ORDINANCE NO. 2656

AN ORDINANCE GRANTING A FRANCHISE TO IFIBER COMMUNICATIONS CORPORATION TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF MOSES LAKE AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE.

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON DOES ORDAIN AS FOLLOWS:

Section 1. Findings. iFiber Communications Corporation,("Grantee") desires to operate a cable system in the rights-of-way of the City of Moses Lake. Negotiations between iFiber and the City have been completed and the franchise process followed in accordance with the guidelines established by applicable law. As a condition of receiving this franchise, Grantee has agreed to abide by the City's current and future lawful policies, ordinances and regulations regarding infrastructure usage, and street-cuts and rights-of-way.

Section 2. Adoption. This ordinance shall be known as the iFiber Communications Corporation 2012 Franchise and shall provide as follows.

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SECTION 1. DEFINITIONS. For the purposes of this Agreement and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not

inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Affiliate" when used in connection with Grantee means any corporation, person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.2 "Basic Service" means any service tier which includes the retransmission of local television broadcast signals, or as such service tier may be further defined by federal law.

1.3. "Cable Act" mean the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996, and any future federal cable television legislation.

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

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

1.6 "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 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 service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

1.7 "Channel" means a portion of the electromagnetic spectrum which is used in a Cable System and is capable of delivering a television channel, as television channel is defined by the FCC in other applicable regulations.

1.8 "Downstream" means the transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.9 "FCC" means the Federal Communications Commission.

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

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

1.12 "Gross Revenues" means all amounts accrued by Grantee in whatever form and from all sources, from the operation of Grantee's Cable System to provide Cable Service within the franchise area. "Gross Revenues" shall include, without limitation, all amounts for all Cable Services, including, but not limited to, basic, expanded basic, premium, and pay-per-view services, advertising sales and installation fees and charges. "Gross Revenues" shall also include any revenue received by any affiliate of Grantee where such revenue in the ordinary course of business has been paid or should have been paid to Grantee from the operation of its Cable System to provide Cable Service within

the franchise area. By way of illustration and not limitation, this definition would include revenue derived from the sale of Cable System advertising time by an affiliate of Grantee. "Gross Revenues" shall not include bad debt, sales taxes, or other taxes which are collected by Grantee on behalf of, and for payment to, the local, state or federal government.

1.13 "Headend" means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.

1.14 "Interconnect" means the provision by Grantee of technical, engineering, physical, and all other necessary components to maintain a physical linking of Grantee's Cable System and Cable Service or any designated channel or signal pathway thereof with neighboring Cable Systems, so that Cable Service of technically adequate quality may be sent to, and received from, other systems in accordance with this Agreement.

1.15 "Leased Access Channel" means any channel commercially available for programming for a fee or charge by Grantee to members of the general public.

1.16 "Person" means any individual, natural person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.17 "School" means any accredited educational institution, public or private, including, but not limited to, primary and secondary schools, and colleges and universities.

1.18 "Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the franchise area: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas.

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

A. "Commercial Subscriber" which means any subscriber other than residential subscriber.

B. "Residential Subscriber" which means any person who receives Cable Service delivered to single or multiple dwelling units, excluding such multiple dwelling units billed on a bulk-billing basis.

1.20 "Upstream" means the carrying of a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

A. This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6), as amended.

B. Grantee promises and guarantees, as a condition of exercising the privileges granted by this Agreement, that any affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the franchise area, or directly involved in the management or operation of the Cable System in the franchise area will also comply with the terms and conditions of this Agreement.

2.2 Use of Public Streets and Ways: Grantee will provide a Cable Service within the franchise area by means of infrastructure owned and maintained by a third party which party has separately obtained a franchise from the City to locate and maintain its infrastructure in the public rights-of-way. Grantee is not granted any permission to make any use of the City's rights-of-way except as a user of the

third party's infrastructure upon such terms and conditions as the Grantee and the third party shall determine.

2.3 Duration: The term of this Agreement and all rights, privileges, obligations and restrictions pertaining thereto shall be from the effective date of this Agreement through May 31, 2022.

2.4 Effective Date: The effective date of this Agreement shall be June 1, 2012, unless Grantee fails to file an unconditional written acceptance of this Agreement by November 1, 2012, in which event this Agreement shall be null and void, and any and all rights of Grantee to operate a Cable System within the franchise area under this Agreement are hereby terminated.

2.5 Franchise Nonexclusive: This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor and for such additional franchises for Cable Systems as Grantor deems appropriate, upon such terms and conditions as Grantor deems appropriate.

2.6 Grant of Other Franchises:

A. In the event the Grantor enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the service area, in which the Grantee is actually providing Cable Service under the terms and conditions of this Agreement, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

B. If Grantor grants a franchise to a third party for service to an area that Grantee is not actually serving or required to extend service to, and which has material provisions that are not reasonably comparable to those contained herein, Grantor shall offer Grantee a franchise to serve the same area under terms and conditions that are reasonably comparable to those set forth in the franchise agreement entered into with the third party.

2.7 Police Powers: Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Notwithstanding the foregoing, Grantor agrees it will not impose any regulation pursuant to the Cable Act not contained herein during the term of this franchise without negotiation with the Grantee and an opportunity for the Grantee to terminate this franchise rather than accept further regulation under the powers granted the Grantor under the Cable Act.

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

2.9 Effect of Acceptance: By accepting the Agreement, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.10 Effect of Change in the Cable Act: This form of franchise is agreed to between the parties owing to the provisions of the Cable Act in place at the time it was entered into. In the event the Cable Act is amended or other federal legislation is adopted providing other means to regulate Grantee's activity, the Grantor and Grantee agree to negotiate to implement such other means of regulation of Grantee's activity.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

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

3.2 Payments: Grantee's franchise fee payments to Grantor shall be computed monthly. Each monthly payment shall be due and payable no later than thirty (30) days after the last day of the preceding month.

3.3 Acceptance of Payment and Recomputation: No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Monthly Franchise Fee Reports: Each payment shall be accompanied by a written report to Grantor, containing an accurate statement in summarized form, as well as in detail, of Grantee's gross revenues and the computation of the payment amount.

3.5 Annual Franchise Fee Reports: On an annual basis, upon thirty (30) days' prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Agreement, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that franchisee fees have been underpaid by four percent (4%) or more, Grantee shall pay the total cost of the audit.

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

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

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

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

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

3.11 Payment on Termination: If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the gross revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in any Letter of Credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

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

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

4.3 Rate Discrimination: All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card), and shall be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all subscribers receiving similar Cable Service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the franchise area. Grantee shall provide equivalent Cable Service to all residential subscribers at similar rates and to commercial subscribers as authorized by applicable laws. Nothing herein shall be construed to prohibit:

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

B. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;

C. Grantee from establishing different and nondiscriminatory rates and charges and classes of service for commercial customers, as well as different nondiscriminatory monthly rates for classes of commercial customers as allowable by federal law and regulations; or

D. Grantee from establishing different and nondiscriminatory rates and charges for residential subscribers as allowable by federal law and regulations.

4.4 Filing of Rates and Charges:

A. Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under

temporary reductions or waivers of rates and charges in conjunction with promotional campaigns provided that Grantee shall make reasonable efforts to notify Grantor in writing in advance of such promotions.

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

4.5 Time Limits Strictly Construed: Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond the reasonable control of Grantee, such as acts of God (for example, floods, tornadoes, earthquakes or unusually severe weather conditions), Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for such obligation which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

4.6 Performance Evaluation Sessions:

A. Grantor may hold regular performance evaluation sessions annually on the anniversary dates of the effective date of this Agreement. All such evaluation sessions shall be conducted by Grantor.

B. Special evaluation sessions may be held at any time by Grantor during the term of this Agreement.

C. All regular evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the franchise area.

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

E. As part of the annual performance evaluation session, Grantee shall submit to the Grantor a list of all cable services available. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, retains the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the cable system.

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

SECTION 5. FINANCIAL AND INDEMNIFICATION REQUIREMENTS

5.1 Indemnification

A. Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the operation of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the grant of this Agreement pursuant to Section 2.9 of this Agreement. Without limiting in any way the

Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

1. To persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees, or agents, or to which the Grantee's negligence shall in any way contribute;

2. Arising out of any claim for invasion of the right of privacy; for defamation of any person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any person;

3. Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies; and

4. Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other person or entity, whether such person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.

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

5.2 Performance Bond: Upon or before the effective date of this franchise, Grantee shall obtain and maintain during the entire term of this franchise, including any extensions or renewals thereof, at its own cost and expense, a performance bond that shall be filed with the Grantor in the amount of six thousand dollars ($6,000) as guarantee for the faithful performance by it of all the provisions of this franchise. Such bond shall be reviewed at the end of sixty (60) months. The amount of the bond shall be set for the remainder of the franchise term at the greater of six thousand dollars ($6,000) or the amount of franchise fees paid in the sixtieth month.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards: The Grantee shall meet or exceed any customer service standards adopted by the FCC and, to the extent the same are stricter or address different matters, those adopted now or in the future by the Grantor.

6.2 Subscriber Privacy: Grantee will comply with privacy rights of subscribers in accordance with federal, state and local law.

6.3 Local Customer Access: Throughout the Agreement term, the Grantee shall provide telephones and other equipment so that customer complaints and service requests can be received by Grantee on a twenty-four (24) hour basis at a toll-free telephone number.

6.4 Emergency Override: The Grantee shall maintain systems, equipment, and procedures permitting preempting of the regular signal on all channels with emergency warning signals originating from the Grant County Emergency Services (GCES). The following stipulations shall apply, except where and to what extent they may be preempted by FCC regulations:

A. The Director of the GCES shall determine when the Emergency Cable Override is to be activated in response to actual or impending emergency conditions.

B. The Grantee shall provide and maintain all equipment, systems, software, services, security provisions, and procedures required for a fully operational emergency cable override warning system in accordance with FCC rules. Any equipment necessary for activation of the system by the GCES shall be provided by the Grantor. Activation points shall be at the GCES and one other backup point within the Grant County area, as mutually agreed upon by the parties.

C. The cable override shall consist of audio and crawler text signals as required by the Federal Communications Commission rules governing the new Emergency Alert System (EAS).

D. The system shall be tested as determined by the GCES not more than monthly and not less than annually.

E. The Grantee shall cooperate fully with the GCES in all other matters pertaining to a functioning emergency cable override system.

F. Should the owner of the infrastructure which is the means of transmission of the Cable Service authorized in this Agreement provide the emergency override acceptable to the GCES, then the Grantee shall have no further obligation under this provision.

SECTION 7. REPORTS AND RECORDS:

7.1 Open Records

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

7.2 Confidentiality: City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If City receives a demand from any person for disclosure of any information designated by Grantee as confidential, City shall, so far as consistent with applicable law, advise Grantee in advance so that Grantee may take appropriate steps to protect its interests and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time.

Until otherwise ordered by a court or agency of competent jurisdiction, City agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any person.

7.3 Complaint File:

A. Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System as required by the FCC.

7.4 Inspection of Facilities: City may inspect upon request any of Grantee's facilities and equipment to confirm performance under this Agreement at any time upon at least forty-eight (48) hours notice, or, in case of an emergency, upon demand without prior notice.

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

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories:

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

1. Educational programming;
2. Washington State news and information;
3. Sports;
4. General entertainment (including movies);
5. Children/family-oriented;
6. Arts, culture and performing arts;
7. Foreign language;
8. Science/documentary;
9. Weather information;
10. Programming addressed to diverse ethnic and minority interests in the franchise area; and
11. National, state, and local government affairs.

B. Grantee shall not delete any broad category of programming within its control.

8.2 Parental Control Device: Upon request by any subscriber, Grantee shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it. Upon request by a subscriber, Grantee may install a filter to block at least the video of certain channels a subscriber subscribes to but finds objectionable.

8.3 Leased Access Channels: Grantee shall meet the requirements for leased access channels imposed by federal law.

8.4 Continuity of Service:

A. It shall be the right of all subscribers to continue to receive cable service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the *force majeure* provisions of this Agreement, Grantee shall use its best efforts to ensure that all subscribers receive continuous, uninterrupted cable service.

B. In the event of a change in ownership, or in the event a new cable operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with City and such new cable operator in maintaining continuity of service to all subscribers.

8.5 Grantee shall retransmit all closed-captioned signals made available by programmers in conjunction with programming in its line-up and which are required to be carried by the FCC in order to facilitate viewing by handicapped persons. Grantee shall comply with the Americans With Disabilities Act, any amendments thereto and any other applicable federal, state or local laws or regulations. Grantee shall maintain the necessary head-end equipment to make SAP features available to subscribers. Grantee's obligations under this subsection do not extend to providing customer premises equipment.

8.6 Community Programming Needs: At the request of the Mayor, but no more than twice, ninety (90) days after such request, the Grantee shall furnish to all subscribers along with their monthly service statement, a list of broad categories of programming, and other services available to Grantee, subject to prior review by the Mayor. The menu to be in the format of a mailback survey for determination of the subscriber's programming preference. The results of the survey are to be provided the City by the Grantee with any proposed change(s) in programming to accommodate subscriber's desired revisions as indicated by the results of the survey.

8.7 Category Agreement: The parties expressly agree that the programming described in paragraph 8.1 represent broad categories of video programming within the meaning of 47 U.S.C. 544(b) (2) (B).

SECTION 9. TEST AND COMPLIANCE PROCEDURES

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

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

SECTION 10. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

10.1 Equivalent Service: It is Grantee's general policy that all residential dwelling units in the franchise area have equivalent availability to cable service from Grantee's cable system under nondiscriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide cable service to any person within its franchise area.

10.2 Service Availability: New Construction. Grantee shall provide cable service in newly constructed areas as soon as the infrastructure carrying Grantee's cable service is installed and operational.

10.3 Connection of Public Facilities: Grantee shall, at no cost to Grantor, provide at least one (1) outlet of Basic and expanded basic programming to all City/Grant County buildings, as designated by the Grantor, and all libraries and schools. In addition, Grantee shall provide, at no cost to the building owner, one (1) outlet of Basic and expanded basic programming to all such future public buildings. Outlets of Basic and expanded basic programming provided in accordance with this subsection may be used to distribute cable service throughout such buildings, provided such distribution can be accomplished without causing cable system disruption and general technical standards are maintained.

SECTION 11. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

11.1 Procedure for Remedying Franchise Violations:

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

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

2. Cure the violation; or

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

B. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor or its designee shall set a public hearing within thirty (30) days of Grantor's receipt of such notice to review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found to be reasonable, the same shall be approved by the Grantor.

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

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

E. If, after the public hearing, Grantor or designee determines that a violation exists, Grantor or designee may utilize one or more of the following remedies subject to Grantee's rights under federal, state or local law to appeal such determination:

1. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor or designee shall determine;

2. Revoke this franchise, subject to subsection F. of this section; and/or

3. Pursue any other legal or equitable remedy available under this franchise or any applicable law.

F. This franchise shall not be revoked except by City Council after notice and hearing as set forth in this section and in accordance with the Cable Act and other applicable law.

G. The determination as to whether a violation of this franchise has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law

11.2 Revocation: In addition to all other rights and powers retained by the Grantor under this franchise or otherwise, the Grantor reserves the right to forfeit and terminate this franchise and all rights and privileges of the Grantee hereunder in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to, the following:

1. Violation of any material provision of this franchise or any other franchise between Grantor and Grantee, or any material rule, order, regulation or determination of the Grantor or authorized agent made pursuant to this franchise or other agreement;

2. Attempt to evade any material provision of this franchise or to practice any fraud or deceit upon the Grantor or its subscribers or customers;

3. Material misrepresentation of fact in the application for or negotiation of this franchise; or

4. If Grantee becomes insolvent, or the subject of a bankruptcy proceeding.

11.3 Removal:

A. In the event of termination, expiration or revocation of this franchise, Grantor may order the removal of the above-ground cable system facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or street-use purposes, from the franchise area at Grantee's sole expense. Grantee shall have one (1) nine (9) month period within which to sell, transfer or convey its Cable System to a qualified purchaser, or to remove its plant, structures and equipment from the Grantor's streets and other public places as directed by the Grantor. During this period which shall run from the effective date of the final, non-appealable order or decision of the City Council or a court of competent jurisdiction imposing termination, the Grantee shall have the ability to operate the Cable System pursuant to the provisions of this franchise. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all streets, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.

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

11.4 Receivership and Foreclosure

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

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

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

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

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

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

11.5 No Recourse Against Grantor: Except where otherwise provided herein, Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this franchise or the enforcement thereof, in accordance with the provisions of applicable federal, state and local

law. The rights of the Grantor under this franchise are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under federal or state law.

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

11.7 Relationship of Remedies: The remedies provided for in this franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the Grantor at law or equity.

SECTION 12. FRANCHISE RENEWAL AND TRANSFER

12.1 Renewal:

A. The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

B. In addition to the procedures set forth in said Section 626(a), the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current franchise, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

12.2 Transfer of Ownership or Control:

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

B. The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any person or group of persons of ten percent (10%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any person or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this franchise subject to cancellation unless and until the Grantor shall have consented thereto.

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

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

foregoing, if the Grantor fails to render a final decision on the request within one-hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

E. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.

F. In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.

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

H. Notwithstanding anything to the contrary in this section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement.

SECTION 13. SEVERABILITY: If any section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, paragraph, term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement.

SECTION 14. MISCELLANEOUS PROVISIONS

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

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

a iFiber Communications Corporation
135 Basin Street SW
Ephrata, WA 98823
Attn: Kelly Ryan

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

City of Moses Lake
PO Drawer 1570
Moses Lake, WA 98837

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

14.4 Authority to Amend: This Agreement may be amended at any time by written agreement between the parties.

14.5 Governing Law: This Agreement shall be governed in all respects by the laws of the State of Washington.

14.6 Guarantee: The performance of the Grantee shall be guaranteed in all respects by iFiber Communication Corporation. The subjoined guarantee shall be executed prior to the effective date hereof.

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

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

14.9 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 or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this franchise may be amended or added to except by agreement in writing signed by both of the parties.

14.10 Attorney's Fees: If any suit or other action is instituted in connection with any controversy arising under this franchise, neither party shall be entitled to recover its costs and expenses including attorney's fees.

14.11 Time Is of the Essence: Time is of the essence of this franchise and each and all of its provisions in which performance is a factor.

Adopted by the City Council and signed by its Mayor on September 25, 2012

Bill J. Ecret, Mayor

ATTEST:

W. Robert Taylor, Finance Director

APPROVED AS TO FORM:

Katherine L. Kenison, City Attorney

ACCEPTED BY iFIBER COMMUNICATIONS CORPORATION

DATE: 9/28/2012, 2012

By: W. Kelly Ryan
W. Kelly Ryan
Chief Executive Officer