

INTERGOVERNMENTAL AGREEMENT FOR EDUCATION ACCESS PROGRAMMING

THIS AGREEMENT, dated and effective as of the date of execution by both Parties (“Effective Date”), is entered into by and between the City of Commerce City (“City”) and Adams County School District 14 (“District”), both of which are political subdivisions of the State of Colorado (collectively, “Parties”).

WHEREAS, through its cable television franchise agreement with Comcast of Colorado, LLC (“Franchisee”) effective January 1, 2014 (“Franchise Agreement”) (attached hereto as Exhibit B) and pursuant to federal law, the City has access to a certain number of channels to be allocated on the cable system that services the City for public, educational, and government (“PEG”) access programming use;

WHEREAS, the Parties share similar concerns with regard to quality government and educational access cable television programming (“Access Programming”) by the City and the District;

WHEREAS, in 2000, the City and District entered into an agreement (“2000 PEG IGA”) to maximize resources and coordinate production and broadcast of Access Programming under the City’s prior franchise agreement through a single channel, recognizing the District had expended substantial resources to construct and equip television production and transmission facilities;

WHEREAS, the City and District desire to replace the 2000 PEG IGA with a new agreement to more accurately reflect the current operating environment and to more fully implement the Franchise Agreement to make use of government and educational cable channels;

WHEREAS, the Parties remain committed to coordinating in a cooperative manner to deliver Access Programming that benefits the public;

WHEREAS Sections 29-1-203 and 29-1-401 of the Colorado Revised Statutes authorize political subdivisions of the State of Colorado to cooperate or contract to provide any lawfully authorized function, service, or facility or to perform and maintain associations to promote, through cooperative effort, the interest and welfare of each.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth, the Parties agree as follows.

1. BROADCASTING.

A. The City will operate Channel 8 as an independent Government Access standard definition channel in accordance with the Franchise Agreement.

B. The City will designate the District as the Designated Access Provider for Channel 22. The District will operate Channel 22 as an independent Educational Access standard definition channel. If the District desires to broadcast in high definition, the District will be responsible for all associated technology, equipment, and infrastructure costs and costs of compliance with the terms of the Franchise Agreement, including without limitation Section 9.2(D).

C. The Parties anticipate and agree to make reasonable efforts to begin channel operations pursuant to this Agreement by June 2, 2018.

2. COMPLIANCE.

A. The Parties will adhere to the terms of the City's Franchise Agreement applicable to the management and use of Access Channels and the operation of Access, including without limitation Section 9, pursuant to this Agreement. All limitations and requirements of the Franchise Agreement apply to this Agreement with respect to Access.

B. The District will perform all obligations of a Designated Access Provider and all obligations of the City as set forth in the Franchise Agreement with respect to the operation of Channel 22.

C. The District will provide written documentation to the City on an annual basis certifying compliance with Franchise Agreement programming requirements and detailing the expenditure of any PEG funds provided to the District by the City.

D. The District will ensure that the operation of Channel 22, including the release of programming to the Comcast headend, by any students shall be supervised by District instructors.

E. The City shall have the right to inspect, audit, and monitor the District's equipment, usage, and output to ensure compliance with the Franchise Agreement. The District shall make any non-public facilities available to the City for such purpose at reasonable times upon reasonable advance notice. The City will notify the District of any deficiency and the District shall correct such deficiency within 60 days. Notwithstanding the foregoing or any inspection by the City, the District shall remain responsible for compliance with the Franchise Agreement in all respects for Channel 22 and District equipment.

3. CONTENT.

A. All programming must have a nexus and/or direct relationship with official, sponsored programs and/or services provided by each of the Parties. Programming and productions that do not have a direct nexus may be denied the use of Access Programming.

B. Programs, public service announcements, or bulletin board content presented or produced by persons, groups, organizations or other governmental entities may be considered for broadcasting, per the discretion of the City Manager or the District Superintendent or their designees, for their respective channels, provided the content has a rational nexus with City or District programs and services, or as it relates to the safety, health and welfare of the public.

C. The Parties will publish their programming calendars online.

D. Each Party will be solely responsible for content broadcast on their respective channels and for damage to third parties' facilities related to the operation or maintenance of their respective channels and associated equipment.

4. PROGRAMMING SPONSORSHIPS. The District may pursue sponsorships and donations to offset its production costs, subject to any limitations of the Franchise Agreement and applicable law. No commercials are allowed. The District's programming may identify sponsors before, during and/or after a program in a non-commercial manner, like that seen on public broadcasting networks. The District shall control the expenditure of sponsorship funds generated for Channel 22 by the District.

5. FINANCIAL CONTRIBUTIONS.

A. Operating Costs Grant. Except as expressly stated in Section (5)(B) below, the District will be responsible for all personnel costs and all capital maintenance and upgrades of technology, equipment and infrastructure assets (to the standard for PEG programming in the Denver Metropolitan area and Franchise Agreement requirements for Access) associated with independent channel operations, including without limitation planning, implementation, and professional services. The District's maintenance obligation will not be limited to funds received from the City.

B. Initial Equipment Grant. The City will make a one-time investment of up to \$50,000 to upgrade the District's PEG system equipment, using the City's forces and contractors, to the standard for PEG programming in the Denver Metropolitan area and Franchise Agreement requirements for standard definition access programming. This upgrade will include the equipment detailed in Exhibit A. All capital equipment shall be subject to the City's approval. The District will cooperate with the City and provide access to all facilities needed at reasonable times for the installation and testing of equipment. Upon installation, the District will be the owner of the all installed equipment. The City will not be responsible for future maintenance or technical support of District equipment. The City will return all District-owned technology currently in its possession within 30 days of the Effective Date, but the current fiber connection between the City and the District will remain intact.

C. Existing Equipment Grant. The District will be deemed the owner of any existing equipment on the District's premises previously installed by the City relating to Access Programming and may use or dispose of such equipment in its discretion.

D. Annual City Grant. The City will provide an annual grant of PEG funds in each year following the Effective Date to the District for the express purpose of capital upgrades and equipment maintenance as allowed by the Franchise Agreement and applicable law ("Eligible Expenses") and approved by the City to ensure compliance with the Franchise Agreement. The City's contribution will be \$5,000 in the first year and will escalate \$1,000 each year of this Agreement to an annual cap of \$10,000. The City's contribution will be payable upon the receipt of a request for payment from the District each year. The District will not use funds provided under this Agreement for any purpose other than Eligible Expenses.

E. PEG Funding Availability. Notwithstanding any other provision of this Agreement, the City's obligation to pay any amounts to the District pursuant to this section shall be subject to the availability of PEG funding pursuant to the Franchise Agreement designated for this purpose. No other fees or amounts will be payable to provide any payment, unless specifically allocated by the City. Nothing in this Agreement will be construed to obligate the City to allocate any funds to

provide payment to District beyond such PEG funding. This section shall survive the termination of this Agreement.

6. COOPERATION AND PUBLIC CHARGE. The Parties will reasonably cooperate in good faith within the constraints of applicable law and the Franchise Agreement to effectuate the intent of this Agreement and to resolve unforeseen issues and disputes. In addition to the requirements of the Agreement, each Party is encouraged, but will not be required, to contribute additional available personnel or employee time, and other available resources without cost to the other Party. The Parties will conform to all applicable laws, statutes and regulations, including equal opportunity provisions, and agree that they will make decisions and act in accordance with the public interest to best benefit the public.

7. TERM & TERMINATION. This Agreement will commence and be in effect following from the Effective Date until terminated by either Party giving notice, with or without cause, of its desire to terminate the Agreement at least 90 days prior to the effective date of termination, by court order, by operation of law, or by the termination or modification of the Franchise Agreement making performance of this Agreement impracticable or impossible.

8. EFFECT ON 2000 IGA. The 2000 PEG IGA is hereby superseded and replaced by this Agreement. Each Party releases the other Party from all obligations under the 2000 PEG IGA and acknowledge that no further performance is due or owing from one Party to the other Party under that agreement.

9. NON-APPROPRIATION. Notwithstanding any other term or condition of this Agreement, all obligations of the City or the District under this Agreement, including all or any part of any payment obligations, whether direct or contingent, will only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through the City's or the District's legally required budgeting, authorization, and appropriation process, as applicable. Further, the City and the District, by this Agreement, do not create a multiple fiscal year obligation or debt either within or without this Agreement. The City and the District, by this Agreement, do not bind future legislatures to make such appropriations. This section shall survive the termination of this Agreement.

10. INCORPORATION. The recitals to this Agreement, the Franchise Agreement, and Exhibit A are incorporated into this Agreement by reference. Terms defined in the Franchise Agreement will have the definitions assigned to them therein.

11. NOTICES. Except for routine communications, written notices required under this Agreement and all other correspondence between the parties will be directed to the following and will be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

Adams County School District 14
Attn: Superintendent
5291 E. 60th Avenue
Commerce City, CO 80022

City of Commerce City
Attn: City Manager
7887 E. 60th Avenue
Commerce City, CO 80022

12. SEVERABILITY. If any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law of the State of Colorado or the federal government, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the liability of the Parties, the validity of the remaining portions or provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

13. AMENDMENT. This Agreement may be amended only by written agreement.

14. RECORD KEEPING. All documents maintained by, or pertaining to, this Agreement will be made available upon reasonable notice for inspection by either Party subject to each Party's record retention requirements.

15. ACTS OF GOD. Both Parties will be held harmless from "Acts of God," under which no control can be exerted for prudent action. This pertains to equipment and personnel.

16. LIABILITY. The District assumes all risk of liability, including personal injury, including death and bodily injury, and property damage, including the loss of use, causes or sustained, in whole or in part, in conjunction with or arising out of the acts or omissions of the District in the operation of Channel 22 and this performance of this Agreement. The District assumes all responsibility for, and will indemnify the City, to the extent allowed by law, for all damage to Comcast's equipment, and any related claims, arising from or relating to the gross negligence or intentional acts of the District, its employees, officials, students, and other persons for whom the District is responsible in the operation of Channel 22 and the exercise of its rights under this Agreement. This section shall survive the termination of this Agreement.

17. RESPONSIBILITY FOR REGULATORY REQUIREMENTS. Each Party will be separately responsible for compliance with all applicable regulatory requirements in the performance of each of their obligations under this Agreement. This section shall survive the termination of this Agreement.

18. IMMUNITY. Under no circumstances will any provision of this Agreement be construed as constituting a waiver of immunity on the part of any Party that is a governmental entity or for any of its facilities under the Colorado Governmental Immunity Act. This section shall survive the termination of this Agreement.

19. NO THIRD-PARTY BENEFICIARIES. Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement will be strictly reserved to the Parties. Any person other than the Parties will be deemed to be only an incidental beneficiary under this Agreement.

20. RULES OF CONSTRUCTION. Neither Party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all Parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all Parties. No term of this Agreement will be construed or resolved in favor of or against the City or the District on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any

gender will include the neutral and other gender. Section headings used in this Agreement are for convenience of reference only

21. NO PARTNERSHIP OR AGENCY. Notwithstanding any language in this Agreement or any representation or warranty to the contrary herein, neither the City nor the District will be deemed or constitute an employee, servant, agent, partner or joint venture of the other.

22. NONLIABILITY OF OFFICIALS AND EMPLOYEES. No elected or appointed official, employee, agent, consultant or contractor of either Party will be personally liable to the other Party or any successors or assign for any breach of this Agreement.

23. NO ASSIGNMENT. This Agreement shall not be assigned or transferred by either Party without the prior written approval of the other Party. Any attempted assignment or transfer in violation of this provision shall, at the non-assigning Party's election, be deemed void and of no effect.

24. NO WAIVER. No waiver of any provision of this Agreement will constitute a waiver of any other provision of this Agreement, nor will any such waiver be a continuing waiver. A party's failure to insist upon strict performance of any of the terms, covenants, conditions or agreements contained in this Agreement will not be deemed a waiver of any rights or remedies that said party may have and will not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained in this Agreement by the same party. Except as expressly provided in this Agreement, no waiver will be binding on any party unless executed in writing by the party making such waiver.

25. COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one Agreement. The Parties consent to the use of electronic signatures for the execution of this Agreement. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by each Party in the manner determined by that Party, and such electronic signature(s) will be binding on that Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

26. INTEGRATION. This Agreement is intended as the complete integration of all understandings on the subjects herein between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto will have any force or effect, unless embodied in this Agreement in writing. Any oral representation by any officer or employee of a Party at variance with terms and conditions of this Agreement or any written amendment to this Agreement will not have any force or effect nor bind the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement below as of the Effective Date.

[INSERT SIGNATURE BLOCKS]

EXHIBIT A

DRAFT

Equipment List

| Mfg | Model | Description | Qty |
|-------------------------|-----------------------|--|-----|
| TIGHTROPE MEDIA SYSTEMS | TIGCBLCG340SDI | CAROUSEL BULLITIN BOARD PLAYER | 1 |
| TIGHTROPE MEDIA SYSTEMS | TIGCBL-FLEXLITE-340 | CONTENT STORAGE, MANAGEMENT & ENCODING | 1 |
| CISCO SYSTEMS | CISSG300-10MPP-K9- NA | SWITCH, 10-PORT GIGABIT MAX PoE+, MANAGED | 1 |
| BLACK Magic Design | BLAVHUBSMART6G12 1 2 | SMART VIDEOHUB, 12x12 | 1 |
| AJA VIDEO SYSTEMS | AJAH10MD4 | CONVERTER, HD DOWNCONVERTER 10-BIT HD-SDI/SDI TO SDI | 1 |
| AJA VIDEO SYSTEMS | AJAGEN10 | SYNC GENERATOR, HD/SD | 1 |
| AJA VIDEO SYSTEMS | AJAV2DIGITAL | MINI CONVERTER, ANALOG VIDEO TO DIGITAL, HD/SD-SDI | 4 |
| EXTRON ELECTRONICS | EXT60105904 | SCALER, 5-IN HDCP COMPLIANT W/SEAMLESS SWITCHING AND AUDIO P | 1 |
| AJA VIDEO SYSTEMS | AJAH5 | CONVERTER, HDMI TO HD-SDI/SDI VIDEO & AUDIO | 1 |
| NEWTEK, INC. | NEWTMINIHD4IBUND LE | VIDEO PRODUCTION/EDITING MODULE, TRICASTER MINI BUNDLE | 1 |
| LG ELECTRONICS | LGE22SM3BB | LCD, 22" 1080P 250NIT 18/7 LED | 1 |
| SHURE | SHUMX418C | MICROPHONE, CONDENSER CARDIOID 18" GOOSENECK ATTACHED XLR | 4 |
| LIBERTY WIRE AND CABLE | LIBE2HDSEMM05 | CABLE, 16.5' HDMI WITH ETHERNET | 2 |
| CABLES TO GO | CAB27151 | CABLE, 3' CAT6 SNAGLESS PATCH (BLACK) | 3 |
| CABLES TO GO | CAB22014 | CABLE, 15' CAT6 SNAGLESS PATCH, BLACK | 1 |
| CABLES TO GO | CAB50211 | CABLE, 3' SELECT VGA VIDEO MALE TO MALE | 1 |

EXHIBIT B

DRAFT

**COMCAST OF COLORADO IX, LLC
AND
THE CITY OF COMMERCE CITY, COLORADO**

CABLE FRANCHISE AGREEMENT

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**COMCAST OF COLORADO IX, LLC
AND
CITY OF COMMERCE CITY, COLORADO**

CABLE FRANCHISE AGREEMENT

**SECTION 1
DEFINITIONS AND EXHIBITS**

1.1. Definitions

For the purposes of this Franchise Agreement, 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.

- (A) “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:
- (1) “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.
- (2) “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.
- (3) “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.
- (B) “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.
- (C) “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.
- (D) “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- (E) “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.
- (F) “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

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- (G) “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise Agreement, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.
- (H) “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.
- (I) “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.
- (J) “Cable Act” means the Title VI of the Communications Act of 1934, as amended.
- (K) “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.
- (L) “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (M) “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.
- (N) “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).
- (O) “City” is the City of Commerce City Colorado, a body politic and corporate under the laws of the State of Colorado.
- (P) “City Council” means the Council of the City, or its successor, the governing body of the City of Commerce City, Colorado.
- (Q) “Colorado Communications and Utility Alliance” or “CCUA” means the non-profit entity formed by franchising authorities and/or local governments in Colorado or its successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

- (R) “Commercial Subscribers” means any Subscribers other than Residential Subscribers.
- (S) “Designated Access Provider” means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.
- (T) “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.
- (U) “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.
- (V) “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.
- (W) “FCC” means the Federal Communications Commission.
- (X) “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.
- (Y) “Franchise” means the authorization granted in Section 2.1(A) of this Franchise Agreement.
- (Z) “Franchise Agreement” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.
- (AA) “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of the Franchise.
- (BB) “Franchise Fee” means that fee payable to the City described in subsection 3.1 (A).
- (CC) “Grantee” means COMCAST OF COLORADO IX, LLC, or its lawful successor, transferee or assignee.
- (DD) “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City.
- (1) Gross revenues include, by way of illustration and not limitation:
- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
 - installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;

- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City;
 - converter, remote control, and other Cable Service equipment rentals, leases, or sales;
 - Advertising Revenues as defined herein;
 - late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
 - revenues from program guides;
 - Franchise Fees;
 - FCC Regulatory Fees; and
 - commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.
- (2) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast Spotlight (“Spotlight”) or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.
- (3) “Gross Revenues” shall not include:
- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
 - any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
 - fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
 - launch fees and marketing co-op fees; and,
 - unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.
- (4) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a method that allocates revenue on a *pro*

rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee's calculations.

- (5) Grantee reserves the right to change the allocation methods set forth in this Section 1.29 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.29(E) below.
 - (6) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.
- (EE) "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.
- (FF) "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.
- (GG) "Manager" means the City Manager of the City or designee.
- (HH) "Municipal Code" means the Commerce City Revised Municipal Code, including all codes adopted therein by reference or otherwise, and the City's home rule charter.
- (II) "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.
- (JJ) "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.
- (KK) "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.
- (LL) "Right-of-Way" 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 City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

(MM) “State” means the State of Colorado.

(NN) “Subscriber” means any Person who or which 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, and who is in compliance with Grantee’s regular and nondiscriminatory terms and conditions for receipt of service.

(OO) “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

(PP) “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

(QQ) “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

(RR) “Tier” means a group of Channels for which a single periodic subscription fee is charged.

(SS) “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

(TT) “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

1.2 Exhibits

The following documents, which are occasionally referred to in this Franchise Agreement, are formally incorporated and made a part of this Franchise Agreement by this reference:

(A) *Exhibit A*, entitled Customer Service Standards.

(B) *Exhibit B*, entitled Report Form.

SECTION 2 **GRANT OF FRANCHISE**

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise Agreement and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This grant of Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise Agreement.

- (B) Nothing in this Franchise Agreement shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as defined in subsection 2.3.
- (C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Municipal Code and the ordinances and regulations enacted pursuant thereto. The Municipal Code, as the same may be amended from time to time, is hereby expressly incorporated into this Franchise Agreement as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise Agreement.
- (D) This Franchise Agreement shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.
- (E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise Agreement, that any Affiliate 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 obligations of this Franchise Agreement.
- (F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, neither the grant of Franchise nor the terms of this Franchise Agreement shall include or be a substitute for:
- (1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;
 - (2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or
 - (3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise Agreement including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.
- (G) This Franchise Agreement is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.
- (H) This Franchise Agreement does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise Agreement is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise Agreement does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Rights-of-Way

- (A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise Agreement, is granted extensive and valuable rights to operate its Cable System for profit using the City's Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise Agreement to be paid for these valuable rights throughout the term of the Franchise.
- (B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

2.3 Effective Date and Term of Franchise and Franchise Agreement

The Franchise, this Franchise Agreement and the rights, privileges and authority granted hereunder shall take effect on January 1, 2013 (the "Effective Date"), and shall terminate on December 31, 2023, unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

The Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise Agreement and for such additional franchises for Cable Systems as the City deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise Agreement. Any conflict between the provisions of this

Franchise Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

- (A) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City. In the event the City grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise Agreement, then the City agrees that the obligations in this Franchise Agreement will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.
- (B) The modification process for this Franchise Agreement as provided for in Section 2.6(A) shall be initiated only by written notice from the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identification of the specific terms or conditions in the competitive cable services franchise that are materially different from Grantee's obligations under this Franchise Agreement; (2) identification of the terms and conditions of this Franchise Agreement for which Grantee is seeking amendments; (3) providing to the City text for any proposed amendments to this Franchise Agreement with a written explanation as to why the proposed amendments are necessary and consistent.
- (C) Upon receipt of Grantee's written notice as provided in Section 2.6(B), the City and Grantee agree that they will use best efforts to negotiate in good faith Grantee's proposed modifications to this Franchise Agreement, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless such time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on modifications to this Franchise Agreement pursuant to such negotiations, then the City shall amend this Franchise Agreement to include such modifications.
- (D) In the alternative to Franchise Agreement modification negotiations as provided for in Section 2.6(C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise Agreement by opting into the franchise agreement or other similar lawful authorization that the City grants to another provider of Cable Services, so as to ensure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise Agreement with the franchise agreement entered into with the other Cable Services provider.
- (E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, the City shall not be obligated to amend or replace this Franchise Agreement unless the new entrant makes

Cable Services available for purchase by Subscribers or customers under its franchise agreement with the City.

- (F) Notwithstanding any provision to the contrary, at any time that non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then Grantee may negotiate with the City to seek modifications to this Franchise Agreement as per Section 2.6(C) above or:
- (1) The term of this Franchise Agreement shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or
 - (2) Grantee may assert, at Grantee's option, that this Franchise Agreement is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

2.7 Familiarity with Franchise Agreement

Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise Agreement and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise_Agreement, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, Grantee: (i) acknowledges and accepts the City's legal right to issue and enforce the Franchise Agreement; (ii) accepts and agrees to comply with each and every provision of this Franchise Agreement subject to Applicable Law; and (iii) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3

FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise Agreement and in consideration of permission to use the City's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise_Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Acceptance of Payment and Re-computation

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

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the City, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the City, including the City's Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise Agreement. Pursuant to subsection 1.29, as part of the Franchise Fee audit/review the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (i) billing reports, (ii) financial reports (such as General Ledgers) and (iii) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to re-compute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits), Grantee shall pay the total cost of the audit/review, which cost shall not to exceed five thousand dollars (\$5,000) for each year of the audit period. The City's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been received by the City.

3.7 Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest (at the prime rate as listed in the Wall Street Journal on the date the payment was due) on the amount due, compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Rights-of-Way for Grantee's use of the City's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise Agreement), to the extent consistent with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise Agreement the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise Agreement may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided Grantee has received written notice from the City of such amendment at least ninety (90) days prior, so long as all Cable Operators in the City are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise Agreement, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (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 the City, nor do they represent an increase in Franchise Fees.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise Agreement shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the City upon request to review Grantee's method of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise Agreement terminates for any reason, Grantee shall file with the City 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 City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4 **ADMINISTRATION AND REGULATION**

4.1 Authority

- (A) The City is vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law, to any agent including, but not limited to, the CCUA, in its sole discretion.
- (B) Nothing in this Franchise Agreement shall limit nor expand the City's right of eminent domain under State law.

4.2 Rates and Charges

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

4.3 Rate Discrimination

- (A) All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military, veteran or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge or penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee.
- (B) Nothing herein shall be construed to prohibit:

- (1) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
- (2) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;
- (3) The offering of rate discounts for Cable Service; or
- (4) Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

- (A) Throughout the term of the Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise 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.
- (B) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. Such schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Time Limits Strictly Construed

Whenever this Franchise 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 breach of this Franchise Agreement and sufficient grounds for the City to invoke any relevant remedy.

4.8 Franchise Agreement Amendment Procedure

Either party may at any time seek an amendment of this Franchise Agreement by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and Grantee, then such amendment(s) shall be deemed part of this Franchise Agreement. If mutual agreement is not reached, there shall be no amendment.

4.9 Performance Evaluations

- (A) The City may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the City.
- (B) Special evaluation sessions may be held at any time by the City during the term of this Franchise Agreement upon written notice to Grantee of not less than ninety (90) days.
- (C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the City. Grantee shall also include with, or on, the Subscriber billing statements for the billing period immediately preceding the commencement of the session written notification of the date, time and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.
- (D) Topics that may be discussed at any evaluation session may include, but are not limited to: Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise Agreement; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided, however, that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise Agreement.
- (E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require in order to perform the evaluation.

4.10 Late Fees

- (A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber solely for late payment of a bill shall constitute a late fee and shall be applied in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.
- (B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of Grantee, if any, to impose assessments, charges, fees or sums other than those permitted by this subsection for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.
- (C) Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscriber.

4.11 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise Agreement by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise Agreement or to procure a substitute for such obligation that is satisfactory to the City. Conditions not within the control of

Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages and severe or unusual weather conditions that have a direct and substantial impact on Grantee's ability to provide Cable Services in the City and that were not caused and could not have been avoided by Grantee using its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise Agreement, Grantee shall provide documentation as reasonably required by the City to substantiate Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

SECTION 5

FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

- (A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or reasonable expenses arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise Agreement, by or for Grantee, its agents or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City.
- (B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City.
- (C) Additional Circumstances. Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or reasonable expenses, in any way arising out of:
 - (1) The lawful actions of the City in granting the Franchise to the extent such actions are consistent with this Franchise Agreement and Applicable Law.
 - (2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise Agreement.
- (D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense, Grantee shall not be liable for any attorney fees, expenses or other costs that the City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In such event, the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for the City's attorney fees, expenses or other costs. In any

event, Grantee shall not agree to any settlement of claims affecting the City without the City's approval.

- (E) Non-waiver. The fact that Grantee carries out any activities under this Franchise_Agreement through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.
- (F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and City desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then City shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The City's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

5.2 Insurance

- (A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:
 - (1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.
 - (2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the City. The policy shall contain a severability of interests provision.
- (B) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise Agreement, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise Agreement and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise Agreement.

5.3 Deductibles/Certificates of Insurance

- (A) Deductibles. Any deductible of the policies shall not in any way limit Grantee's liability to the City.
- (B) Endorsements. All policies shall contain, or shall be endorsed so that:
 - (1) The City, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise Agreement or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;
 - (2) Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and
 - (3) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."
- (C) Verification of Coverage. Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.
- (D) Self-Insurance. In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and City, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City.

5.4 Letter of Credit

- (A) If there is a claim by the City of an uncured breach by Grantee of a material provision of this Franchise Agreement or pattern of repeated violations of any provision(s) of this Franchise Agreement, then the City may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise Agreement, a letter of credit from a financial institution satisfactory to the City in the amount of twenty-five thousand dollars (\$25,000).
- (B) In the event Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at twenty-five thousand dollars (\$25,000) until the allegations of the uncured breach have been resolved.
- (C) As an alternative to the provision of a Letter of Credit to the City as set forth in Subsections 5.4(A) and (B) above, because the City is a member of CCUA, if Grantee provides a Letter of Credit to CCUA in an amount agreed to between Grantee and CCUA for the benefit of its members, in order

to collectively address claims reference in 5.4(A), Grantee shall not be required to provide a separate Letter of Credit to the City.

- (D) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise Agreement, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:
 - (1) Failure of Grantee to pay the City sums due under the terms of this Franchise Agreement;
 - (2) Reimbursement of costs borne by the City to correct violations of this Franchise Agreement not corrected by Grantee;
 - (3) Monetary remedies or damages assessed against Grantee due to default or breach of any requirements of this Franchise Agreement; and
 - (4) Failure to comply with the Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance or resolution.
- (E) The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise Agreement.
- (F) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise Agreement. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest calculated from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6

CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards of the City, as the same may be amended from time to time by the City Council in its sole discretion, acting by ordinance. Any requirement in Customer Service Standards for a “local” telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date are attached as Exhibit A. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise Agreement.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State or local law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise Agreement, or any Exhibit hereto, or the requirements of any applicable Customer

Service Standard. Upon request, Grantee will provide to the City a sample of the Subscriber contract or service agreement then in use.

6.4 Advance Notice to City

Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the City in advance.

6.5 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the City, Grantee shall place the City's phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7 **REPORTS AND RECORDS**

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise Agreement. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The 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 (1) copy of all reports and records required under this or any other subsection shall be furnished to the 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 the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise Agreement, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the 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 the City believes it must release any such confidential books and records in the course of enforcing this Franchise Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the 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.

Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

- (A) Grantee shall at all times maintain, and shall furnish to the City upon 30 days written request and subject to Applicable Law:
- (1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;
 - (2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;
 - (3) Current Subscriber Records and information;
 - (4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and
 - (5) A list of Cable Services, rates and Channel line-ups.
- (B) Subject to subsection 7.2, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within sixty (60) days of the City's written request, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information for the City:

- (A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise Agreement;
- (B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);
- (C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;
- (D) A statement of planned construction, if any, for the next year; and,
- (E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

The parties agree that the City's request for these annual reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports annually, until further written notice from the City to the contrary.

7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

- (A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the City during normal business hours at Grantee's local business office.
- (B) Within thirty (30) days of a written request, Grantee shall provide the City a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:
 - (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
 - (2) A log of all service interruptions;
 - (3) A summary of customer complaints referred by the City to Grantee; and,
 - (4) Such other information as reasonably requested by the City.

The parties agree that the City's request for these summary reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports quarterly, until further written notice from the City to the contrary.

7.7 Failure to Report

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise Agreement or such other reports as the City may reasonably request (not including clerical errors or errors made in good faith), may, at the City's option, be deemed a breach of this Franchise Agreement.

7.8 False Statements

Any false or misleading statement or representation in any report required by this Franchise Agreement (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise Agreement and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise Agreement or otherwise.

SECTION 8

PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information; and,
- (J) Public, Educational and Government Access, to the extent required by this Franchise_Agreement.

8.2 Deletion or Reduction of Broad Programming Categories

- (A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.
- (B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date shall be deemed the mix and quality of Cable Services required under this Franchise_Agreement throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

- (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 honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, “uninterrupted” does not include short-term outages of the Cable System for maintenance or testing.
- (B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise Agreement, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.
- (C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee’s failure to perform.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9 **ACCESS**

9.1 Designated Access Providers

- (A) The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise Agreement. As used in this Section, such “Access Facilities” includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise Agreement, which is used or useable by and for Public Access, Educational Access, and Government Access (“PEG” or “PEG Access”).
- (B) Grantee shall cooperate with City in City’s efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

- (A) Grantee shall make available to City four (4) Downstream Channels for PEG use as provided for in this Section.
- (B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to City, if such Channel is not “fully utilized” as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered “unduplicated programming.” Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to City. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. City shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.
- (C) Standard Definition (“SD”) Digital Access Channels.
 - (1) Grantee shall provide two (2) Activated Downstream Channels for PEG Access use in a standard definition (“SD”) digital format in Grantee’s Basic Service (“SD Access Channel”). Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards.
 - (2) With respect to signal quality, Grantee shall not be required to carry a SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Section 9.2(C).
 - (3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point which for the purposes of this Section 9.2 (C)(3), shall mean up to and including the modulator where the City signal is converted into a format to be transmitted over a fiber connection to Grantee. The City or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.
 - (4) SD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which SD channels are

made available. Grantee is not required to provide free SD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(D) High Definition (“HD”) Digital Access Channels.

- (1) Within one hundred twenty (120) days of the City’s written request, Grantee shall activate one (1) HD Access Channel, for which the City may provide Access Channel signals in HD format to the demarcation point at the designated point of origination for the Access Channel. After the fifth anniversary of the Effective Date, and with at least 120 days written notice to Grantee, the City may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for PEG Access use in a High Definition (“HD”) digital format (“HD Access Channel or Channels”). Activation of HD Access Channels shall only occur after the following conditions are satisfied:
 - (a) The City shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for the newly activated HD Access Channel(s); and,
 - (b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel.
- (2) The City shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channel. For purposes of this Franchise Agreement, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.
- (3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Grantee shall verify signal delivery to Subscribers with the City, consistent with the requirements of this Section 9.2(D).
- (4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which HD channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.
- (5) The City or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

- (6) Grantee shall cooperate with the City to procure and provide, at City's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The City and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise Agreement.
- (E) Grantee shall simultaneously carry the two (2) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C).
- (F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of this Franchise Agreement are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the City believes that Grantee fails to meet this standard, City will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the CCUA members served by the same Headend as City for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide City a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed.

9.5 Web-Based Video On-Demand and Streaming

- (A) Within one hundred twenty (120) days after written request by the City, Grantee shall provide to the City at no cost a business class broadband connection, broadband service and all necessary hardware to enable the City's delivery of web-based PEG content (the "PEG Web-Based Connection"). The location for the provision of the PEG Web-Based Connection shall be determined by the City at the time of the aforementioned request, provided the location has the capacity to connect and receive the broadband service described in this Section 9.5(A). If the location does not have the capacity to connect and receive the broadband service described in this Section 9.5(A), the cost of upgrading the network to enable such service shall be incurred by the City. If, during the term of this Franchise Agreement and subsequent to the provision of the PEG

Web-Based Connection, the City moves its location and such new location does not have the capacity to connect and receive the broadband service described in this Section 9.5(A), the cost of upgrading the network to enable such service shall be incurred by the City. The broadband connection provided herein shall be used exclusively for web-based on demand Access programming and/or web-based video streaming of Access content. Additionally, within ninety (90) days after written request of the City, Grantee shall provide a one-time grant of funding the City shall use to acquire and/or replace a video on-demand server for facilitating the web-based Access programming described in this Section 9.5. This one-time grant of funding shall be in an amount sufficient to pay the actual costs of such acquisition and/or replacement, but in no event shall the funding exceed seven thousand five hundred dollars (\$7,500).

- (B) The City's Designated Access Provider(s) may provide web-based video on demand programming on line; provided however, that such Designated Access Provider(s) shall be responsible for its own costs related to a video on demand server, broadband connection and service and any other associated equipment.
- (C) For all of the City's and its Designated Access Provider's web-based on demand Access programming facilitated through the broadband connection and service described in this Section 9.5, Grantee shall be permitted to provide its logo which shall be displayed on the main web page for the web-based Access programming, in a manner reasonably similar to the Grantee's logo display found on its Project Open Voice web-based supported programming. Notwithstanding the foregoing, the size of the City's or Designated Access Provider's logos may be as large as or larger than Grantee's logo, in the City's or Designated Access Provider's sole reasonable discretion.
- (D) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

9.6 Support for Access Costs

During the term of this Franchise Agreement, Grantee shall provide fifty cents (\$0.50) per month per Residential Subscriber (the "PEG Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access and the web based on demand Access programming described in Section 9.5, or as may be permitted by Applicable Law. To address inflationary impacts on capital equipment or to evaluate whether the City's PEG Access capital costs have reduced with time, the City and Grantee may meet no more than three times after the Effective Date to discuss whether to increase or to decrease the PEG Contribution. The primary purpose of such meetings will be for the parties to review prior expenditures and future capital plans to determine if the current PEG Contribution is reasonably appropriate to meet future needs. The City and Grantee may suggest to each other, based upon their own assessments of reasonable past practices and future anticipated needs, whether the current level of PEG Contribution is appropriate. If either party believes that the PEG Contribution should be modified in a reasonable amount to address such future needs the parties shall share all relevant information supporting their positions and negotiate in good faith to determine if the PEG Contribution should be increased or decreased, and if so, in what amount. Such discussions regarding potential adjustment to the PEG Contribution will be conducted pursuant to the Franchise Agreement amendment procedures in Section 4.8 of this Franchise Agreement. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter. City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise Agreement

shall provide City discretion to utilize Access payments for new internal network connections and enhancements to the City's existing network.

9.7 Access Support Not Franchise Fees

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise Agreement and federal law.

9.8 Access Channels on Basic Service or Lowest Priced HD Service Tier

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

9.9 Change In Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the City implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the City implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the City shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.10 Technical Quality

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Section 9.5. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the demarcation point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The City shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of City staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of

Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any HD PEG Access and web-based video on demand transmission equipment that Grantee maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' HD Access programming.

9.11 Access Cooperation

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any CCUA member, the CCUA, or any combination thereof to receive any Access benefit due City hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as City in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by City.

9.12 Return Lines/Access Origination

- (A) Grantee shall continuously maintain the return lines previously constructed to the City's Designated Access Provider for Educational Programming, 5291 East 60th Avenue, Commerce City, throughout the Term of the Franchise, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels; provided however that Grantee's maintenance obligations with respect to either of these locations shall cease if a location is no longer used in the future by the City to originate Access programming.
- (B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the City. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the City or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the City or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

SECTION 10 **GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

10.1 General Standards

- (A) All work authorized and required hereunder shall be performed in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.
- (B) Matters of Right-of-Way usage and construction not addressed herein shall be as provided for in the Municipal Code, as amended.

10.2 Right to Construct

Subject to Applicable Law, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise Agreement, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.3 Permits Required for Construction

Prior to performing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

10.4 Emergency Permits

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

10.5 Compliance with Applicable Codes

- (A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the International Building Code and other International codes, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.
- (B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.
- (C) Safety Codes. Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.6 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Rights-of-Way.

10.7 Prevent Injury/Safety

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

10.8 Hazardous Substances

- (A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

- (B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise Agreement, Grantee shall also remove all residue of hazardous substances related thereto.
- (C) Grantee shall indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by Grantee's Cable System.

10.9 Locates

- (A) Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.
- (B) Within forty-eight (48) hours after any City bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:
 - (1) Mark on the surface all of its located underground facilities within the area of the proposed excavation;
 - (2) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or
 - (3) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.10 Notice to Private Property Owners

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance or resolution.

10.11 Use of Poles

- (A) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, supports for wires and conductors and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper City authorities.
- (B) This Franchise Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

10.12 Undergrounding of Multiple Dwelling Unit Drops

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling

Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

10.13 Burial Standards

(A) Depths. Unless otherwise required by law, Grantee, and its contractors, shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

- Underground cable drops from the curb shall be buried at a minimum depth of twelve inches (12”), unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six inches (6”).
- Feeder lines shall be buried at a minimum depth of eighteen inches (18”).
- Trunk lines shall be buried at a minimum depth of thirty-six inches (36”).
- Fiber Optic cable shall be buried at a minimum depth of thirty-six inches (36”).

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

10.14 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable Municipal Code requirements.

10.15 Prewiring

Any ordinance or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

10.16 Repair and Restoration of Property

(A) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

- (B) Private Property. Upon completion of work that causes any disturbance or damage to private property, Grantee shall promptly commence restoration of such property, and will use best efforts to complete such restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

10.17 Use of Conduits by the City

The City may, without charge, install or affix and maintain wires and equipment owned by the City for City purposes in or upon any of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places if such placement does not interfere with Grantee's use of its facilities, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. This right shall not extend to affiliates of Grantee who have facilities in the Rights-of-Way for the provision of non-Cable Services. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone and/or signal systems, but not for Cable Service or transmission to third parties of telecommunications or information services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the City.

10.18 Common Users

- (A) For the purposes of this subsection:

- (1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.
- (2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.
- (3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.
- (4) "Licensee" means any Person licensed or otherwise permitted by the City to use the Rights-of-Way.
- (5) "Surplus Ducts or Conduits" are Conduit Facilities, other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

- (B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impractical to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

- (C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.
- (D) Grantee shall give a Licensee a minimum notice of one hundred twenty (120) days prior to its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:
 - (1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;
 - (2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;
 - (3) Vacate the needed Ducts or Conduit; or
 - (4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.
- (E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.
- (F) All Attachments shall meet local, State and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.
- (G) In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

10.19 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any City Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any such facility, Grantee shall, at the City's request, submit to the City a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise Agreement.

10.20 Movement of Cable System Facilities for City Purposes

- (A) The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements required by the City for public purposes, whether or not actually constructed or funded by the City), all in accordance with the Municipal Code. All such relocation, removal,

replacement, modification or disconnection of Grantee's facilities shall be performed at Grantee's expense. If, however, funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

- (B) Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee the opportunity to perform such action. In the event of any capital improvement project required by the City exceeding \$500,000 in expenditures, which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least ninety (90) days written notice to Grantee. Following notice by the City, Grantee shall perform such relocation, removal, replacement, modification or disconnection required by the City pursuant to this subsection 10.20.
- (C) If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way.
- (D) If Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be performed and charge the cost of the work to Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, Grantee shall pay the City.

10.21 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require the costs associated with the removal or relocation to be paid by the benefited party.

10.22 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.23 Reservation of City Use of Right-of-Way

Nothing in this Franchise Agreement shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be performed, insofar as practical, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.24 Tree Trimming

Grantee may prune or cause to be pruned, in accordance with the then-current International Society of Arboriculture publication titled "BEST MANAGEMENT PRACTICES – UTILITY PRUNING OF TREES," any tree in the City's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty feet (30') above sidewalk grade until one (1) week

written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.25 Inspection of Construction and Facilities

The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so and to charge Grantee therefore.

10.26 Stop Work

- (A) On notice from the City that any work is being performed contrary to the provisions of this Franchise Agreement, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.
- (B) The stop work order shall:
 - (1) Be in writing;
 - (2) Be given to the Person performing the work, or posted on the work site;
 - (3) Be sent to Grantee by overnight delivery at the address given herein;
 - (4) Indicate the nature of the alleged violation or unsafe condition; and
 - (5) Establish conditions under which work may be resumed.

10.27 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise Agreement and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors and other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise Agreement and other Applicable Law governing the work performed by them.

SECTION 11
CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

- (A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than one hundred ten (110) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.
- (B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.
- (C) All construction shall be subject to the City's permitting processes.
- (D) Grantee and City shall meet, at the City's request, to discuss the progress of the design plan and construction.
- (E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise Agreement or Applicable Law.
- (F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Technology Assessment

- (A) The City may notify Grantee, on or after five (5) years after the Effective Date, that the City will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.
- (B) Grantee shall cooperate with the City to provide necessary non-confidential and proprietary information upon the City's reasonable request as part of the technology assessment.
- (C) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

11.3 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise Agreement, Grantee shall have a

plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

11.4 Emergency Alert Capability

- (A) Grantee shall provide an operating Emergency Alert System (“EAS”) throughout the term of this Franchise Agreement in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall then be retested.

11.5 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.6 Cable System Performance Testing

- (A) Grantee shall, at Grantee’s expense, perform the following tests on its Cable System:
- (1) All tests required by the FCC;
 - (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise Agreement; and
 - (3) All other tests as otherwise specified in this Franchise Agreement.
- (B) At a minimum, Grantee’s tests shall include:
- (1) Cumulative leakage index testing of any new construction;
 - (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
 - (3) Tests in response to Subscriber complaints;
 - (4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and
 - (5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee’s Cable System has been ground or air tested for signal leakage in accordance with FCC standards.
- (C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.
- (D) If the FCC no longer requires proof of performance tests for Grantee’s Cable System during the term of this Franchise Agreement, Grantee agrees that it shall continue to conduct proof of

performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.

- (E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15, respectively, of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If the City notifies Grantee by the December 15 and June 15 dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.
- (F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise Agreement. Sites shall be re-tested following correction.

11.7 Additional Tests

Where there exists other evidence which, in the judgment of the City, casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 12

SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

12.1 Service Availability

- (A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:
 - (1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

- (2) At a non-discriminatory installation charge for a standard installation, consisting of a 125-foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non standard installations computed according to a non discriminatory method for such installations, adopted by Grantee and provided in writing to the City;
 - (3) At non discriminatory monthly rates for Residential Subscribers.
- (B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon Grantee having legal access to such unit. The City acknowledges that Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.
- (C) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of thirty-five (35) residences per mile of Cable System plant. If the residential density is less than thirty-five (35) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and customers in the area in which service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

12.2 Connection of Public Facilities

Grantee shall, at no cost to the City, provide one outlet of Basic Service and Digital Starter Service to all City owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within one hundred fifty feet (150') of its Cable System. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center workout facilities). Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings; provided, however, that such distribution can be accomplished without causing Cable System disruption and that general technical standards are maintained. Such outlets may be used only for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

SECTION 13

FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Violations of the Franchise Agreement

- (A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise Agreement or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:
- respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;
 - cure the default; or,
 - notify the City that it cannot cure the default within the thirty (30) days due to the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps Grantee will take and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed steps and completion schedule are reasonable.
- (B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.
- (C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:
- (1) Withdraw an amount from the letter of credit as monetary damages;
 - (2) Recommend the revocation of the Franchise pursuant to the procedures in subsection 13.2; or
 - (3) Recommend any other legal or equitable remedy available under this Franchise Agreement or any Applicable Law.
- (D) The determination as to whether a violation of this Franchise Agreement has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Revocation

- (A) In addition to revocation in accordance with other provisions of this Franchise Agreement, the City may revoke the Franchise and rescind all rights and privileges associated with this Franchise

Agreement in the following circumstances, each of which represents a material breach of this Franchise Agreement:

- (1) If Grantee fails to perform any material obligation under this Franchise Agreement or under any other agreement, ordinance or document regarding the City and Grantee;
 - (2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;
 - (3) If Grantee attempts to evade any material provision of this Franchise Agreement or to practice any fraud or deceit upon the City or Subscribers;
 - (4) If Grantee becomes insolvent or there is an assignment for the benefit of Grantee's creditors; or
 - (5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise Agreement.
- (B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.
- (C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.
- (1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation and shall allow Grantee, in particular, an opportunity to state its position on the matter.
 - (2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or, if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions the City Council determines are reasonable under the circumstances. If the City Council determines that the Franchise is to be revoked, the City Council shall set forth the reasons for such a decision and shall transmit a copy of its decision to Grantee. Grantee shall be bound by the City Council's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.
 - (3) Grantee shall be entitled to such relief as such Court may deem appropriate.
 - (4) The City Council may at its sole discretion take any lawful action it deems appropriate to enforce the City's rights under this Franchise Agreement in lieu of revocation of the Franchise.

13.3 Procedures in the Event of Termination or Revocation

- (A) If this Franchise Agreement expires without renewal after completion of all processes available under this Franchise Agreement and federal law, or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:
 - (1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise Agreement for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or
 - (2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4 below.
- (B) In the event a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City, at Grantee's sole expense, within a reasonable period of time as determined by the City. 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 Rights-of-Way, public places and private property in a condition as good as that prevailing prior to Grantee's removal of its equipment, without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions herein and the letter of credit required herein shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.
- (C) If Grantee fails to complete any removal required by subsection 13.3(B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be performed, and Grantee shall reimburse the City for the costs incurred by the City within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.
- (D) The City may seek legal and equitable relief to enforce the provisions of this Franchise Agreement.

13.4 Purchase of Cable System

- (A) If at any time the Franchise is revoked, terminated or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the Cable System.
- (B) The City may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.
- (C) In any instance where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a current profit and loss statement of Grantee. The City shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.
- (D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

- (1) In the case of the expiration of the Franchise Agreement without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City would assume.
- (2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

13.5 Receivership and Foreclosure

- (A) At the option of the City, subject to Applicable Law, the 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 receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise Agreement and have remedied all defaults under the Franchise Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise Agreement.
- (B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise Agreement shall be revoked thirty (30) days after service of such notice, unless:
 - (1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise Agreement and as provided by law; and
 - (2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise Agreement.

13.6 No Monetary Recourse Against the City

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

13.7 Alternative Remedies

No provision of this Franchise Agreement shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of this Franchise Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise Agreement nor the exercise thereof shall be deemed to bar or otherwise limit

the right of the City to recover monetary damages for such violations by Grantee or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate or any other remedy at law or in equity.

13.8 Assessment of Monetary Damages

- (A) The City may assess against Grantee monetary damages: (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of PEG obligations or payment obligations; (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches; or (iii) up to one hundred dollars (\$100.00) per day for defaults, and the City may withdraw such assessment(s) from the letter of credit or collect the assessment(s) as specified in this Franchise Agreement. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise Agreement. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the City in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.
- (B) The assessment does not constitute a waiver by City of any other right or remedy it may have under this Franchise Agreement or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise Agreement.

13.9 Effect of Abandonment

If Grantee abandons its Cable System during the term of this Franchise Agreement or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may: (i) operate the Cable System; (ii) designate another entity to operate the Cable System temporarily until Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or (iii) obtain an injunction requiring Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

13.10 What Constitutes Abandonment

The City shall be entitled to exercise its options in subsection 13.9 if:

- (A) Grantee fails to provide Cable Service in accordance with this Franchise Agreement over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or
- (B) Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise Agreement.

SECTION 14
FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

- (A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures 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 City 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 the City agree that at any time during the term of the then-current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then-current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

14.2 Transfer of Ownership or Control

- (A) The Cable System and the Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council, acting by ordinance.
- (B) Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of Grantee. The word “control” as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of Grantee shall make this Franchise Agreement subject to cancellation unless and until the City shall have consented in writing thereto.
- (C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.
- (D) In seeking the City’s consent to any change in ownership or control, the proposed transferee shall indicate whether it:
 - (1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;
 - (2) Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;
 - (3) Has pending any material legal claim, lawsuit or administrative proceeding arising out of or involving a cable system or a broadband system;

- (4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data the City may reasonably require; and
 - (5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.
- (E) The City shall act on the request by ordinance within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise Agreement and/or by Applicable Law. The City and Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.
- (F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise Agreement, subject to Applicable Law. In the event of a change in control, in which Grantee is not replaced by another entity, Grantee will continue to be bound by all of the provisions of this Franchise Agreement, subject to Applicable Law, and will not be required to file an additional written acceptance.
- (G) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.
- (H) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an 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 City and must agree in writing to comply with all of the provisions of this Franchise Agreement. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided, however, that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise Agreement.

SECTION 15

SEVERABILITY

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

SECTION 16
MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise Agreement, Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise Agreement, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or Grantee by written notice at any time. Upon the Effective Date:

Grantee's address shall be:

COMCAST OF COLORADO IX, LLC
8000 E. Iliff Ave.
Denver, CO 80231
Attn: Government Affairs

The City's address shall be:

City Manager
City of Commerce City
7887 East 60th Avenue
Commerce City, CO 80022

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise Agreement are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs incurred in publishing this Franchise Agreement, if such publication is required.

16.5 Binding Effect

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

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party, act toward third Persons or the public in any manner that would indicate any such relationship with the other.

16.7 Waiver

The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

16.9 Entire Agreement

This Franchise Agreement and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

16.10 Jurisdiction

Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise Agreement shall be in District Court for Adams County, Colorado, or in the United States District Court in Denver.

IN WITNESS WHEREOF, this Franchise Agreement, on this ____ day of _____, 2013, has been signed and executed on behalf of the City of Commerce City, Colorado.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Gregory D. Graham, Assistant City Attorney

Recommended for approval:

James Hayes, Deputy City Manager

ERROR! MAIN DOCUMENT ONLY.

Accepted and approved this _____ day of _____, 2013.

ATTEST:

COMCAST OF COLORADO IX, LLC

Public Notary

Name/Title: _____

EXHIBIT A:
CUSTOMER SERVICE STANDARDS

EXHIBIT B

Report Form

Comcast
Quarterly Executive Summary - Escalated Complaints
Section 7.6 (B) of our Franchise Agreement
Quarter Ending _____, Year
[CITY OF COMMERCE CITY]

| <u>Type of Complaint</u> | <u>Number of Calls</u> |
|---|------------------------|
| Accessibility | 0 |
| Billing, Credit and Refunds | 0 |
| Courtesy | 0 |
| Drop Bury | 0 |
| Installation | 0 |
| Notices/Easement Issues (Non-Rebuild) | 0 |
| Pedestal | 0 |
| Problem Resolution | 0 |
| Programming | 0 |
| Property Damage (Non-Rebuild) | 0 |
| Rates | 0 |
| Rebuild/Upgrade Damage | 0 |
| Rebuild/Upgrade Notices/Easement Issues | 0 |
| Reception/Signal Quality | 0 |
| Safety | 0 |
| Service and Install Appointments | 0 |
| Service Interruptions | 0 |
| Serviceability | 0 |
| <u>TOTAL</u> | 0 |

| | |
|-------------|--|
| Compliments | |
|-------------|--|