

ORDINANCE 2017 - 10



ORIGINAL

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, GRANTING A NONEXCLUSIVE CABLE COMMUNICATIONS SYSTEM FRANCHISE TO FALCON VIDEO COMMUNICATIONS, L.P., LOCALLY KNOWN AS CHARTER COMMUNICATIONS; AND EXTENDING ORDINANCE NO. 2033, AND RATIFYING ITS TERMS FROM THE DATE OF ITS EXPIRATION, TO THE EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, the Washington legislature by RCW 35A.47.040 grants the authority to code cities to grant nonexclusive franchises for the use of public ways for facilities that provide for the transmission of methods of communication; and

WHEREAS, RCW 35A.47.040 requires that no ordinance granting any franchise in a code city for any purpose shall be adopted or passed by the city's legislative body on the day of its introduction nor for five (5) days thereafter, nor at any other than a regular meeting nor without first being submitted to the city attorney, nor without having been granted by the approving vote of at least a majority of the entire legislative body, nor without being published at least once in a newspaper of general circulation in the city before becoming effective; and

WHEREAS, Charter Communications is a provider of cable communications serving the citizens of the City of Sunnyside, Washington, and has faithfully performed under the terms of a nonexclusive franchise granted by Ordinance No. 2033; and

WHEREAS, such franchise having expired on September 20 of 2016, however, the parties have continued to operate under the terms and conditions of the grant of franchise; and

WHEREAS, the parties wish to ratify the rights and responsibilities created under such franchise up to the effective date of a newly granted franchise provided herein; and

WHEREAS, the City and Charter Communications have negotiated a new franchise agreement as provided herein; and

WHEREAS, on July 31, 2017 and August 7, 2017, the City of Sunnyside published notice in the local newspaper of a public hearing regarding this Ordinance and the Franchise Agreement with Charter Communications that is attached as Exhibit A; and

WHEREAS, the requirements of RCW 35A.47.040 that pertain to this Ordinance granting the Franchise Agreement attached as Exhibit A have been met; and

WHEREAS, the City of Sunnyside held a public hearing regarding said Franchise Agreement on August 14, 2017, and at a regular City Council meeting on the same day did also make a first reading of this Ordinance; and

WHEREAS, the City of Sunnyside wishes to grant a nonexclusive franchise to Falcon Video Communications L.P., locally known as Charter Communications, a copy of which is attached to this Ordinance as Exhibit A.

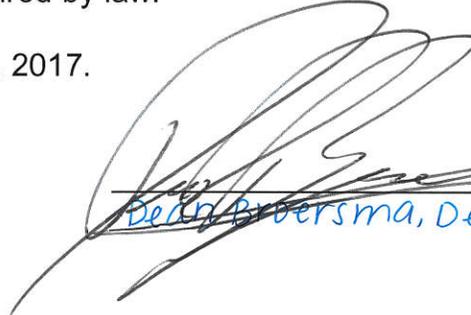
NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, as follows:

Section 1. The City does hereby ratify the terms and conditions of the grant to Charter Communications of a nonexclusive franchise for the transmission of cable communications within the City of Sunnyside, Washington, in accordance with the terms and conditions contained in Ordinance No. 2033, and ratify that such terms and conditions shall be binding upon the parties from the date of its expiration on September 20, 2016, until the effective date of this Ordinance as provided below.

Section 2. The City of Sunnyside does hereby grant a nonexclusive franchise to Falcon Video Communications L.P., for the provision of cable service within the franchise area for the benefit of the residents of the City, which franchise is attached as Exhibit A; and furthermore, the City Manager of the City of Sunnyside, Washington, is hereby authorized to execute said Franchise Agreement and to take all necessary steps required to complete this transaction.

Section 2. This Ordinance shall be effective five (5) days after passage, approval and publication as required by law.

PASSED this 28th day of August, 2017.



Debra Broersma, Deputy Mayor

ATTEST:



Jacqueline Renteria

JACQUELINE RENTERIA, DEPUTY CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP
Attorneys for the City of Sunnyside

EXHIBIT A

FRANCHISE AGREEMENT

This Franchise Agreement (“Franchise”) is between the CITY of SUNNYSIDE, WASHINGTON, hereinafter referred to as the “Franchisor” and FALCON VIDEO COMMUNICATIONS L.P., locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the “Franchisee.”

WHEREAS, the Franchisor finds that the Franchisee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Franchisee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Franchisor desires to enter into this Franchise with the Franchisee for the construction and operation of a cable system on the terms set forth herein; and

WHEREAS, the Franchisor and Franchisee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the Franchisor and Franchisee agree as follows:

SECTION 1
Definition of Terms

1.1 Terminology. For the purpose of this Franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

“Affiliate” is defined as set forth in Section 522(2) of Title 47 of the United States Code.

“Board/Council” shall mean the governing body of the Franchisor.

“Cable Act” shall refer to the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and as it may be further amended during the term of the Franchise.

“Cable Operator” is defined as set forth in Section 522(5) of Title 47 of the United States Code.

“Cable Service” is defined as the one-way transmission to Subscribers of either Video Programming, or other programming service, and subscriber interaction, if any, which is required

for the selection or use of Video Programming or other programming service, as set forth in Section 522(6) of Title 47 of the United States Code.

“Cable System” is defined as set forth in Section 522(7) of Title 47 of the United States Code.

“Channel” is defined as set forth in Section 522(4) of Title 47 of the United States Code.

“City”, when used to refer to a geographic area, means the City of Sunnyside, a political subdivision of the State of Washington, in its present incorporated form or in any later recognized, consolidated, enlarged, or reincorporated form; when used to refer to an action taken by an entity, the term refers to the governing body of the City of Sunnyside or any entity authorized to act on its behalf.

“FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.

“Franchise” shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.

“Franchise Agreement” or “Agreement” shall refer to this contract between the City and the Franchisee entered into in accordance with applicable law.

“Franchisee” means Falcon Video Communications. L.P., locally known as Charter Communications, the entity to which this Cable Franchise is granted by the Sunnyside City Council, and its lawful and permitted successors, assigns, and transferees.

“Gross Revenues” means all revenue actually received by the Franchisee, as determined in accordance with generally accepted accounting principles, that is derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, including all of the following

a. All charges billed to Subscribers for any and all Cable Service provided by the Franchisee, including all revenue related to programming provided to the Subscriber, equipment rentals, and late fees.

b. Franchise Fees imposed on the Franchisee by this Franchise that are passed through to, and paid by, the Subscribers.

c. Compensation received by the Franchisee that is derived from the operation of the Franchisee's Cable System to provide Cable Service in the Service Area with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Franchisee's Cable System such as a "home shopping" or similar Channel subject to paragraph 4 below.

d. A pro rata portion of all revenue derived by the Franchisee or its Affiliates pursuant to compensation arrangements for advertising derived from the operation of the Franchisee's Cable

System to provide Cable Service within the Service Area subject to paragraph 1 below. The allocation shall be based on the number of Subscribers in the local entity divided by the total number of Subscribers in relation to the relevant regional or national compensation arrangement.

For purposes of this Franchise, the term “Gross Revenues” set forth above does not include any of the following:

1. Amounts not actually received, even if billed, such as bad debt; refunds, rebates, or discounts to Subscribers or other third parties; or revenue imputed from the provision of Cable Services for free or at reduced rates to any person as required or allowed by law, including, but not limited to the provision of these services to public institutions, public schools, governmental agencies, or employees.

2. Revenues received by an Affiliate or any other person in exchange for supplying goods or services used by the Franchisee to provide Cable Services. However, revenue received by an Affiliate of the Franchisee from the Affiliate's provision of Cable Service shall be included in Gross Revenues as follows:

i) To the extent that treating the revenue as revenue of the Affiliate, instead of revenue of the Franchisee, would have the effect of evading the payment of fees that would otherwise be paid to the City.

ii) The revenue is not otherwise subject to fees to be paid to the City.

3. Revenue derived from services classified as noncable services under federal law, including, but not limited to, revenue derived from telecommunications services and information services, other than Cable Services, and any other revenues attributed by the Franchisee to noncable services in accordance with FCC rules, regulations, standards, or orders.

4. Revenue paid by Subscribers to “home shopping” or similar networks directly from the sale of merchandise through any home shopping Channel offered as part of the Cable Services. However, commissions or other compensation paid to the Franchisee by “home shopping” or similar networks for the promotion or exhibition products or services shall be included in Gross Revenue.

5. Revenue from the sale of Cable Services for resale in which the reseller is required to collect a fee similar to the Franchise Fee from the reseller's Subscribers.

6. Amounts billed to, and collected from, Subscribers to recover any tax, fee, or surcharge imposed by any governmental entity on the Franchisee, including, but not limited to, sales and use taxes, gross receipts taxes, excise taxes, utility users taxes, public service taxes, communication taxes, and any other fee not imposed by this section.

7. Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive Cable Services from the seller of those assets or surplus equipment.

8. Revenue from directory or Internet advertising revenue, including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing.

9. Revenue received as reimbursement by programmers of specific, identifiable marketing costs incurred by the Franchisee for the introduction of new programming.

10. Security deposits received from Subscribers, excluding security deposits applied to the outstanding balance of a Subscriber's account and thereby taken into revenue.

For purposes of this Franchise, in the case of a Cable Service that may be bundled or integrated functionally with other services, capabilities, or applications, the Franchise Fee shall be applied only to the Gross Revenue, as defined in subsections a-d above, attributable to Cable Service. Where the Franchisee or any Affiliate bundles, integrates, ties, or combines Cable Services with noncable services creating a bundled package, so that Subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, Gross Revenues shall be determined based on an equal allocation of the package discount, that is, the total price of the individual classes of service at advertised rates compared to the package price, among all classes of service comprising the package. The Franchisee's offering a bundled package shall not be deemed a promotional activity. If the Franchisee does not offer any component of the bundled package separately, the Franchisee shall declare a stated retail value for each component based on reasonable comparable prices for the product or service for the purpose of determining Franchise Fees based on the package discount.

For the purposes of determining Gross Revenue, Franchisee shall use the same method of determining revenues under generally accepted accounting principles as that which Franchisee uses in determining revenues for the purpose of reporting to national and state regulatory agencies.

“Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.

“Other Programming Service” means information that a Cable Operator makes available to all Subscribers generally, as set forth in Section 522(14) of Title 47 of the United States Code.

“Service Area” shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions specifically listed in this Agreement.

“Signal” means any analog or digital electrical or light impulses carried on the Cable System, whether one-way or bidirectional.

“State” shall mean the State of Washington

“Street”, “Public Way” or “Right of Way” means land acquired or dedicated for roads and public streets and easements, including but not limited to Utility Easements, which, under the City Charter, the municipal code, city ordinances, and applicable laws, the City has authority to grant permits, licenses, or leases for use thereof, or has regulatory authority over. “Street”, “Public Way” or “Right of Way” does not include buildings, parks, poles, conduits or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the public way such as utility poles, light poles and bridges.

“Subscriber” or “Customer” shall mean any person lawfully receiving Cable Service from the Franchisee.

“Utility Easement” means any easement acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities, excluding easements not specifically allowing license, franchise or lease holders.

“Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in Section 522(20) of Title 47 of the United States Code.

All words appearing in this Agreement which are identical to the words defined in Section 1.1 shall have the meanings set forth in Section 1.1.

SECTION 2 **Grant of Franchise**

2.1 Grant. The Franchisor hereby grants to the Franchisee a nonexclusive Franchise which authorizes the Franchisee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Franchisee from offering any service over its Cable System that is not prohibited by federal, State or local law.

2.2 Term. The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 14.10. This Franchise will be automatically extended for an additional term of five (5) years from the expiration date as set forth in Section 14.10, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

2.3 Police Powers and Conflicts with Franchise. The Franchisee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Franchisee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Franchisor’s lawful exercise of its general police power, the Franchisor may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Franchisee and the Franchisor. In the event of any conflict between this Franchise and any Franchisor ordinance or regulation that is not generally applicable, this Franchise shall control.

2.4 Cable System Franchise Required. No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

SECTION 3
Franchise Renewal

3.1 Procedures for Renewal. The Franchisor and the Franchisee agree that any proceedings undertaken by the Franchisor that relate to the renewal of the Franchisee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

SECTION 4
Indemnification and Insurance

4.1 Indemnification. The Franchisee shall defend, indemnify and hold the Franchisor, its officers, councils, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, penalties, or judgments for any injury to any Person or property, caused in whole or in part, by the negligence or misconduct of Franchisee arising out of the issuance of this Franchise including, but not limited to, the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation and maintenance of the Cable System, or the use of the Franchisor's right-of-way. Grantor shall provide Grantee reasonable notice of any demand or claim for which Grantor is seeking indemnification, which, in most instances, would be at least 10 calendar days prior to the deadline for responding to the demand or claim. Nothing in this section relieves the Grantee of their duty to indemnify the Grantor, although, additional liability and legal costs incurred for failure to provide reasonable notice shall be borne by the Grantor. In the event any such claim arises, the Franchisor shall tender the defense thereof to the Franchisee and the Franchisee shall defend, settle or compromise any claims arising thereunder and the Franchisor shall cooperate fully therein. If the Franchisor determined in good faith that its interests cannot be represented by the Franchisee, the Franchisee shall be excused from any obligation to represent the Franchisor. Notwithstanding the foregoing, the Franchisee shall not be obligated to defend or indemnify the Franchisor from any damages, liability or claims resulting from the willful misconduct or negligence of the Franchisor or arising from the Franchisor's use of the Cable System, *including any PEG channels*. Franchisee's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Franchisee to the coverage provided by such insurance, or otherwise limit the Franchisor's recourse to any remedy available at law or in equity.

4.2 Insurance.

A. Insurance Term

The Franchisee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on the Franchisee's behalf with the issuance of this Franchise.

B. Franchisee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Franchisor shall be named as an additional insured under the Franchisee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.
2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

C. The Franchisee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence Combined Single Limit
Umbrella Liability	\$1,000,000 per occurrence

Franchisor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

D. The Franchisee shall furnish the Franchisor with current certificates of insurance evidencing such coverage initially and upon request.

SECTION 5 **Customer Protection**

5.1 Customer Protection. The Franchisee agrees to comply with FCC Customer Service Standards throughout the term of this Agreement as they may be amended or modified from time to time.

5.2 Privacy. The City and the Franchisee shall comply with the requirements of Cable Act Section 631 (47 U.S.C. §551).

5.3 Sale of Subscriber Lists and Personalized Data.

The Franchisee shall be subject to the provisions of federal law regarding limitations on the Franchisee's collection and use of personally identifiable information, and the protection of Subscriber privacy.

5.4 Maintenance and Complaints.

A. The Franchisee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. The Franchisee shall, at all times, employ ordinary care and shall use commonly accepted methods and devices to prevent failures and accidents which are likely to cause damage.

B. Complaints concerning billing, employee courtesy, programming, safety, or the Franchisee's operational policies, as well as all other complaints, including complaints about outages, Signal quality, and service disruptions, shall be recorded where practicable. The Franchisee will maintain records of complaints for one (1) year. Summaries of complaint records shall be provided to the City on request.

C. The Franchisee shall maintain a repair force of technicians sufficient to comply with this Franchise which includes the FCC Customer Service Standards under normal operating conditions and to respond to Subscriber complaints, loss of service, or requests for service. The Franchisee shall have in place at all times the equipment necessary to locate and correct Cable System malfunctions.

D. All Subscribers and members of the general public in the City may direct complaints and inquiries regarding the Franchisee's service or performance to the City. In addition to such other actions it may take to enforce this Franchise, upon the request of all parties involved in a dispute, the City may act as a board of review of a complaint or dispute, and recommend action for resolution.

5.5 Non- discrimination and Equal Employment Opportunity.

A. Throughout the term of this Franchise, the Franchisee shall fully comply with the equal employment opportunity requirements of Federal and State law and, in particular, FCC rules and regulations relating thereto. Upon request by the City, the Franchisee shall furnish the City a copy of the Franchisee's annual statistical report filed with the FCC, along with proof of the Franchisee's annual certification of compliance.

B. The Franchisee shall not deny, delay, or otherwise burden service or discriminate against Subscribers within its Service Area on the basis of age, race, creed, religion, color, sex, national origin, marital status, sexual orientation, physical or mental disability, or political affiliation.

C. The Franchisee shall not deny Cable Service to any group of potential Subscribers because of the income of the residents of the area in which the group resides.

D. The Franchisee shall ensure that its services are accessible, as far as reasonably practical, to people with disabilities. All programming received by the Franchisee with closed-captioning shall

be retransmitted by the Cable System including the closed-caption Signal, if required by applicable law.

5.6 Parental Control Device. Upon request, the Franchisee shall provide parental control devices or technology to any Subscriber.

SECTION 6 **Service Availability**

6.1 Service Area. The Franchisee shall continue to provide Cable Service to all residences within the Service Area where Franchisee currently provides Cable Service. Franchisee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Franchisee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.

6.2 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Franchisor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Franchisee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Franchisee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Franchisee's expense. Franchisee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Franchisee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the five day period, the cost of new trenching is to be borne by Franchisee.

6.3 Annexation. The Franchisor shall promptly provide written notice to the Franchisee of its annexation of any territory which is being provided Cable Service by the Franchisee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Franchisor, subject to the conditions set forth below and Section 6.1 above. The Franchisor shall also notify Franchisee in writing of all new street address assignments or changes within the Service Area. Franchisee shall within ninety (90) days after receipt of the annexation notice, pay the Franchisor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Franchisor if the Franchisor has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Franchisee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Franchisee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 14.5 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Franchise, Franchisee shall not be liable for franchise fees on annexed areas unless and until Franchisee has received notification and information that meets the standards set forth in this section.

SECTION 7
Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

7.2 Construction Standards and Requirements. All of the Franchisee's plant and equipment, including but not limited to the antenna site, head end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Safety. The Franchisee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.4 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

7.5 Performance Monitoring. Franchisee shall test the Cable System consistent with the FCC regulations.

7.6 Emergency Alert System.

A. The Franchisee shall install and maintain an Emergency Alert System ("EAS"). Franchisee shall comply with the EAS requirements of the FCC and federal law, in order that required emergency messages may be distributed over the system.

B. To the extent the City is approved or authorized to operate the EAS, the City shall permit only appropriately trained and authorized persons to operate the EAS equipment, and shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold the Franchisee, its employees, officers and assigns harmless from any claims or costs arising out of the EAS or the emergency use of its facilities by the City.

SECTION 8
Conditions on Street Occupancy

8.1 General Conditions. Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.

8.2 Underground Construction. All facilities installed after the date of the execution of this Agreement shall be installed, located, erected, constructed, reconstructed, and replaced

underground in those Service Areas where existing telephone and electric services are both underground, unless exempted from this requirement at the sole discretion of the City.

8.3 Whenever the owner of a pole on which Franchisee is attached locates or relocates underground within an area of the Service Area, Franchisee shall concurrently relocate its facilities underground in the same area. In the event that any telephone or electric utilities are reimbursed by the City for the placement of cable underground or the movement of cable, the Franchisee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

8.4 Construction Codes and Permits. The City may, for good cause shown, exempt Franchisee's system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical, where ordinary engineering practices make undergrounding impractical, or where the City and the Subscriber's interest can be protected in another manner. Nothing in this section prevents the City from ordering communications facilities to be located or relocated underground under generally applicable provisions of the City Code or its general police powers.

8.5 Construction Codes and Permits. Franchisee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Franchisor shall cooperate with the Franchisee in granting any permits required, providing such grant and subsequent construction by the Franchisee shall not unduly interfere with the use of such Streets. The Franchisee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Franchisor as to other public utility companies and other entities operating in the Service Area. Notwithstanding the above, the Franchisee may set off any administrative permit fees or other fees required by the Franchisor related to the Franchisee's use of Franchisor rights-of-way against the franchise fee payments required under Section 10.1 of this Franchise.

8.6 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Franchisee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Franchisee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.7 Restoration of Public Ways. Franchisee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, maintenance, or removal of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

8.8 Removal in Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Franchisor to remove any of the Franchisee's facilities, no charge shall be

made by the Franchisee against the Franchisor for restoration and repair, unless such acts amount to gross negligence by the Franchisor.

8.9 Tree Trimming. Franchisee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

8.10 Relocation for the Franchisor.

A. The Franchisee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Franchisee when lawfully required by the City pursuant to its general police powers, including by reason of traffic conditions; public safety; public rights-of-way construction and repair (including regrading, resurfacing or widening); public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, and tracks.

B. Except in the case of emergency, the City shall provide written notice describing where the public work is to be performed at least ten (10) business days prior to the deadline by which Franchisee must protect, support, temporarily disconnect, relocate or remove its facilities. Franchisee shall be responsible for any costs associated with these obligations to the same extent all other users of the City rights-of-way are responsible for the costs related to the relocation of their facilities. Provided that, in an emergency, or where the Cable System creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Cable System without further notice, but only to the extent necessary to eliminate the imminent danger, and charge the Cable System operator for costs incurred.

8.11 Relocation for a Third Party.

A. To accommodate the relocation of building or other objects on public or private property, or to accommodate the construction, operation, or repair of the facilities of another person authorized to use the public rights-of-way or public property, Franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, temporarily relocate or remove its facilities, provided that the expense of such is paid by any such person requesting the relocation. Franchisee must be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time by which its work must be completed in the event of a temporary relocation, and no less than one hundred and twenty (120) days for a permanent relocation. Upon request of all involved parties, the City may resolve disputes as to responsibility for costs associated with removal or relocation of facilities among entities authorized to install facilities in the Streets or on public property if such entities are unable to do so themselves.

8.12 Reimbursement of Costs. If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Franchisor shall reimburse the Franchisee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchisor shall make application for such funds on behalf of the Franchisee.

SECTION 9
Service and Rates

9.1 Phone Service. The Franchisee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

9.2 Notification of Service Procedures. The Franchisee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Franchisee's name, address and local telephone number. Franchisee shall give the Franchisor thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

9.3 Rate Regulation. Franchisor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Franchisor. If and when exercising rate regulation, the Franchisor shall abide by the terms and conditions set forth by the FCC.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Franchisee are honored, and subject to Franchisee's rights under Section 14.1 of this Franchise.

SECTION 10
Franchise Fee

10.1 Amount of Fee. Franchisee shall pay to the Franchisor an annual franchise fee in an amount equal to three and one half percent (3.5%) of the annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the Franchisor by the Franchisee that are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Franchisee chooses, consistent with federal law.

10.2 Payment of Fee. Payment of the fee due the Franchisor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by Franchisor. The payment period and the collection of the franchise fees that are to be paid to the Franchisor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 14.10. In the event of a dispute, the Franchisor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

10.3 Accord and Satisfaction. No acceptance of any payment by the Franchisor shall be construed as a release or as an accord and satisfaction of any claim the Franchisor may have for additional sums payable as a franchise fee under this Franchise.

10.4 Limitation on Recovery. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Franchisee was due. If any Franchise payment or recomputed payment is not made on or before the dates specified

herein, Franchisee shall pay an interest charge, computed from the last day of the fiscal year in which payment was due, at the annual rate of one (1%) percent over the prime interest rate.

SECTION 11 **Transfer of Franchise**

11.1 Franchise Transfer. The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Franchisee, without the prior consent of the Franchisor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchisor shall notify the Franchisee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchisor has not taken action on the Franchisee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchisor shall be deemed given.

SECTION 12 **Records, Reports and Maps**

12.1 Reports Required. The Franchisee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Franchisee's policy in connection with its Subscribers shall be filed with the Franchisor upon request.

12.2 Records Required.

The Franchisee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.
- B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

12.3 Inspection of Records. Franchisee shall permit any duly authorized representative of the Franchisor, upon receipt of advance written notice, to examine at Franchisee's local office or another mutually agreeable location during normal business hours and on a non-disruptive basis any and all of Franchisee's records maintained by Franchisee as is reasonably necessary to ensure Franchisee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Franchisee may organize the necessary books and records for easy access by the Franchisor. The Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Franchisor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Franchisee makes the Franchisor

aware of such confidentiality. If the Franchisor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Franchisee in advance so that Franchisee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Franchisor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Franchisee's books and records marked confidential, as set forth above, to any Person.

SECTION 13 **Enforcement or Revocation**

13.1 Franchise Violation. Notice and Procedures. If the City believes that Franchisee has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Franchisee through a written, documentable form of communication. If these discussions do not lead to resolution of the problem, Franchisee will provide written notice via e-mail or letter. Before revoking the Franchise or pursuing any other remedy or enforcement action, the City shall follow the procedures set forth below:

The City shall notify Franchisee in writing of any alleged violation ("Violation Notice") of the Franchise. The Violation Notice shall:

1. Identify the nature of the alleged noncompliance or violation;
2. Direct Franchisee to cure the alleged noncompliance or violation or show cause why the alleged noncompliance or violation cannot or should not be cured; and
3. State the time for Franchisee's response, which shall be at minimum thirty (30) days from the date of issuance of the Violation Notice, except for violations that present a danger to public health, safety or welfare, in which case the time for response may be shortened.

13.2 Franchisee's Right to Cure or Respond. Within the time period designated for response, Franchisee shall respond in writing to the City indicating that:

- A. Franchisee contests the Violation Notice and describing facts relevant to its claim; or
- B. Franchisee has completely cured the alleged noncompliance or violation, in which case Franchisee shall provide documentation demonstrating that the alleged noncompliance or violation has been completely cured; or
- C. Franchisee has begun to correct the alleged noncompliance or violation; however, the alleged noncompliance or violation cannot be corrected immediately despite Franchisee's continued due diligence, in which case Franchisee shall describe in detail the steps already taken and Franchisee's proposed plan and time schedule for completely curing the alleged noncompliance or violation.

13.3 Public Hearing. If Franchisee contests the Violation Notice or the City believes that the Franchisee has failed to completely cure the alleged noncompliance or violation, to submit a reasonable plan to cure the alleged noncompliance or violation, or to work diligently to cure the alleged noncompliance or violation, the City shall schedule a hearing before the City Council

(Violation Hearing"). The City shall provide Franchisee written notice of the Violation Hearing at least thirty (30) days prior to the hearing ("Hearing Notice").

A. The Hearing Notice shall indicate:

1. The time and place of the Violation Hearing;
2. The nature of the alleged noncompliance or violation; and
3. Franchisee's right to present oral and written testimony at an open and public meeting.

B. At the Violation Hearing, the City Council shall hear and consider evidence from Franchisee, City staff and members of the public regarding the alleged noncompliance or violation. Franchisee shall be given an opportunity to present any and all evidence relating to the alleged noncompliance or violation.

C. If, based upon the evidence presented at the Violation Hearing, the City Council finds that Franchisee has violated the Franchise, the City Council may issue written findings and an order invoking the appropriate remedy under this Franchise.

13.4 Enforcement. Subject to applicable federal and State law, in the event the City, after the Violation Hearing set forth in subsection 13.3 above, determines that the Franchisee is in default of any provision of the Franchise, the City may take any or all of the following actions:

A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

B. Commence an action at law for monetary damages or seek other equitable relief.

C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 13.5 below.

13.5 Revocation. The City Council may revoke this Franchise or reduce the term of this Franchise if it finds, after complying with procedures set forth in Section 13.1- 13.4 above, that Franchisee has substantially failed to comply or violated a material provision of this Franchise; has defrauded or attempted to defraud the City or Subscribers; has attempted to evade material requirements of this Franchise; or has abandoned its Franchise (the Franchisee shall be deemed to have abandoned its Franchise if it willfully refuses to operate the Cable System as required by its Franchise, when there is no event beyond the Franchisee's control that prevents the operation of the Cable System, and where operation would not endanger the health or safety of the public or property). Franchisee may continue to operate the Cable System until all legal appeals procedures have been exhausted. Upon revocation of the Franchise, or upon any other termination of the Franchise by passage of time or otherwise, the City shall have the right to require the Franchisee to remove, at the Franchisee's expense, its Cable System from Streets, public property, and any private property occupied pursuant to the revoked, canceled, or terminated Franchise. The City shall notify the Franchisee in writing that the Cable System should be removed, and identify any period during which the Franchisee will be required to continue to operate the Cable System. In removing its Cable System, the Franchisee shall refill and compact, at its expense, any excavation

that shall be made and shall leave all Streets, public property, and private property in as good a condition as that prevailing prior to the Franchisee's removal of the Cable System. The provisions of Section 13.5 of this Franchise Agreement shall remain in full force and effect until the Cable System is removed. Upon revocation or termination of the Franchise, Franchisee may, if the City declines to acquire ownership of the Cable System, sell or transfer the ownership of the Cable System, subject to Section 11 herein. Notwithstanding the foregoing, neither the Franchisee nor the City waive any of their respective rights under federal law or regulation. Nothing herein shall be construed to waive or otherwise affect Franchisee's right to seek relief in a court of competent jurisdiction from any decision made or action taken by the City under this Franchise. The Franchisee may appeal such City determinations to an appropriate court, which shall have the power to review the decision of the City *de novo*.

SECTION 14

Miscellaneous Provisions

14.1 Service to Public Facilities. Subject to applicable law, Franchisee shall provide, without charge, standard installation and one outlet and equipment of basic Cable Service to the locations listed in Exhibit A hereto. Standard installation shall mean installations to buildings that are located up to 125 feet from the point of connection to Franchisee's existing distribution system. The Cable Service provided pursuant to this Section 14.1 shall not be used for commercial purposes. The Franchisor shall take reasonable precautions to prevent any inappropriate use or loss or damage to the Franchisee's Cable System.

14.2 Force Majeure. The Franchisee shall not be held in default under, or in noncompliance with the provisions of the 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 Franchisee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Franchisee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

14.3 Minor Violations. Furthermore, the parties hereby agree that it is not the Franchisor's intention to subject the Franchisee 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 Service Area, or where strict performance would result in practical difficulties and hardship to the Franchisee which outweighs the benefit to be derived by the Franchisor and/or Subscribers.

14.4 Action of Parties. In any action by the Franchisor or the Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

14.5 Equal Protection. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Franchisor or by any other State or federal governmental entity to provide such services using facilities located wholly

or partly in the public rights-of-way of the Franchisor, the Franchisor shall within thirty (30) days of a written request from Franchisee, modify this Franchise to insure that the obligations applicable to Franchisee are no more burdensome than those imposed on the new competing provider. If the Franchisor fails to make modifications consistent with this requirement, Franchisee's Franchise shall be deemed so modified thirty (30) days after the Franchisee's initial written notice. As an alternative to the Franchise modification request, the Franchisee shall have the right and may choose to have this Franchise with the Franchisor be deemed expired thirty (30) days after written notice to the Franchisor. Nothing in this Franchise shall impair the right of the Franchisee to terminate this Franchise and, at Franchisee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

14.6 Notices. Unless otherwise provided by federal, State or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Franchisee shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Franchisor shall be delivered or sent to:

Franchisor: City of Sunnyside
Attn: Don Day
818 E. Edison Ave.
Sunnyside, WA 98944
Email: dday@sunnyside-wa.gov

Franchisee: Director, Government Affairs
Charter Communications
222 NE Park Plaza Drive, #231
Vancouver, WA 98684
Marian.jackson@charter.com

Copy to: Charter Communications
Attn: Vice President of Government Affairs
12405 Powerscourt Drive
St. Louis, MO 63131

14.7 Public Notice. Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Franchisor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Franchisor.

14.7.1 Franchisor shall provide written notice to Franchisee within ten (10) days of Franchisor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable

Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Section 14.6 above.

14.8 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

14.9 Entire Agreement. This Franchise and any Exhibits hereto constitute the entire agreement between Franchisee and the Franchisor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

14.10 Administration of Franchise. This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Franchisor and the Franchisee. Any determination by the Franchisor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

14.12 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Franchisee recorded on the signature page of this Franchise (“Effective Date”). The initial term of this franchise shall expire ten (10) years from the Effective Date defined herein, unless extended in accordance with Section 2.2 of the Franchise or by the mutual agreement of the parties. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

Considered and approved this ___ day of _____, 2017.

City of Sunnyside

Signature: _____

Name/Title: _____

Accepted this ___ day of _____, 2017, subject to applicable federal, State and local law.

Falcon Video Communications, L.P.

By: Charter Communications VII, LLC, its General Partner

By: Charter Communications, Inc., its Manager

Signature: _____

Name/Title: _____

Date: _____

Exhibit A

Service will be provided to the following locations:

1. City Hall, 818 E. Edison Ave, Sunnyside, WA 98944
2. Fire Department, 513 S. 8th Street, Sunnyside, WA 98944
3. Police Department, 401 Homer St., Sunnyside, WA 98944
4. TBD, as long as a standard installion per section 14.1 of the franchise agreement.