichever applies among the following: (1) thirty (30) days after City notice per Section~~ F19~~___, if no cure plan is submitted; (2) on the date of City denial of the Operator's cure plan; (3) the date of the City accepted cure plan completion date; or (4) the date of the determination by the City following the public hearing provided

under Section ~~F19~~ ___, that either (a) there was a violation; or (b) the cure plan was not unreasonably denied.

Section M34 of ~~the Master Ordinance~~ This Franchise allows the City to require bonds and other security, which may be used by the City to reimburse the City for the Operator's failure to pay sums due under the Franchise ~~or Master Ordinance~~, to reimburse the City for reasonable costs to correct Franchise violations, and to pay the City for monetary remedies, including ~~penalties,~~ sanctions~~,~~ or damages, assessed against the Operator due to default or violations of the Franchise or ~~Master Ordinance~~ Cable System Regulations.

(4) In the case of a failure by the Operator to comply with a material provision of the Franchise, the City may seek to revoke the Franchise in accordance with ~~Section M30 of the Master Ordinance~~ this Franchise.

Section F22: Revocation. ***[The City is also working on Alternative Dispute Resolution language.]***

A. The City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in accordance with applicable law under the following circumstances:

1. If Operator willfully fails for more than three (3) days to provide continuous and uninterrupted Cable Service;

2. If Operator attempts to evade any provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;

3. If Operator becomes insolvent, or if there is an assignment for the benefit of Operator's creditors;

4. If Operator makes a misrepresentation of fact in the application for or negotiation of this Franchise; or

5. If Operator fails to timely pay Franchise Fees to the City; or

6. If Operator repeatedly breaches a provision of the Customer Service Standards subject to Community Development review.

B. Prior to forfeiture or termination of the Franchise, the City shall give written notice to the Operator of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Operator shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a satisfactory response from Operator, it may then seek a termination of the Franchise by the City Council in accordance with this subsection.

C. Any proceeding regarding revocation shall be conducted by the ~~City Council~~Hearing Examiner and open to the public. Operator shall be afforded at least ~~forty-five (45)~~thirty (30) days prior written notice of such proceeding.

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

2. Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise; or if the breach at issue is capable of being cured by Operator, the City Council shall direct Operator to take appropriate remedial action within the time and in

the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City Council determines that the Franchise is to be revoked, the City Council shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Operator. Operator shall be bound by the City Council's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within thirty (30) days of the date of the decision.

3. Operator and the City shall be entitled to such relief as the court may deem appropriate.

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

Section F2~~1~~3: Insurance.

The Operator shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of two million dollars ($2,000,000) for both bodily injury and/or property damage, Umbrella Insurance in the amount of five million dollars ($5,000,000), Automobile Liability in the amount of two million dollars ($2,000,000) combined single limit per accident for bodily injury and property damage, and Workers' Compensation Insurance in accordance with State law.

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The Operator shall provide a Certificate of Insurance designating the City as an additional insured. Such insurance shall be non cancelable except upon thirty (30) days' prior written notice to the City.

Section F2~~2~~4: Rates.

The City ~~will~~ may regulate Basic Service tier rates and charges as provided by the Cable Act and FCC regulations. Those fees and charges subject to regulation by the City shall not be increased by the Operator without prior approval of the City, except as allowed by law.

A. Semi-annually, by January 31st and July 31st.~~T~~throughout the term of this Franchise, the Operator shall provide written notification to the City of its complete schedule of applicable rates and charges for residential Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require the Operator to provide written notice of its rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

B. Upon request of the City, the Operator shall provide a complete schedule of current rates and charges for any and all leased access channels, or portions of such channels, provided by the Operator. The schedule shall include a description of the price, terms, and conditions established by the Operator for leased access channels.

F2~~3~~5: Discounts.

The Operator shall offer a discount of thirty percent (30%) from the normal charge for ~~b~~Basic services and Installations to those individuals age sixty-two (62) or older or handicapped, who are the legal owner or lessee/tenant of their residence, provided that their combined disposable income from all sources does not exceed income levels used by the City for other utility discounts. The Operator shall provide notice of such discount to all subscribers in writing and through announcements on the Cable System. The City or its designee shall accept the

application forms and be responsible for ~~certifying~~ forwarding them to the Operator who shall determine whether ~~that~~ such applicants conform to the specific criteria. At its sole option, the Operator may offer a limited level of service commonly referred to as "lifeline" at a reduced rate for those individuals unable to afford additional levels of service, including such programming as satellite-delivered ~~superstations~~ cable programming and movies, etc.

Section F2~~4~~6: Indemnification.

The Operator shall, at its sole cost and expense, indemnify, defend, and hold harmless the City, its officials, boards, commissions, duly authorized agents and employees against any and all third party claims, suits, causes of action, proceedings, and judgments for damage arising out of the operation and construction of the ~~e~~Cable ~~television s~~System under this Franchise, except that no such requirement shall apply where such claims, suits, causes of actions, proceedings, and judgments for damage are occasioned solely by the negligence~~,~~ or gross negligence or ~~intentional~~ malicious acts of the City or its officials, boards, commissions, agents and employees while acting on behalf of the City. ~~These d~~Damages shall include, but not be limited to, claims made against the City by the Operator's employees from which the Operator would otherwise be immune under Title 51 RCW, ~~penalties~~ damages or fines arising out of patent and copyright infringements, and damages arising out of any failure by the Operator to secure consent or licenses from the owners, authorized distributors or licensees of programs to be delivered by the Operator's Cable System, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

The City shall give the Operator timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnification in this Section. In the event any such claim arises, the City or any other indemnified party shall tender

the defense thereof to the Operator and the Operator shall have the obligation and duty to defend, through services of competent counsel satisfactory to the City, and to contest, settle or compromise any claims arising hereunder. If the City determines that it is necessary for ~~it~~ the Operator to employ ~~separate~~ different counsel because of a conflict of interest, the costs for such ~~separate~~ different counsel shall be the responsibility of the ~~City~~ Operator.

Section F2~~5~~7: Independent Contractor~~s~~.

The Operator is an independent contractor under this Franchise. This Franchise shall not be construed to provide that the Operator is the agent or legal representative of the City for any purpose whatsoever. The Operator is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner whatsoever.

Section F28: Franchise Renewal.

A. The City and Operator agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures or substantive protections set forth therein shall be deemed to be preempted and/or 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 City agrees to notify Operator of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Operator under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Operator and the City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Operator may agree to

undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Operator and the City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

C. Upon acceptance of any renewal franchise granted hereunder, the Operator shall pay to the City the City's out-of-pocket costs and expenses associated with the franchise renewal processes. Costs and expenses shall include such items as attorneys' fees, consulting fees and other expenses in connection with the franchise renewal processes and expenses associated with publishing notices and ordinances. Such payment is not to be considered in lieu of franchise fee payments. Payment is due within thirty (30) days of receipt of an invoice from the City.

Section F29: Franchise Transfer.

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

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

C. The parties to the sale, transfer or change of control shall make a written request to the City for its approval of a sale, transfer or change of control and shall furnish all information required by law.

D. In seeking the City's consent to any change in ownership or control, the proposed transferee or controlling party shall indicate whether, as applicable, it:

1. Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

2. Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against it by any court of competent jurisdiction;

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

4. Is financially solvent, by submitting financial data, including financial statements, that are audited by an independent certified public accountant, along with any other data that the City may reasonably require; and

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

E. In reviewing a request for sale, transfer or change of control, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Operator shall assist the City in so inquiring. The City may condition said sale, transfer or change of control 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.

Additionally, such Person shall effect changes as promptly as practicable in the operation of the Cable System, if any changes are necessary to cure any violations or defaults presently in effect or ongoing.

F. The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all information required by law, such as a complete FCC Form 394. Subject to the foregoing, if the City 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 City agree to an extension of time.

G. Within thirty (30) days of any transfer, sale or change of control, if approved or deemed granted by the City, Operator shall file with the City 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 Operator and the transferee or new controlling entity. In the case of a sale or transfer of ownership or change of control, the transferee or the new controlling entity shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which the Operator is not replaced by another entity, the Operator will continue to be bound by all of the provisions of the Franchise and will not be required to file an additional written acceptance.

H. Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an intra-company Affiliate; provided that the proposed assignee or transferee must show legal, technical and financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise, subject to applicable law. Further, Operator may pledge the assets of the Cable System for the purpose of

financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Operator's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

Section F~~26~~30: General Provisions.

A. Entire Agreement. This Franchise contains all of the agreements of the parties with respect to any matter covered or mentioned in this Franchise, and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

~~B. Modification. The provisions of this Franchise may be amended or added to by the mutual~~ written agreement of both of the parties~~, provided, however, that such modifications shall not be effective until approved by the City Council by ordinance and accepted by the Operator in writing~~.

C. Attorneys' Fees. If any suit or other action is instituted in connection with any controversy arising under this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge reasonable for ~~attorney's~~ attorneys' fees, including fees upon appeal of any judgment or ruling.

D. No Waiver. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

E. Governing Law. This Franchise shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington and Federal and local laws.

Venue over any dispute arising hereunder shall be in the Snohomish County Superior Court or the United States District Court for the Western District of Washington ~~at~~ in Seattle.

F. Notices. Any notices required to be given or permitted hereunder shall be delivered to the parties at the following addresses:

OPERATOR:
Wave Division I, LLC ~~Broadband~~
~~P.O. Box 1630~~
~~La Conner, WA 98257~~
Attn: ~~Steve Schneider~~ Jim Penney
Exec. VP - Business and Legal Affairs

CITY:
~~Jeannie Brown~~ Greg Thramer
Director of Finance
City of Stanwood
10220 270th St. N.W.
Stanwood, WA 98292

With a Copy to:
~~Wave Division Holdings LLC~~ Wave Division I, LLC
dba Wave Broadband
401 Kirkland Park Place
Suite 410
Kirkland, WA 98033
Attn: ~~Steve Weed~~

Notices may be delivered personally, or deposited in the United States mail, first-class postage prepaid, to the address set forth herein~~, unless specifically directed otherwise herein~~. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

G. Captions. The respective captions of the sections of this Franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Franchise.

H. Time of Essence. Time is of the essence of this Franchise and each and all of its provisions in which performance is a factor.

I. Remedies Cumulative. Any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

J. Force Majeure. The Operator shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement~~ or penalty~~ relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Operator to control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Operator's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the City's intention to subject the Operator to~~ penalties,~~ fines, forfeitures, or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise area or the City.

K. Severability. If any section, sentence, paragraph, term or provision hereof 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, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

Section F~~27~~31: Successors and Assigns.

This Franchise, including all Appendices, shall be binding on the Operator, its~~ heirs,~~ permitted successors and assigns~~, provided, however, that this Franchise is non-transferable except as provided in Section M28 of the Master Ordinance~~.

Section F~~28~~32: Acceptance.

~~This Franchise and all of its terms and provisions, including all of the terms and provisions of the Master Ordinance~~ Cable System Regulations, shall be unconditionally accepted by the Operator by the submission of a written instrument which is attached ~~by the City~~ as ~~Exhibit "A"~~ Appendix B, executed and sworn to by an ~~corporate~~ officer of the Operator before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise, together with the evidence of insurance ~~as required by Section M32 of the Master Ordinance and Section F21 of this Franchise. Such instrument shall evidence the unconditional acceptance of this Franchise and the Master Ordinance and the promise to comply with and abide by all their provisions, terms and conditions~~.

~~**Section F29: Ratification.**~~

~~Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.~~

Section F~~30~~33: Effective Date.

This Ordinance shall be in full force and effect five (5) days after its passage and publication of a summary consisting of the title.

PASSED by the City Council and approved by its Mayor this ~~18th~~____ day of ~~January, 2007~~_____, 2014.

THE CITY OF STANWOOD

_____

Dianne White_____, Mayor

Attest:

Melissa CollinsGreg Thramer, City Clerk

Approved as to Form:

Grant Weed, City Attorney

Date Published

~~APPENDIX A~~

~~FCC Fact Sheet on Cable Customer Service Standards~~
~~FEDERAL COMMUNICATIONS~~

~~COMMISSION~~
~~FACT SHEET~~
~~September 1998~~
~~CABLE TELEVISION FACT SHEET~~
~~CUSTOMER SERVICE STANDARDS~~

~~Pursuant to the 1992 Cable Act, the Commission adopted federal standards aimed at improving the quality of customer service rendered by cable operators. Although the standards were issued by the FCC, local franchising authorities are charged with enforcing them. Franchise authorities may also adopt stricter or additional standards with the consent of the cable operator or through enactment of a state or municipal law. Smaller cable systems (those with 1,000 or fewer subscribers) are encouraged to seek waivers of the standards they believe are too burdensome. The federal standards in each of four major areas are described below.~~

~~**Office Hours and Telephone Availability**~~

~~The federal guidelines recommend that each cable system maintain a local, toll-free or collect call telephone line for taking customer's calls. This line must be available 24 hours a day, 7 days a week. During normal business hours, company representatives must be available to respond to customer inquiries. After normal business hours, the cable system may use an answering service or machine. A trained company representative must respond to inquiries received after normal business hours on the next business day. Normal business hours are the hours during which most similar businesses in the community are open to serve customers. These hours must include some evening hours at least one night per week and/or some weekend hours.~~

~~According to the federal guidelines, a call to a cable system must be answered -- including wait time -- within 30 seconds after the connection is made. If the call is transferred, the transfer time may not exceed 30 seconds. These standards must be met at least 90 percent of the time, measured quarterly, under "normal operating conditions." Also under normal operating conditions, cable system customers may receive a busy signal no more than three percent of the time. Normal operating conditions are those which are within the control of the cable operator. These conditions include special promotions and normal system maintenance and upgrades, but do not include natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.~~

~~The operator is not required to use special equipment to measure telephone answering and hold time, according to the federal standards. However, if complaints indicate that a cable system is failing to comply with these standards, the local franchising authority may require it to acquire equipment or to conduct surveys to measure compliance. Otherwise, cable systems must use their best efforts to document compliance. The standards recommend that each cable system's customer service center and bill payment locations be conveniently located and open at least during normal business hours. However, the cable system may use an agent, such as a bank, to receive bill payments during and after normal business hours.~~

~~**Installations, Outages and Service Calls**~~

~~Standard installations -- which are those located up to 125 feet from the existing distribution system -- must be performed within seven days after an order has been placed.~~

~~Except during conditions beyond its control, the cable operator must begin working on a service interruption no later than 24 hours after being notified of the problem. A service interruption has occurred if picture or sound on one or more channels has been lost.~~

~~The cable operator must begin to correct other service problems the next business day after learning of them. Under the federal guidelines, cable operators may schedule appointments for installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during normal business hours. Cable operators may also schedule service calls outside of normal business hours for the convenience of the customer.~~

~~A cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the cable installer or technician is running late and will not meet the specified appointment time, he or she must contact the customer and reschedule the appointment at the convenience of the subscriber. However, this later contact will not excuse the missed appointment. The federal standards concerning installations, outages and service calls must be met under normal operating conditions at least 95 percent of the time, measured quarterly.~~

~~Billing Practices~~

~~Thirty days advance notice (in writing and through announcements on the cable system) must be given to subscribers of any changes in rates, programming services or channel positions, if the change is within the control of the cable operator.~~

~~The guidelines require cable system bills to be clear, concise and understandable, with full itemization of services and charges. The bill should indicate charges for basic and premium service, any equipment charges, and a summary of all activity during the billing period, including optional charges, rebates and credits.~~

~~Cable operators should respond to written complaints about billing matters within 30 days. Refunds must be issued no later than either the customer's next billing cycle or 30 days following resolution of the request, whichever is earlier, or upon the return of equipment when service is terminated. Credits must be issued no later than the billing cycle following the determination that a credit is warranted. Questions concerning late fees should be directed to the local franchising authority.~~

~~Communications Between Cable Operators and Subscribers~~

~~According to the federal guidelines, the following information must be provided to customers at the time of installation, at least annually to all subscribers, and at any time, upon request:~~

~~(1) products and services offered;~~

~~(2) prices and options of programming services and conditions of subscription to programming and other services;~~

~~(3) installation and service maintenance policies;~~

~~(4) instructions on how to use cable service;~~

~~(5) channel positions of programming carried on the system; and~~

~~(6) billing and complaint procedures, including the address and telephone number of the local franchise authority's office.~~

~~The cable operator must give 30 days notice in advance of any significant changes in this information.~~

~~FCC~~

APPENDIX ~~B~~ A

City of Stanwood

Public Buildings

City Hall	10220 270th Street NW
Library	9701 271st Street NW
Police Station	271st Street NW and 88th Avenue NW
Fire Station	8117 267th Street NW
Stanwood High School	7400 272nd Street NW
Stanwood Middle School	9405 271st Street NW
Stanwood Elementary	10227 273rd Place NW
Twin City Elementary	26211 72nd Avenue NW
Port Susan Middle School	7506 267th Street NW
Cedarhome Elementary	27911 68th Avenue NW
Stanwood/Camano SD Administration	26920 Pioneer Highway

[Greg -- Please confirm recipients and locations.]

Comment [GJT1]: I will provide addresses for all PW buildings, including: WWTP, shop, Ovenell, Heritage Park, Water Treatment Plant and all lift stations.

~~Exhibit A~~ Appendix B - Acceptance of Franchise

~~In accordance with Section F28~~__ of the Franchise between the City ~~of Stanwood ("the City")~~ and ~~Wave Division Holdings IV, LLC, dba Wave Broadband ("~~the Operator~~")~~ and in accordance with ~~Section M5 of~~ the City's ~~Master Cable Ordinance, Ordinance No. 1156 ("the Master Ordinance")~~ Cable System Regulations, the Operator hereby submits this Acceptance of Franchise to the City.

The Operator hereby accepts and agrees to comply with all terms, provisions, and conditions of the Franchise and the ~~Master Ordinance~~ Cable System Regulations.

Attached herewith is a certificate of insurance in accordance with ~~Section F21 of~~ the Franchise ~~and Section M32 of the Master Ordinance~~.

~~The Operator hereby agrees to reimburse the City for its out-of-pocket costs~~ and expenses associated with the ~~franchising~~ franchise renewal process within 30 days of receipt of an ~~appropriate~~ invoice from the City ~~in accordance with Section F1 of the Franchise and Section M35 of the Master Ordinance~~.

The Operator hereby certifies that the undersigned is a duly authorized officer of the Operator with the authority to execute this Acceptance of Franchise.

ACCEPTED BY ~~WAVE DIVISION HOLDINGS IV~~ WAVEDIVISION I, LLC, DBA WAVE BROADBAND

_____, its _____ Date: _____, ~~2007~~ 2014
Name Title

Attachment B

CITY OF STANWOOD, WASHINGTON

AN ORDINANCE TO AUTHORIZE NEW CABLE SYSTEM REGULATIONS

RECITALS

WHEREAS, the City wishes: (i) to promote the availability of high-quality and diverse Cable Services to residents, the City and other public institutions; (ii) to promote the availability of diverse information resources to the community; (iii) to promote competitive Cable Services and rates; (iv) to take advantage of technologies; (v) to enhance educational opportunities throughout the community and provide opportunities for building a stronger community; and (vi) to allow flexibility to respond to changes in technology, Subscriber interests and competitive factors within the cable television industry that will positively affect the health, welfare and well-being of the community;

WHEREAS, the City, pursuant to applicable federal law, is authorized to grant one or more nonexclusive Franchises to construct, operate and maintain Cable Systems within the City; and

WHEREAS, because of the complex and rapidly changing technology associated with Cable Systems, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers that should be vested in the City. It is further the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public. It is the further intent of this Chapter to establish regulatory provisions that permit the City to regulate Cable System Franchises to the maximum extent permitted by federal and state law, including, but not limited to, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, applicable Federal Communications Commission regulations and Washington law.

NOW, THEREFORE, The city council of the city of Stanwood, Washington do ordain as follows:

Section 1. Chapter 5.20 Stanwood Municipal Code "CATV Franchise" is hereby repealed.

Section 2. A new Chapter 5.20 Stanwood Municipal Code entitled "Cable System Regulations" is hereby enacted, reading as follows:

CHAPTER 5.20
CABLE SYSTEM REGULATIONS

Sections

5.20.010 Short Title
5.20.020 Definitions
5.20.030 Franchise Grant
5.20.040 Franchise Purposes
5.20.050 Nonexclusive Franchise
5.20.060 Application
5.20.070 Franchising Costs
5.20.080 Pole or Conduit Agreements
5.20.090 Other Authorizations
5.20.100 Rules and Regulations of the City
5.20.110 Applicability
5.20.120 Severability

5.20.010. Short Title. This Chapter shall constitute the "Cable System Regulations" of the City of Stanwood and may be referred to as such.

5.20.020. Definitions.

For the purposes of this Chapter, the following words, terms, phrases and their derivations have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the singular number include the plural number and words in the plural number include the singular number.

1. "Affiliate," when used in connection with the Franchisee, means any person who owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

2. "Applicant" means any person or entity that applies for an initial Franchise.

3. "Cable Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as any of them may be amended.

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

5. "Cable System" means any facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable

Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

6. "Channel" means a portion of the frequency band capable of carrying a video programming service or combination of video programming services whether by analog or digital signal.

7. "City" means the City of Stanwood, a municipal corporation of the State of Washington, and all of the area within its boundaries, as such may change from time to time.

8. "City Council" means the Stanwood City Council, or its successor, the governing body of the City.

9. "Franchise" means an Agreement that authorizes a person or entity to construct, operate, maintain or reconstruct a Cable System. Upon the written acceptance by a Franchisee, the Agreement constitutes a contract between the City and Franchisee.

10. "Franchisee" means the person, firm, corporation or entity to whom or which a Franchise, as hereinabove defined, is granted by the City Council under this Chapter and the lawful successor, transferee or assignee of said person, firm, corporation or entity.

11. "Person" means any individual, sole proprietorship, partnership, association, government or corporation, or any other form of entity or organization.

12. "Right-of-Way" or "Rights-of-Way" means all 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 are located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property and areas.

13. "Subscriber" means any person who or which elects to subscribe to, for any purpose, Cable Service provided by a Franchisee by means of or in connection with the Cable System and whose premises are physically wired and lawfully activated to receive Cable Service from Franchisee's Cable System.

5.20.030. Franchise Grant.

It is unlawful to engage in or commence construction, operation, or maintenance of a Cable System in the City without a Franchise issued under this Chapter. The City Council may, by

ordinance, issue a nonexclusive Franchise to construct, operate and maintain a Cable System within all or any portion of the City to any person or entity, whether operating under an existing franchise or not, who applies for authority to furnish Cable Service which complies with the terms and conditions of this Chapter, and provided that such person or entity also agrees to comply with all of the provisions of the Franchise. However, this shall not be deemed to require the grant of a Franchise to any particular person or entity. The City Council may restrict the number of Franchisees should it determine such a restriction would be in the public interest.

5.20.040. Franchise Purposes.

A Franchise granted by the City under the provisions of this Chapter shall:

A. Permit the Franchisee to engage in the business of operating a Cable System and providing Cable Service within the City;

B. Permit the Franchisee to erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cable lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of the Cable System in, on, over, under, upon, along and across Rights-of-Way within the City;

C. Permit the Franchisee to maintain and operate said Cable System for the origination, reception, transmission, amplification and distribution of cable television signals and for the delivery of Cable Service; and

D. Set forth the obligations of the Franchisee under the Franchise.

5.20.050. Nonexclusive Franchise.

Any Franchise granted pursuant to this Chapter shall be nonexclusive and not preclude the City from granting other or future Franchises or permits or preclude the City from using any Rights-of-Way or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the City to make all necessary changes, as the City in its sole discretion shall decide, including the dedication, establishment, maintenance and improvements of all Rights-of-Way and thoroughfares and other public properties of any type.

5.20.060. Application.

A. An Applicant for an initial Franchise shall submit to the City a written application in a format provided by the City, at the time and place specified by the City for accepting applications, and accompanied by the designated application fee. An application fee as set by resolution shall accompany the application to cover costs associated with processing the application, including, without limitation, costs of administrative review, financial, legal and technical evaluation of the Applicant, the costs of consultants, notice and publication requirements, and document preparation expenses. In the event such costs exceed the application fee, the Applicant shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

Comment [GJT2]: Could this be part of our adopted fee schedule to give the city more flexibility to change the fee in the future? Would the $25,000 application fee apply to the current Wave cable franchise application? Need to calculate actual costs YTD so we can bill this back to Wave, including City Attorney and staff time.

Conversely, if such costs are less than the application fee, the City shall refund the difference to the Applicant.

B. Application - Contents. An application for an initial Franchise for a Cable System shall contain, at a minimum:

1. A statement as to the proposed Franchise and information relating to the characteristics and location of the proposed System;

2. A resume of prior history of the Applicant, including the expertise of the Applicant in the Cable System field;

3. Information demonstrating the Applicant's legal, technical and financial ability to construct and operate the proposed System;

4. A list of the partners, general and limited, of the Applicant, if a partnership, members, if a limited liability company, or the percentage of stock owned or controlled by each stockholder having a five percent (5%) or greater interest, if a corporation;

5. A list of officers, directors and key employees of the Applicant, together with a description of the background of all such persons;

6. The names and addresses of any parent entity or subsidiary of the Applicant or any other business entity owning or controlling the Applicant in whole or in part, or owned or controlled in whole or in part by the Applicant;

7. A proposed construction and service schedule;

8. Any other reasonable information that the City may request.

The City shall be allowed the opportunity to ask relevant follow-up questions and obtain further information from whatever source. A refusal by an Applicant to cooperate or provide requested information is sufficient grounds for the City Community Development Director or designee to deny an application.

Comment [GJT3]: We want to further define who approves or denies applications.

C. Consideration of Initial Franchise.

1. Upon receipt of an application for an initial Franchise and after obtaining any additional information the City in its sole discretion deems appropriate from any source, a public hearing shall be scheduled to allow public comment. At the public hearing, the City Council shall receive public comment regarding the following:

Comment [GJT4]: Is there a required # of days to hold a public hearing?

a. Public Benefit. Whether the public will benefit from granting a Franchise to the Applicant;

b. Qualifications. Whether the Applicant appears to have adequate legal, financial and technical qualifications and capabilities to build, operate and maintain a Cable System in the City;

c. No Conflicting Interests. Whether the Applicant has any conflicting interests, either financial or commercial, that will be contrary to the interests of the City;

d. Compliance with the Franchise and Local Laws. Whether the Applicant will comply with all of the terms and conditions placed upon a Franchisee by the Franchise, this Chapter, Customer Service Standards and other applicable local laws and regulations;

e. Compliance with Other Requirements. Whether the Applicant will comply with all relevant federal and state laws and regulations pertaining to the construction, operation and maintenance of the Cable System.

D. Within sixty (60) days after the close of the hearing, the City Council shall decide whether to grant a Franchise and on what conditions. The City Council's decision shall be based upon the application, any additional information submitted by the Applicant or obtained by the City from any source, and public comments. The City Council may grant one (1) or more Franchises, or may decline to grant any Franchise. Any final action shall be taken in accordance with the requirements of RCW 35A.47.040.

5.20.070. Franchising Costs.

Upon acceptance of any initial Franchise granted hereunder, the Franchisee shall pay to the City the City's out-of-pocket costs associated with the franchising process. Costs shall include such items as consulting fees and expenses and fees associated with publishing notices and ordinances. Such payment is not to be considered in lieu of franchise fee payments as set forth in the City's adopted fee schedule. Payment is due within thirty (30) days of receipt of an appropriate invoice from the City.

Comment [GJT5]: Set forth in ?

5.20.080. Pole or Conduit Agreements.

No Franchise shall relieve Franchisee of any of its obligations in obtaining pole or conduit agreements from any department of the City, any utility company, or from others maintaining facilities in the Rights-of-Way.

5.20.090. Other Authorizations.

Franchisee shall comply with and obtain, at its own expense, all permits, licenses and other authorizations required by federal, state and local laws, rules, regulations and applicable resolutions and ordinances which are now existing or hereafter lawfully adopted.

5.20.100. Rules and Regulations of the City.

In addition to the inherent powers of the City to regulate and control any Franchise it issues, the authority granted to it by the Cable Act, and those powers expressly reserved by the City, or agreed to and provided for in a Franchise, the right and power is reserved by the City to promulgate such additional rules and regulations as it may find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of a Franchise and this Chapter, and as permitted by applicable state and federal law.

5.20.110. Applicability.

The provisions of this Chapter shall apply to all Franchisees and Cable Systems to the greatest extent permissible under applicable law.

5.20.120. Severability.

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

Section 3. Effective Date.

This Ordinance shall take effect five days after its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2014.

CITY OF STANWOOD

By:_____
Leonard Kelley, Mayor

ATTEST:

By:_____
Greg Thramer, City Clerk

Approved as to form:

By:_____
Grant K. Weed, City Attorney

Date of Publication:_____

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