

**CITY OF SANTA FE, NEW MEXICO**

**BILL NO. 2019-22**

**INTRODUCED BY:**

Councilor Roman "Tiger" Abeyta

Councilor Signe I. Lindell

**AN ORDINANCE**

**REPEALING ORDINANCE 2003-33 AND GRANTING A NEW NON-EXCLUSIVE FRANCHISE TO COMCAST OF EASTERN SHORE AND COMCAST OF NEW MEXICO/PENNSYLVANIA ("COMCAST") TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE PUBLIC RIGHTS-OF-WAY AND TO PROVIDE CABLE SERVICE WITHIN A FRANCHISE AREA WITH THE CITY OF SANTA FE (APPENDIX "H" CABLE TELEVISION FRANCHISES).**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

**Section 1. Definitions and Exhibits.**

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" means the availability for noncommercial use by various agencies,

1 institutions, organizations, groups, and individuals in the community, including the City and its  
2 designees, of the Cable System to acquire, create, receive, and distribute video Cable Services  
3 and other services and signals as permitted under Applicable Law including, but not limited to:

4 a. "Public Access" means Access where community-based, noncommercial  
5 organizations, groups, or individual members of the general public, on a  
6 nondiscriminatory basis, are the primary users.

7 b. "Educational Access" means Access where schools are the primary users  
8 having editorial control over programming and services. For purposes of this definition,  
9 "school" means any State-accredited educational institution, public or private, including,  
10 for example, primary and secondary schools, colleges, and universities.

11 c. "Government Access" means Access where governmental institutions or their  
12 designees are the primary users having editorial control over programming and services.

13 1.2 "Access Channel" means any Channel, or portion thereof, designated for Access  
14 purposes or otherwise made available to facilitate or transmit Access programming or services.

15 1.3 "Activated" means the status of any capacity or part of the Cable System in  
16 which any Cable Service requiring the use of that capacity or part is available without further  
17 installation of system equipment, whether hardware or software.

18 1.4 "Affiliate," when used in connection with Grantee, means any Person who owns  
19 or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

20 1.5 "Applicable Law" means any statute, ordinance, judicial decision, executive  
21 order, or regulation having the force and effect of law that determines the legal standing of a case  
22 or issue.

23 1.6 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the  
24 Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected  
25 after reasonable efforts have been made by Grantee to collect the charges.

1           1.7     “Basic Service” is the level of programming service which includes, at a  
2     minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and  
3     any additional Programming added by the Grantee, and is made available to all Cable Services  
4     Subscribers in the Franchise Area.

5           1.8     “Broadcast Channel” means local commercial television stations, qualified low  
6     power stations, and qualified local noncommercial educational television stations, as referenced  
7     under 47 USC § 534 and 535.

8           1.9     “Broadcast Signal” means a television or radio signal transmitted over the air to a  
9     wide geographic audience, and received by a Cable System by antenna, microwave, satellite  
10    dishes, or any other means.

11          1.10    “Cable Act” means the Title VI of the Communications Act of 1934, as  
12    amended.

13          1.11    “Cable Operator” means any Person or groups of Persons, including Grantee,  
14    who provide(s) Cable Service over a Cable System and directly or through one or more affiliates  
15    owns a significant interest in such Cable System or who otherwise control(s) or is (are)  
16    responsible for, through any arrangement, the management and operation of such a Cable System.

17          1.12    “Cable Service” means the one-way transmission to Subscribers of video  
18    programming or other programming service, and Subscriber interaction, if any, which is required  
19    for the selection or use of such video programming or other programming service.

20          1.13    “Cable System” means any facility, including Grantee’s, consisting of a set of  
21    closed transmissions paths and associated signal generation, reception, and control equipment that  
22    is designed to provide Cable Service which includes video programming and which is provided to  
23    multiple Subscribers within a community, but such term does not include (A) a facility that serves  
24    only to retransmit the television signals of one or more television broadcast stations; (B) a facility  
25    that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which

1 is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47  
2 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for  
3 purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the  
4 transmission of video programming directly to Subscribers, unless the extent of such use is solely  
5 to provide interactive on-demand services; (D) an open video system that complies with federal  
6 statutes; or (E) any facilities of any electric utility used solely for operating its electric utility  
7 systems.

8 1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is  
9 used in the Cable System and which is capable of delivering a television channel (as television  
10 channel is defined by the FCC by regulation).

11 1.15 “City” is the City of Santa Fe, New Mexico, a body politic and corporate under  
12 the laws of the State of New Mexico.

13 1.16 “City Council” means the governing body of the City of Santa Fe, New Mexico.

14 1.17 “Commercial Subscribers” means any Subscribers other than Residential  
15 Subscribers.

16 1.18 “Designated Access Provider” means the entity or entities designated now or in  
17 the future by the City to manage or co-manage Access Channels and facilities. The City may be a  
18 Designated Access Provider.

19 1.19 “Digital Starter Service” means the Tier of optional video programming services,  
20 which is the level of Cable Service received by most Subscribers above Basic Service, and does  
21 not include Premium Services.

22 1.20 “Downstream” means carrying a transmission from the Headend to remote points  
23 on the Cable System or to Interconnection points on the Cable System.

24 1.21 “Dwelling Unit” means any building, or portion thereof, that has independent  
25 living facilities, including provisions for cooking, sanitation, and sleeping, and that is designed

1 for residential occupancy. Buildings with more than one set of facilities for cooking shall be  
2 considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

3 1.22 “FCC” means the Federal Communications Commission.

4 1.23 “Fiber Optic” means a transmission medium of optical fiber cable, along with all  
5 associated electronics and equipment, capable of carrying Cable Service by means of electric  
6 light wave impulses.

7 1.24 “Franchise” means the document in which this definition appears, *i.e.*, the  
8 contractual agreement, executed between the City and Grantee, containing the specific provisions  
9 of the authorization granted, including references, specifications, requirements, and other related  
10 matters.

11 1.25 “Franchise Area” means the area within the jurisdictional boundaries of the City,  
12 including any areas annexed by the City during the term of this Franchise.

13 1.26 “Franchise Fee” means that fee payable to the City described in subsection 3.1  
14 (A).

15 1.27 “Grantee” means Comcast of Eastern Shore, LLC and Comcast of New  
16 Mexico/Pennsylvania, LLC or their lawful successors, transferees or assignees.

17 1.28 “Gross Revenues” means, and shall be construed broadly to include all revenues  
18 derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of  
19 the Cable System, from the operation of Grantee’s Cable System to provide Cable Services  
20 within the City.

21 (A) Gross revenues include, by way of illustration and not limitation:

22 (1) monthly fees for Cable Services, regardless of whether such  
23 Cable Services are provided to residential or commercial customers, including  
24 revenues derived from the provision of all Cable Services (including but not  
25 limited to pay or premium Cable Services, digital Cable Services, pay-per-view,

1 pay-per-event and video-on-demand Cable Services);

2 (2) installation, reconnection, downgrade, upgrade, or similar  
3 charges associated with changes in subscriber Cable Service levels;

4 (3) fees paid to Grantee for channels designated for  
5 commercial/leased access use and shall be allocated on a pro rata basis using  
6 total Cable Service subscribers within the City;

7 (4) converter, remote control, and other Cable Service equipment  
8 rentals, leases, or sales;

9 (5) Advertising Revenues as defined herein;

10 (6) late fees, convenience fees, and administrative fees which shall  
11 be allocated on a pro rata basis using Cable Services revenue as a percentage of  
12 total subscriber revenues within the City;

13 (7) revenues from program guides;

14 (8) Franchise Fees;

15 (9) FCC Regulatory Fees; and,

16 (10) commissions from home shopping channels and other Cable  
17 Service revenue sharing arrangements which shall be allocated on a pro rata basis  
18 using total Cable Service subscribers within the City.

19 (B) "Advertising Revenues" shall mean revenues derived from sales of  
20 advertising that are made available to Grantee's Cable System subscribers within the City  
21 and shall be allocated on a pro rata basis using total Cable Service subscribers reached by  
22 the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise  
23 fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to  
24 National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their  
25 successors associated with sales of advertising on the Cable System within the City

1 allocated according to this paragraph using total Cable Service subscribers reached by the  
2 advertising.

3 (C) "Gross Revenues" shall not include:

4 (1) actual bad debt write-offs, except any portion which is  
5 subsequently collected which shall be allocated on a *pro rata* basis using Cable  
6 Services revenue as a percentage of total subscriber revenues within the City;

7 (2) any taxes and/or fees on services furnished by Grantee imposed  
8 by any municipality, state, or other governmental unit, provided that Franchise  
9 Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

10 (3) fees imposed by any municipality, state, or other governmental  
11 unit on Grantee including but not limited to Public, Educational, and  
12 Governmental (PEG) Fees;

13 (4) launch fees and marketing co-op fees; and,

14 (5) unaffiliated, third-party, advertising sales agency fees that are  
15 reflected as a deduction from revenues.

16 (D) To the extent revenues are received by Grantee for the provision of a  
17 discounted bundle of services that includes Cable Services and non-Cable Services,  
18 Grantee shall calculate revenues to be included in Gross Revenues using a methodology  
19 that allocates revenue on a *pro rata* basis when comparing the bundled service price and  
20 its components to the sum of the published rate card. Except as required by specific  
21 federal, state, or local law, it is expressly understood that equipment may be subject to  
22 inclusion in the bundled price at full rate card value. This calculation shall be applied to  
23 every bundled service package containing Cable Service from which Grantee derives  
24 revenues in the City. The City reserves its right to review and to challenge Grantee's  
25 calculations.

1 (E) Grantee reserves the right to change the allocation methodologies set  
2 forth in this Section 1.28 in order to meet the standards required by governing accounting  
3 principles as promulgated and defined by the Financial Accounting Standards Board  
4 ("FASB"), Emerging Issues Task Force ("EITF"), and/or the U.S. Securities and  
5 Exchange Commission ("SEC").

6 (F) Resolution of any disputes over the classification of revenue should first  
7 be attempted by agreement of the Parties, but should no resolution be reached, the Parties  
8 agree that reference shall be made to generally accepted accounting principles ("GAAP")  
9 as promulgated and defined by the Financial Accounting Standards Board ("FASB"),  
10 Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange  
11 Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to  
12 challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP  
13 as promulgated and defined by the FASB, EITF, and/or the SEC.

14 1.29 "Headend" means any facility for signal reception and dissemination on a Cable  
15 System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators,  
16 processors for Broadcast Signals, equipment for the Interconnection of the Cable System with  
17 adjacent Cable Systems and Interconnection of any networks which are part of the Cable System,  
18 and all other related equipment and facilities.

19 1.30 "Leased Access Channel" means any Channel or portion of a Channel  
20 commercially available for video programming by Persons other than Grantee, for a fee or  
21 charge.

22 1.31 "Manager" means the City Manager of the City or designee.

23 1.32 "Person" means any individual, sole proprietorship, partnership, association, or  
24 corporation, or any other form of entity or organization.

25 1.33 "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.

1.34 “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.

1.35 “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.

1.36 “State” means the State of New Mexico.

1.37 “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.

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

1.39 “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(50)).

1.40 “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(53)).

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

1           1.42    “Two-Way” means that the Cable System is capable of providing both Upstream  
2 and Downstream transmissions.

3           1.43    “Upstream” means carrying a transmission to the Headend from remote points on  
4 the Cable System or from Interconnection points on the Cable System.

5           **Section 2.     Grant of Franchise.**

6           2.1     Grant.

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

14          (B)    Nothing in this Franchise shall be deemed to waive the lawful requirements of  
15 any generally applicable City ordinance existing as of the Effective Date, as defined in subsection  
16 2.3.

17          (C)    Each and every term, provision, or condition herein is subject to the provisions of  
18 state law, federal law, the Charter of the City, and the ordinances and regulations enacted  
19 pursuant thereto. The Charter and Municipal Code of the City, as the same may be amended  
20 from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein  
21 by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material  
22 rights and obligations of Grantee under this Franchise.

23          (D)    This Franchise shall not be interpreted to prevent the City from imposing  
24 additional lawful conditions, including additional compensation conditions for use of the Rights-  
25 of-Way, should Grantee provide service other than Cable Service.

1 (E) Grantee promises and guarantees, as a condition of exercising the privileges  
2 granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of  
3 Cable Service in the Franchise Area, or directly involved in the management or operation of the  
4 Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

5 (F) No rights shall pass to Grantee by implication. Without limiting the foregoing,  
6 by way of example and not limitation, this Franchise shall not include or be a substitute for:

7 (1) Any other permit or authorization required for the privilege of  
8 transacting and carrying on a business within the City that may be required by the  
9 ordinances and laws of the City;

10 (2) Any permit, agreement, or authorization required by the City for Right-  
11 of-Way users in connection with operations on or in Rights-of-Way or public property  
12 including, by way of example and not limitation, street cut permits; or

13 (3) Any permits or agreements for occupying any other property of the City  
14 or private entities to which access is not specifically granted by this Franchise including,  
15 without limitation, permits and agreements for placing devices on poles, in conduits or in  
16 or on other structures.

17 (G) This Franchise is intended to convey limited rights and interests only as to those  
18 Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in  
19 any Right-of-Way; it does not provide the Grantee with any interest in any particular location  
20 within the Right-of-Way; and it does not confer rights other than as expressly provided in the  
21 grant hereof.

22 (H) This Franchise does not authorize Grantee to provide Telecommunications  
23 Service, or to construct, operate, or maintain Telecommunications facilities separate from those  
24 used to provide Cable Service. This Franchise is not a bar to the provision of non-Cable Services,  
25 or to the imposition of any lawful conditions on Grantee with respect to Telecommunications,

1 whether similar, different, or the same as the conditions specified herein. This Franchise does not  
2 relieve Grantee of any obligation it may have to obtain from the City an authorization to provide  
3 Telecommunications Services, or to construct, operate, or maintain Telecommunications facilities  
4 separate from those used to provide Cable Service, or relieve Grantee of its obligation to comply  
5 with any such authorizations that may be lawfully required.

6 2.2 Use of Rights-of-Way.

7 (A) Subject to the City's supervision and control, Grantee may erect, install,  
8 construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the  
9 Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes,  
10 amplifiers, pedestals, attachments, and other property and equipment as are necessary and  
11 appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise,  
12 is granted extensive and valuable rights to operate its Cable System for profit using the City's  
13 Rights-of-Way in compliance with all applicable City construction codes and procedures. As  
14 trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this  
15 Franchise to be paid for these valuable rights throughout the term of the Franchise.

16 (B) Grantee must follow City established nondiscriminatory requirements for  
17 placement of Cable System facilities in Rights-of-Way, including the specific location of  
18 facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner  
19 that minimizes interference with the use of the Rights-of-Way by others, including others that  
20 may be installing communications facilities. Within limits reasonably related to the City's role in  
21 protecting public health, safety, and welfare, the City may require that Cable System facilities be  
22 installed at a particular time, at a specific place, or in a particular manner as a condition of access  
23 to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's  
24 requirements; and may remove, or require removal of, any facility that is not installed by Grantee  
25 in compliance with the requirements established by the City, or which is installed without prior

1 City approval of the time, place, or manner of installation, and charge Grantee for all the costs  
2 associated with removal; and may require Grantee to cooperate with others to minimize adverse  
3 impacts on the Rights-of-Way through joint trenching and other arrangements.

4 2.3 Effective Date and Term of Franchise

5 This Franchise and the rights, privileges and authority granted hereunder shall take effect  
6 on October 28, 2019 (the "Effective Date"), and shall terminate on October 28, 2029 unless  
7 terminated sooner as hereinafter provided.

8 2.4 Franchise Nonexclusive

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

16 2.5 Police Powers

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

1           2.6    Competitive Equity

2           (A)    The Grantee acknowledges and agrees that the City reserves the right to grant  
3 one (1) or more additional franchises or other similar lawful authorization to provide Cable  
4 Services within the City. If the City grants such an additional franchise or other similar lawful  
5 authorization containing material terms and conditions that differ from Grantee's material  
6 obligations under this Franchise, then the City agrees that the obligations in this Franchise will,  
7 pursuant to the process set forth in this Section, be amended to include any material terms or  
8 conditions that it imposes upon the new entrant, or provide relief from existing material terms or  
9 conditions, so as to insure that the regulatory and financial burdens on each entity are materially  
10 equivalent. "Material terms and conditions" include, but are not limited to Franchise Fees and  
11 Gross Revenues; complementary services; insurance; system build-out requirements; security  
12 instruments; Public, Education, and Government Access Channels and support; customer service  
13 standards; required reports and related record keeping; competitive equity (or its equivalent);  
14 audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties  
15 agree that this provision shall not require a word-for-word identical franchise or authorization for  
16 a competitive entity, so long as the regulatory and financial burdens on each entity are materially  
17 equivalent. Video programming services (as defined in the Cable Act) delivered over wireless  
18 broadband networks are specifically exempted from the requirements of this Section.

19           (B)    The modification process of this Franchise as provided for in Section 2.6 (A)  
20 shall only be initiated by written notice by the Grantee to the City regarding specified franchise  
21 obligations. Grantee's notice shall address the following: (1) identifying the specific terms or  
22 conditions in the competitive cable services franchise that are materially different from Grantee's  
23 obligations under this Franchise; (2) identifying the Franchise terms and conditions for which  
24 Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the  
25 City, with a written explanation of why the proposed amendments are necessary and consistent.

1 (C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), the City  
2 and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed  
3 Franchise modifications and that such negotiation will proceed and conclude within a ninety (90)  
4 day time period, unless that time period is reduced or extended by mutual agreement of the  
5 parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such  
6 negotiations, then the City shall amend this Franchise to include the modifications.

7 (D) In the alternative to Franchise modification negotiations as provided for in  
8 Section 2.6 (C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee  
9 may, at its option, elect to replace this Franchise by opting into the franchise or other similar  
10 lawful authorization that the City grants to another provider of Cable Services, with the  
11 understanding that Grantee will use its current system design and technology infrastructure to  
12 meet any requirements of the new franchise so as to insure that the regulatory and financial  
13 burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence  
14 proceedings to replace this Franchise with the franchise issued to the other Cable Services  
15 provider.

16 (E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the  
17 contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant  
18 makes Cable Services available for purchase by Subscribers or customers under its franchise  
19 agreement with the City.

20 (F) Notwithstanding any provision to the contrary, at any time that a wireline  
21 facilities based entity, legally authorized by state or federal law, makes available for purchase by  
22 Subscribers or customers, Cable Services or multiple Channels of video programming within the  
23 Franchise Area without a franchise or other similar lawful authorization granted by the City, then:

24 (1) Grantee may negotiate with the City to seek Franchise modifications as  
25 per Section 2.6(C) above; or

1 (2) the term of Grantee's Franchise shall, upon ninety (90) days written  
2 notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a  
3 date eighteen (18) months from the first day of the month following the date of Grantee's  
4 notice; or,

5 (3) Grantee may assert, at Grantee's option, that this Franchise is rendered  
6 "commercially impracticable," and invoke the modification procedures set forth in  
7 Section 625 of the Cable Act.

#### 8 2.7 Familiarity with Franchise

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

#### 16 2.8 Effect of Acceptance

17 By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal  
18 right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every  
19 provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was  
20 granted pursuant to processes and procedures consistent with Applicable Law and that it will not  
21 raise any claim to the contrary.

### 22 **Section 3. Franchise Fee Payment and Financial Controls.**

#### 23 3.1 Franchise Fee

24 As compensation for the benefits and privileges granted under this Franchise and in  
25 consideration of permission to use the City's Rights-of-Way, Grantee shall continue to pay as a



1 Franchise Fee to the City, throughout the duration of and consistent with this Franchise, an  
2 amount equal to five percent (5%) of Grantee's Gross Revenues.

3 3.2 Payments

4 Grantee's Franchise Fee payments to the City shall be computed quarterly for the  
5 preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each  
6 quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

7 3.3 Acceptance of Payment and Recomputation

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

12 3.4 Quarterly Franchise Fee Reports

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

18 3.5 Annual Franchise Fee Reports

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

22 3.6 Audits

23 On an annual basis, upon thirty (30) days prior written notice, the City, including the  
24 City's Auditor or his/her authorized representative, shall have the right to conduct an independent  
25 audit/review of Grantee's records reasonably related to the administration or enforcement of this

1 Franchise. Pursuant to subsection 1.28, as part of the Franchise Fee audit/review the City shall  
2 specifically have the right to review relevant data related to the allocation of revenue to Cable  
3 Services in the event Grantee offers Cable Services bundled with non-Cable Services. For  
4 purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced  
5 and maintained in the ordinary course of business, showing the subscriber counts per package and  
6 the revenue allocation per package for each package that was available for City subscribers  
7 during the audit period. To the extent that the City does not believe that the relevant data  
8 supplied is sufficient for the City to complete its audit/review, the City may require other relevant  
9 data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1)  
10 billing reports, (2) financial reports (such as General Ledgers), and (3) sample customer bills used  
11 by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to  
12 recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee  
13 payments have been underpaid by five percent (5%) or more (or such other contract  
14 underpayment threshold as set forth in a generally applicable and enforceable regulation or policy  
15 of the City related to audits), Grantee shall pay the total cost of the audit/review, such cost not to  
16 exceed two thousand five hundred dollars (\$2,500) for each year of the audit period. The City's  
17 right to audit/review and the Grantee's obligation to retain records related to this subsection shall  
18 expire three (3) years after each Franchise Fee payment has been made to the City.

19       3.7     Late Payments

20       In the event any payment due quarterly is not received within forty-five (45) days from  
21 the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as  
22 listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated  
23 from the date the payment was originally due until the date the City receives the payment.

24     3.8     Underpayments

25       If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall

1 pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated  
2 from the date each portion of the underpayment was originally due until the date Grantee remits  
3 the underpayment to the City.

4 3.9 Alternative Compensation

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

12 3.10 Maximum Legal Compensation

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

21 No term or condition in this Franchise shall in any way modify or affect Grantee's  
22 obligation to pay in full the Franchise Fee percentage listed in this Franchise. Additionally, the  
23 PEG fee pursuant to Section 9.5, as well as any charges incidental to the awarding or enforcing of  
24 this Franchise, including payments for bonds, security funds, letters of credit, insurance,  
25 indemnification, penalties, or liquidated damage shall not be offset against Franchise Fees.

1 Furthermore, the City and Grantee agree that any utility tax, business and occupation tax, or  
2 similar local tax of general applicability shall be in addition to any Franchise Fees required herein  
3 and there shall be no offset against Franchise Fees subject to Applicable Law. With the exception  
4 of the foregoing, Comcast reserves all rights to offset cash or non-cash payments from Franchise  
5 Fees, consistent with Applicable Law.

6 Should Grantee elect to offset commitments or initiatives such as complimentary cable  
7 service against the Franchise Fee in accordance with Applicable Law, including any Order  
8 resulting from the FCC's 621 proceeding, MB Docket No. 05-311, Grantee shall provide the City  
9 ninety (90) days' advance written notice. Discounted leased fiber or managed services provided  
10 under a separate contract with Comcast Business are not a non-cash commitment or initiative and  
11 shall not be offset.

12 Any decision or election by Comcast not to exercise any right it has under Applicable  
13 Law, including any Order by the FCC in the 621 proceeding, to offset cash or non-cash payments  
14 from Franchise Fees under or pursuant to this Franchise, shall not constitute a waiver of any such  
15 rights Comcast may have under Applicable Law.

16 3.11 Tax Liability

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

1           3.12   Financial Records

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

6           3.13   Payment on Termination

7           If this Franchise terminates for any reason, the Grantee shall file with the City within  
8 ninety (90) calendar days of the date of the termination, a financial statement, certified by an  
9 independent certified public accountant, showing the Gross Revenues received by the Grantee  
10 since the end of the previous fiscal year. The City reserves the right to satisfy any remaining  
11 financial obligations of the Grantee to the City by utilizing the funds available in any security  
12 provided by the Grantee.

13           **Section 4.     Administration and Regulation**

14           4.1     Authority

15           (A)    The City shall be vested with the power and right to reasonably regulate the  
16 exercise of the privileges permitted by this Franchise in the public interest, or to delegate that  
17 power and right, or any part thereof, to the extent permitted under federal, state, and local law, to  
18 any agent, in its sole discretion.

19           (B)    Nothing in this Franchise shall limit nor expand the City's right of eminent  
20 domain under state law.

21           4.2     Rates and Charges

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

24           4.3     Rate Discrimination

25           All of Grantee's rates and charges shall be published (in the form of a publicly-available

1 rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under  
2 similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable  
3 Law, with identical rates and charges for all Subscribers receiving identical Cable Services,  
4 without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation,  
5 marital, military or economic status, or physical or mental disability or, where consistent with any  
6 requirements of federal law, geographic location within the City. Grantee shall offer the same  
7 Cable Services to all Residential Subscribers at identical rates to the extent required by  
8 Applicable Law and to Multiple Dwelling Unit Subscribers to the extent required by FCC rules or  
9 applicable federal law. Grantee shall permit Subscribers to make any lawful in-residence  
10 connections the Subscriber chooses without additional charge and without penalizing the  
11 Subscriber therefor. However, if any in-home connection requires service from Grantee due to  
12 signal quality, signal leakage, or other factors, caused by improper installation of such in-home  
13 wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable  
14 service charges by Grantee. Nothing herein shall be construed to prohibit any of the following:

15 (A) The temporary reduction or waiving of rates or charges in conjunction with valid  
16 promotional campaigns;

17 (B) The offering of reasonable discounts to senior citizens or economically  
18 disadvantaged citizens;

19 (C) The offering of rate discounts for Cable Service; or,

20 (D) The Grantee from establishing different and nondiscriminatory rates and charges  
21 and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

22 4.4 Filing of Rates and Charges

23 (A) Throughout the term of this Franchise, Grantee shall maintain on file with the  
24 City a complete schedule of applicable rates and charges for Cable Services provided under this  
25 Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and

1 charges under temporary reductions or waivers of rates and charges in conjunction with  
2 promotional campaigns.

3 (B) Upon request of the City, Grantee shall provide a complete schedule of current  
4 rates and charges for any and all Leased Access Channels, or portions of such Channels, provided  
5 by Grantee. The schedule shall include a description of the price, terms, and conditions  
6 established by Grantee for Leased Access Channels.

7 4.5 Cross Subsidization

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

10 4.6 Reserved Authority

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

13 4.7 Franchise Amendment Procedure

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

20 4.8 Performance Evaluations

21 (A) The City may hold performance evaluation sessions upon ninety (90) days  
22 written notice, provided that such evaluation sessions shall be held no more frequently than once  
23 every two (2) years. All such evaluation sessions shall be conducted by the City.

24 (B) Special evaluation sessions may be held at any time by the City during the term  
25 of this Franchise, upon ninety (90) days written notice to Grantee.

1 (C) All regular evaluation sessions shall be open to the public and announced at least  
2 two (2) weeks in advance in any manner within the discretion of the City. Grantee shall also  
3 include with or on the Subscriber billing statements for the billing period immediately preceding  
4 the commencement of the session, written notification of the date, time, and place of the regular  
5 performance evaluation session, and any special evaluation session as required by the City,  
6 provided Grantee receives appropriate advance notice.

7 (D) Topics that may be discussed at any evaluation session may include, but are not  
8 limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or  
9 discounted Cable Services; application of new technologies; Cable System performance; Cable  
10 Services provided; programming offered; Subscriber complaints; privacy; amendments to this  
11 Franchise; judicial and FCC rulings; line extension policies; and the City or Grantee's rules;  
12 provided that nothing in this subsection shall be construed as requiring the renegotiation of this  
13 Franchise.

14 (E) During evaluations under this subsection, Grantee shall fully cooperate with the  
15 City and shall provide such information and documents as the City may reasonably require to  
16 perform the evaluation.

17 4.9 Late Fees

18 (A) For purposes of this subsection, any assessment, charge, cost, fee, or sum,  
19 however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a  
20 bill, is a late fee and shall be applied in accordance with the City's Customer Service Standards,  
21 as the same may be amended from time to time by the City Council acting by ordinance or  
22 resolution, or as the same may be superseded by legislation or final court order.

23 (B) Nothing in this subsection shall be deemed to create, limit, or otherwise affect the  
24 ability of the Grantee, if any, to impose other assessments, charges, fees, or sums other than those  
25 permitted by this subsection, for the Grantee's other services or activities it performs in



1 compliance with Applicable Law, including FCC law, rule, or regulation.

2 (C) The Grantee's late fee and disconnection policies and practices shall be  
3 nondiscriminatory and such policies and practices, and any fees imposed pursuant to this  
4 subsection, shall apply equally in all parts of the City without regard to the neighborhood or  
5 income level of the Subscriber.

6 4.10 Force Majeure

7 In the event Grantee is prevented or delayed in the performance of any of its obligations  
8 under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable  
9 time, under the circumstances, to perform the affected obligation under this Franchise or to  
10 procure a substitute for such obligation which is satisfactory to the City. Those conditions that  
11 are not within the control of Grantee include, but are not limited to, natural disasters, civil  
12 disturbances, work stoppages or labor disputes, power outages, telephone network outages, and  
13 severe or unusual weather conditions that have a direct and substantial impact on the Grantee's  
14 ability to provide Cable Services in the City and that were not caused and could not have been  
15 avoided by the Grantee, which used its best efforts in its operations to avoid such results.

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

21 **Section 5. Financial and Insurance Requirements.**

22 5.1 Indemnification

23 (A) General Indemnification. Grantee shall indemnify, defend, and hold the City, its  
24 officers, officials, boards, commissions, agents, and employees, harmless from any action or  
25 claim for injury, damage, loss, liability, cost, or expense, including court and appeal costs and

1 reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person  
2 or property, including, without limitation, copyright infringement, defamation, and all other  
3 damages in any way arising out of, or by reason of, any construction, excavation, operation,  
4 maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its  
5 agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall  
6 consult and cooperate with the City while conducting its defense of the City. Grantee shall not be  
7 obligated to indemnify the City to the extent of the City's negligence or willful misconduct.

8 (B) Indemnification for Relocation. Grantee shall indemnify the City for any  
9 damages, claims, additional costs, or reasonable expenses assessed against, or payable by, the  
10 City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust, or  
11 relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any  
12 relocation required by the City.

13 (C) Additional Circumstances. Grantee shall also indemnify, defend, and hold the  
14 City harmless for any claim for injury, damage, loss, liability, cost, or expense, including court  
15 and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

16 (1) The lawful actions of the City in granting this Franchise to the extent  
17 such actions are consistent with this Franchise and Applicable Law; and

18 (2) Damages arising out of any failure by Grantee to secure consents from  
19 the owners, authorized distributors, or licensees/licensors of programs to be delivered by  
20 the Cable System, whether or not any act or omission complained of is authorized,  
21 allowed, or prohibited by this Franchise.

22 (D) Procedures and Defense. If a claim or action arises, the City or any other  
23 indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall  
24 be at Grantee's expense. The City may participate in the defense of a claim, but if Grantee  
25 provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees,

1 expenses or other costs that City may incur if it chooses to participate in the defense of a claim,  
2 unless and until separate representation as described below in Paragraph 5.1(F) is required. In  
3 that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for City's  
4 attorney's fees, expenses, or other costs. In any event, Grantee may not agree to any settlement  
5 of claims affecting the City without the City's approval.

6 (E) Non-waiver. The fact that Grantee carries out any activities under this Franchise  
7 through independent contractors shall not constitute an avoidance of or defense to Grantee's duty  
8 of defense and indemnification under this subsection.

9 (F) Expenses. If separate representation to fully protect the interests of both parties is  
10 or becomes necessary, such as a conflict of interest between the City and the counsel selected by  
11 Grantee to represent the City, Grantee shall pay, from the date such separate representation is  
12 required forward, all reasonable expenses incurred by the City in defending itself with regard to  
13 any action, suit, or proceeding indemnified by Grantee. Provided, however, that in the event that  
14 such separate representation is or becomes necessary, and City desires to hire counsel or any  
15 other outside experts or consultants and desires Grantee to pay those expenses, then City shall be  
16 required to obtain Grantee's consent to the engagement of such counsel, experts, or consultants,  
17 such consent not to be unreasonably withheld. The City's expenses shall include all reasonable  
18 out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of  
19 any services rendered by the City Attorney or his/her assistants or any employees of the City or  
20 its agents but shall not include outside attorneys' fees for services that are unnecessarily  
21 duplicative of services provided the City by Grantee.

## 22 5.2 Insurance

23 (A) Grantee shall maintain in full force and effect at its own cost and expense each of  
24 the following policies of insurance:

25 (1) Commercial General Liability insurance with limits of no less than one

1 million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00)  
2 general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01  
3 1/96 or its equivalent and include severability of interests. Such insurance shall name the  
4 City, its officers, officials, and employees as additional insureds per ISO CG 2026 or its  
5 equivalent. There shall be a waiver of subrogation and rights of recovery against the  
6 City, its officers, officials, and employees. Coverage shall apply as to claims between  
7 insureds on the policy, if applicable.

8 (2) Commercial Automobile Liability insurance with minimum combined  
9 single limits of one million dollars (\$1,000,000.00) each occurrence with respect to each  
10 of Grantee's owned, hired, and non-owned vehicles assigned to or used in the operation  
11 of the Cable System in the City. The policy shall contain a severability of interests  
12 provision.

13 (B) The insurance shall not be canceled or materially changed so as to be out of  
14 compliance with these requirements without thirty (30) days' written notice first provided to the  
15 City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is  
16 canceled or materially altered so as to be out of compliance with the requirements of this  
17 subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee  
18 agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required,  
19 for the duration of this Franchise and, in the case of the Commercial General Liability, for at least  
20 one (1) year after expiration of this Franchise.

21 5.3 Deductibles / Certificate of Insurance

22 Any deductible of the policies shall not in any way limit Grantee's liability to the City.

23 (A) Endorsements.

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

25 (a) The City, its officers, officials, boards, commissions, employees,

1 and agents are to be covered as, and have the rights of, additional insureds with  
2 respect to liability arising out of activities performed by, or on behalf of, Grantee  
3 under this Franchise or Applicable Law, or in the construction, operation or  
4 repair, or ownership of the Cable System;

5 (b) Grantee's insurance coverage shall be primary insurance with  
6 respect to the City, its officers, officials, boards, commissions, employees, and  
7 agents. Any insurance or self-insurance maintained by the City, its officers,  
8 officials, boards, commissions, employees, and agents shall be in excess of the  
9 Grantee's insurance and shall not contribute to it; and

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

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

15 (C) Verification of Coverage. The Grantee shall furnish the City with certificates of  
16 insurance and endorsements or a copy of the page of the policy reflecting blanket additional  
17 insured status. The certificates and endorsements for each insurance policy are to be signed by a  
18 Person authorized by that insurer to bind coverage on its behalf. The certificates and  
19 endorsements for each insurance policy are to be on standard forms or such forms as are  
20 consistent with standard industry practices.

21 (D) Self-Insurance In the alternative to providing a certificate of insurance to the  
22 City certifying insurance coverage as required above, Grantee may provide self-insurance in the  
23 same amount and level of protection for Grantee and City, its officers, agents, and employees as  
24 otherwise required under this Section. The adequacy of self-insurance shall be subject to the  
25 periodic review and approval of the City.

1           5.4    Letter of Credit

2           (A)    If there is a claim by the City of an uncured breach by Grantee of a material  
3 provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise,  
4 then the City may require and Grantee shall establish as security for the faithful performance by  
5 Grantee of all of the provisions of this Franchise, within thirty (30) days from receiving notice  
6 from the City, a letter of credit from a financial institution satisfactory to the City in the amount  
7 of one hundred thousand dollars (\$100,000).

8           (B)    In the event that Grantee establishes a letter of credit pursuant to the procedures  
9 of subsection (A), then the letter of credit shall be maintained at one hundred thousand dollars  
10 (\$100,000) until the allegations of the uncured breach have been resolved.

11          (C)    After completion of the procedures set forth in Section 13.1 or other applicable  
12 provisions of this Franchise, the letter of credit may be drawn upon by the City for purposes  
13 including but not limited to the following:

14               (1)   Failure of Grantee to pay the City sums due under the terms of this  
15 Franchise;

16               (2)   Reimbursement of costs borne by the City to correct Franchise violations  
17 not corrected by Grantee;

18               (3)   Monetary remedies or damages assessed against Grantee due to default  
19 or breach of Franchise requirements; and,

20               (4)   Failure to comply with the Customer Service Standards of the City, as  
21 the same may be amended from time to time by the City Council acting by ordinance or  
22 resolution.

23          (D)    The City shall give Grantee written notice of any withdrawal under this  
24 subsection upon such withdrawal. Within seven (7) days following receipt of such notice,  
25 Grantee shall restore the letter of credit to the amount required under this Franchise.

1 (E) Grantee shall have the right to appeal to the City Council for reimbursement in  
2 the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also  
3 have the right of judicial appeal if Grantee believes the letter of credit has not been properly  
4 drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully  
5 withdraws from the letter of credit shall be returned to Grantee with interest, from the date of  
6 withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

7 **Section 6. Customer Service.**

8 6.1 Customer Service Standards

9 The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the  
10 FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the  
11 customer service requirements established by the FCC.

12 6.2 Subscriber Privacy

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

15 6.3 Subscriber Contracts

16 Grantee shall not enter into a contract with any Subscriber which is in any way  
17 inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any  
18 applicable Customer Service Standard. Upon request, Grantee will provide to the City a sample  
19 of the Subscriber contract or service agreement then in use.

20 6.4 Advance Notice to City

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

23 6.5 Identification of Local Franchise Authority on Subscriber Bills

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

1 | complaints.

2 |       **Section 7.       Reports and Records.**

3 |       7.1     Open Records

4 |       Grantee shall manage all of its operations in accordance with a policy of keeping its  
5 | documents and records open and accessible to the City. The City, including the City's Auditor or  
6 | his/her authorized representative, shall have access to, and the right to inspect, any books and  
7 | records of Grantee, its parent corporations and Affiliates which are reasonably related to the  
8 | administration or enforcement of the terms of this Franchise. Grantee shall not deny the City  
9 | access to any of Grantee's records on the basis that Grantee's records are under the control of any  
10 | parent corporation, Affiliate, or a third party. The City may, in writing, request copies of any  
11 | such records or books and Grantee shall provide such copies within thirty (30) days of the  
12 | transmittal of such request. One (1) copy of all reports and records required under this or any  
13 | other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested  
14 | books and records are too voluminous, or for security reasons cannot be copied or removed, then  
15 | Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local  
16 | offices. If any books or records of Grantee are not kept in a local office and not made available in  
17 | copies to the City upon written request as set forth above, and if the City determines that an  
18 | examination of such records is necessary or appropriate for the performance of any of the City's  
19 | duties, administration or enforcement of this Franchise, then all reasonable travel and related  
20 | expenses incurred in making such examination shall be paid by Grantee.

21 |       7.2     Confidentiality

22 |       The City agrees to treat as confidential any books or records that constitute proprietary or  
23 | confidential information under federal or state law, to the extent Grantee makes the City aware of  
24 | such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the  
25 | word "Confidential" on each page that contains confidential or proprietary information, and shall



1 provide a brief written explanation as to why such information is confidential under state or  
2 federal law. If the City believes it must release any such confidential books and records in the  
3 course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so  
4 that Grantee may take appropriate steps to protect its interests. If the City receives a demand  
5 from any Person for disclosure of any information designated by Grantee as confidential, the City  
6 shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy  
7 of any written request by the party demanding access to such information within a reasonable  
8 time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that,  
9 to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and  
10 records marked confidential as set forth above to any Person. Grantee shall reimburse the City  
11 for all reasonable costs and attorneys' fees incurred in any legal proceedings pursued under this  
12 Section.

13 7.3 Records Required

14 (A) Grantee shall at all times maintain, and shall furnish to the City upon thirty (30)  
15 days written request and subject to Applicable Law, the following records:

16 (1) A complete set of maps showing the exact location of all Cable System  
17 equipment and facilities in the Right-of-Way, but excluding detail on proprietary  
18 electronics contained therein and Subscriber drops. As-built maps including proprietary  
19 electronics shall be available at Grantee's offices for inspection by the City's authorized  
20 representative(s) or agent(s) and made available to such during the course of technical  
21 inspections as reasonably conducted by the City. These maps shall be certified as  
22 accurate by an appropriate representative of the Grantee;

23 (2) A copy of all FCC filings on behalf of Grantee, its parent corporations,  
24 or Affiliates that relate to the operation of the Cable System in the City;

25 (3) Current Subscriber Records and information;

1 (4) A log of Cable Services added or dropped, Channel changes, number of  
2 Subscribers added or terminated, all construction activity, and total homes passed for the  
3 previous twelve (12) months; and

4 (5) A list of Cable Services, rates, and Channel line-ups.

5 (B) Subject to subsection 7.2, all information furnished to the City is public  
6 information, and shall be treated as such, except for information involving the privacy rights of  
7 individual Subscribers.

8 7.4 Copies of Federal and State Reports

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

16 7.5 Complaint File

17 Grantee shall keep an accurate and comprehensive file of any complaints regarding the  
18 Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's  
19 actions in response to those complaints. These files shall remain available for viewing to the City  
20 during normal business hours at Grantee's local business office.

21 7.6 False Statements

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

1           **Section 8.       Programming.**

2           8.1    Broad Programming Categories

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

- 5           (A)    Educational programming;
- 6           (B)    New Mexico news, weather, and information;
- 7           (C)    Sports;
- 8           (D)    General entertainment (including movies);
- 9           (E)    Children/family-oriented;
- 10          (F)    Arts, culture, and performing arts;
- 11          (G)    Foreign language;
- 12          (H)    Science/documentary;
- 13          (I)    National news, weather, and information; and
- 14          (J)    Public, Educational, and Government Access, to the extent required by this  
15 Franchise.

16          8.2    Deletion or Reduction of Broad Programming Categories

17          (A)    Grantee shall not delete or so limit as to effectively delete any broad category of  
18 programming within its control without the prior written consent of the City.

19          (B)    In the event of a modification proceeding under federal law, the mix and quality  
20 of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed  
21 the mix and quality of Cable Services required under this Franchise throughout its term.

22          8.3    Obscenity

23          Grantee shall not transmit, or permit to be transmitted over any Channel subject to its  
24 editorial control, any programming which is obscene under, or violates any provision of,  
25 Applicable Law relating to obscenity, and is not protected by the Constitution of the United

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

8 8.4 Parental Control Device

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

14 8.5 Continuity of Service Mandatory

15 (A) It shall be the right of all Subscribers to continue to receive Cable Service from  
16 Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall  
17 act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service, regardless  
18 of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-  
19 term outages of the Cable System for maintenance or testing.

20 (B) In the event of a change of grantee, or in the event a new Cable Operator acquires  
21 the Cable System in accordance with this Franchise, Grantee shall cooperate with the City, new  
22 franchisee, or Cable Operator in maintaining continuity of Cable Service to all Subscribers.  
23 During any transition period, Grantee shall be entitled to the revenues for any period during  
24 which it operates the Cable System, and shall be entitled to reasonable costs for its services when  
25 it no longer operates the Cable System.

1 (C) In the event Grantee fails to operate the Cable System for four (4) consecutive  
2 days without prior approval of the Manager, or without just cause, the City may, at its option,  
3 operate the Cable System itself or designate another Cable Operator until such time as Grantee  
4 restores service under conditions acceptable to the City or a permanent Cable Operator is  
5 selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the  
6 City for all reasonable costs or damages that are the result of Grantee's failure to perform.

7 8.6 Services for the Disabled

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

10 **Section 9. Access.**

11 9.1 Designated Access Providers

12 (A) The City shall have the sole and exclusive responsibility for identifying the  
13 Designated Access Providers, including itself for Access purposes, to control and manage the use  
14 of any or all Access Facilities provided by Grantee under this Franchise. As used in this Section,  
15 such "Access Facilities" includes the Channels, services, facilities, equipment, technical  
16 components, and/or financial support provided under this Franchise, which is used or useable by  
17 and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

18 (B) Grantee shall cooperate with City in City's efforts to provide Access  
19 programming, but will not be responsible or liable for any damages resulting from a claim in  
20 connection with the programming placed on the Access Channels by the Designated Access  
21 Provider.

22 9.2 Channel Capacity and Use

23 (A) Grantee shall make available to City three (3) Downstream Channels for PEG use  
24 as provided for in this Section.

25 (B) Grantee shall have the right to temporarily use any Channel, or portion thereof,

1 which is allocated under this Section for Public, Educational, or Governmental Access use, within  
2 sixty (60) days after a written request for such use is submitted to City, if such Channel is not  
3 "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially  
4 unduplicated programming is delivered over it more than an average of 38 hours per week over a  
5 six (6) month period. Programming that is repeated on an Access Channel up to two times per  
6 day shall be considered "unduplicated programming." Character-generated programming shall be  
7 included for purposes of this subsection, but may be counted towards the total average hours only  
8 with respect to two (2) Channels provided to City. If a Channel allocated for Public, Educational,  
9 or Governmental Access use will be used by Grantee in accordance with the terms of this  
10 subsection, the institution to which the Channel has been allocated shall have the right to require  
11 the return of the Channel or portion thereof. City shall request return of such Channel space by  
12 delivering written notice to Grantee stating that the institution is prepared to fully utilize the  
13 Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or  
14 portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee  
15 of such written notice.

16 (C) Standard Definition ("SD") Digital Access Channels.

17 (1) Grantee shall continue to provide two (2) Activated Downstream  
18 Channels for PEG Access use in a standard definition ("SD") digital format in Grantee's  
19 Basic Service ("SD Access Channel"). Grantee shall carry all components of the SD  
20 Access Channel Signals provided by a Designated Access Provider including, but not  
21 limited to, closed captioning, stereo audio, and other elements associated with the  
22 Programming. A Designated Access Provider shall be responsible for providing the SD  
23 Access Channel Signal in an SD format to the demarcation point at the designated point  
24 of origination for the SD Access Channel. Grantee shall transport and distribute the SD  
25 Access Channel signal on its Cable System and shall not unreasonably discriminate

1 against SD Access Channels with respect to accessibility, functionality, and to the  
2 application of any applicable Federal Communications Commission Rules &  
3 Regulations, including without limitation Subpart K Channel signal standards.

4 (2) With respect to signal quality, Grantee shall not be required to carry a SD  
5 Access Channel in a higher quality format than that of the SD Access Channel signal  
6 delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without  
7 degradation. Upon reasonable written request by a Designated Access Provider, Grantee  
8 shall verify signal delivery to Subscribers with the Designated Access Provider,  
9 consistent with the requirements of this Section 9.2(C).

10 (3) Grantee shall be responsible for costs associated with the transmission of  
11 SD Access signals on its side of the demarcation point, which, for the purposes of this  
12 Section 9.2 (C)(3), shall mean up to and including the modulator where the City signal is  
13 converted into a format to be transmitted over a fiber connection to Grantee. The City or  
14 Designated Access Provider shall be responsible for costs associated with SD Access  
15 signal transmission on its side of the demarcation point.

16 (4) SD Access Channels may require Subscribers to buy or lease special  
17 equipment, available to all Subscribers, and subscribe to those tiers of Cable Service,  
18 upon which SD channels are made available. Grantee is not required to provide free SD  
19 equipment to Subscribers, including complimentary government and educational  
20 accounts, nor modify its equipment or pricing policies in any manner.

21 (D) High Definition ("HD") Digital Access Channels.

22 (1) After the Effective Date and within one hundred twenty (120) days of  
23 written notice, Grantee shall activate one (1) HD Access Channel, for which the City may  
24 provide Access Channel signals in HD format to the demarcation point at the designated  
25 point of origination for the Access Channel. Activation of the HD Access Channel shall

1       only occur after the following conditions are satisfied:

2               (a)       The City shall, in its written notice to Grantee as provided for in  
3               this Section, confirm that it or its Designated Access Provider has the capabilities  
4               to produce, has been producing, and will produce programming in an HD format  
5               for the newly activated HD Access Channel(s); and,

6               (b)       There will be a minimum of five (5) hours per-day, five days  
7               per-week of HD PEG programming available for each HD Access Channel. For  
8               the purposes of this subsection, character-generated programming (i.e.,  
9               community bulletin boards) shall not satisfy, in whole or in part, this  
10              programming requirement.

11             (2)       The City shall be responsible for providing the HD Access Channel  
12             signal in an HD digital format to the demarcation point at the designated point of  
13             origination for the HD Access Channel. For purposes of this Franchise, an HD signal  
14             refers to a television signal delivering picture resolution of either 720p or 1080i, or such  
15             other resolution in this same range that Grantee utilizes for other similar non-sport, non-  
16             movie programming channels on the Cable System, whichever is greater.

17             (3)       Grantee shall transport and distribute the HD Access Channel signal on  
18             its Cable System and shall not unreasonably discriminate against HD Access Channels  
19             with respect to accessibility, functionality, or to the application of any applicable Federal  
20             Communications Commission Rules & Regulations, including without limitation Subpart  
21             K Channel signal standards. With respect to signal quality, Grantee shall not be required  
22             to carry a HD Access Channel in a higher quality format than that of the HD Access  
23             Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel  
24             signal without degradation. Grantee shall carry all components of the HD Access  
25             Channel signals provided by the Designated Access Provider including, but not limited



1 to, closed captioning, stereo audio, and other elements associated with the Programming.  
2 Upon reasonable written request by the City, Grantee shall verify signal delivery to  
3 Subscribers with the City, consistent with the requirements of this Section 9.2(D).

4 (4) HD Access Channels may require Subscribers to buy or lease special  
5 equipment, available to all Subscribers, and subscribe to those tiers of Cable Service,  
6 upon which HD channels are made available. Grantee is neither required to provide free  
7 HD equipment to Subscribers, including complimentary government and educational  
8 accounts, nor to modify its equipment or pricing policies in any manner.

9 (5) The City or any Designated Access Provider is responsible for acquiring  
10 all equipment necessary to produce programming in HD.

11 (6) Grantee shall cooperate with the City to procure and provide, at City's  
12 cost, all necessary transmission equipment from the Designated Access Provider channel  
13 origination point, at Grantee's headend and through Grantee's distribution system, in  
14 order to deliver the HD Access Channels. The City shall be responsible for the costs of  
15 all transmission equipment, including HD modulator and demodulator, and encoder or  
16 decoder equipment, and multiplex equipment, required in order for Grantee to receive  
17 and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to  
18 the video return line. The City and Grantee agree that such expense of acquiring and  
19 installing the transmission equipment or upgrades to the video return line qualifies as a  
20 capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C. Section  
21 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG  
22 Capital fees provided for in this Franchise.

23 (E) Grantee shall simultaneously carry the one (1) HD Access Channel provided for  
24 in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously  
25 carrying in standard definition format the SD Access Channels provided pursuant to Subsection

1 9.2(C).

2 (F) There shall be no restriction on Grantee's technology used to deploy and deliver  
3 SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may  
4 implement HD carriage of the PEG channel in any manner (including selection of compression,  
5 utilization of IP, and other processing characteristics) that produces a signal quality for the  
6 consumer that is reasonably comparable and functionally equivalent to similar commercial HD  
7 channels carried on the Cable System. In the event the City believes that Grantee fails to meet  
8 this standard, City will notify Grantee of such concern, and Grantee will respond to any  
9 complaints in a timely manner.

10 9.3 Access Channel Assignments

11 Grantee will use reasonable efforts to minimize the movement of SD and HD Access  
12 Channel assignments. In addition, Grantee will make reasonable efforts to locate HD Access  
13 Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is  
14 easily accessible to Subscribers.

15 9.4 Relocation of Access Channels

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

19 9.5 Support for Access Costs

20 Within 180 days after the effective date, and during the term of this Franchise  
21 Agreement, Grantee shall provide forty-four cents (\$0.44) per month per Residential Subscriber  
22 (the "PEG Contribution") to be used solely for capital costs related to Public, Educational, and  
23 Governmental Access and web-based, on-demand Access programming described in Section 9.5,  
24 or as may be permitted by Applicable Law. To address inflationary impacts on capital equipment  
25 or to evaluate whether the City's PEG Access capital costs have reduced with time, the City and

1 Grantee may meet after the Effective Date to discuss whether to increase or to decrease the PEG  
2 Contribution. The primary purpose of such meetings will be for the parties to review prior  
3 expenditures and future capital plans to determine if the current PEG Contribution is reasonably  
4 appropriate to meet future needs. The City and Grantee may suggest to each other, based upon  
5 their own assessments of reasonable past practices and future anticipated needs, whether the  
6 current level of PEG Contribution is appropriate. If either party believes that the PEG  
7 Contribution should be modified in a reasonable amount to address such future needs, the parties  
8 shall share all relevant information supporting their positions and negotiate in good faith to  
9 determine if the PEG Contribution should be increased or decreased, and, if so, in what amount.  
10 Such discussions regarding potential adjustment to the PEG Contribution will be conducted  
11 pursuant to the Franchise amendment procedures in Section 4.8 of this Franchise. Grantee shall  
12 make PEG Contribution payments quarterly, following the effective date of this Franchise  
13 Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31.  
14 Each payment shall be due and payable no later than forty-five (45) days following the end of the  
15 quarter. City shall have sole discretion to allocate the expenditure of such payments for any  
16 capital costs related to PEG Access. The parties agree that this Franchise shall provide City  
17 discretion to utilize Access payments for new internal network connections and enhancements to  
18 the City's existing network.

19 9.6 Access Support Not Franchise Fees

20 Grantee agrees that capital support for Access Costs arising from or relating to the  
21 obligations set forth in this Section shall in no way modify or otherwise affect Grantee's  
22 obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees  
23 plus the payments set forth in this Section may total more than five percent (5%) of Grantee's  
24 Gross Revenues in any 12-month period, the additional commitments shall not be offset or  
25 otherwise credited in any way against any Franchise Fee payments under this Franchise

1 Agreement so long as such support is used for capital Access purposes consistent with this  
2 Franchise and federal law. PEG fees shall not be collected and remitted on (1) Subscribers  
3 residing in Multiple Dwelling Units billed on a bulk-billing basis for any additional services; (2)  
4 Subscribers and/or employees receiving Cable Service on a gratis or complimentary basis; and (3)  
5 Subscribers whose accounts are written off as uncollectable or are considered Bad Debt.

6       9.7     Access Channels On Basic Service or Lowest Priced HD Service Tier

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

11       9.8     Change In Technology

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

24       9.9     Technical Quality

25       Grantee shall maintain all upstream and downstream Access services and Channels on its

1 side of the demarcation point at the same level of technical quality and reliability required by this  
2 Franchise Agreement and all other applicable laws, rules, and regulations for Residential  
3 Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment  
4 on its side of the demarcation point, including modulators, decoders, multiplex equipment, and  
5 associated cable and equipment necessary to carry a quality signal to and from City's facilities for  
6 the Access Channels provided under this Franchise Agreement, including the business class  
7 broadband equipment and services necessary for the video on demand and streaming service  
8 described in Section 9.5. Grantee shall also provide, if requested in advance by the City, advice  
9 and technical expertise regarding the proper operation and maintenance of transmission  
10 equipment on the City's side of the demarcation point. The City shall be responsible for all initial  
11 and replacement costs of all HD modulator and demodulator equipment, web-based video on  
12 demand servers, and web-based video streaming servers. The City shall also be responsible, at its  
13 own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence  
14 or intentional acts of City staff. The Grantee shall be responsible, at its own expense, to replace  
15 any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of  
16 Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any HD  
17 PEG Access and web-based video on demand transmission equipment that Grantee maintains that  
18 is used exclusively for transmission of the City's and/or its Designated Access Providers' HD  
19 Access programming.

20 9.10 Return Lines/Access Origination

21 (A) Grantee shall continuously maintain the return lines previously constructed to the  
22 200 Lincoln Ave, Santa Fe, NM 87504, throughout the Term of the Franchise, in order to enable  
23 the distribution of Access programming to Residential Subscribers on the Access Channels;  
24 provided, however, that Grantee's maintenance obligations with respect to either of these  
25 locations shall cease if a location is no longer used in the future by the City to originate Access

1 programming.

2 (B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend  
3 from production facilities of new or relocated Designated Access Providers delivering Access  
4 programming to Residential Subscribers as requested in writing by the City. All actual  
5 construction costs incurred by Grantee from the nearest interconnection point to the Designated  
6 Access Provider shall be paid by the City or the Designated Access Provider. New return lines  
7 shall be completed within one (1) year from the request of the City or its Designated Access  
8 Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates  
9 movement of production facilities to a new location, the parties shall work together to complete  
10 the new return line as soon as reasonably possible.

11 **Section 10. General Right-of-Way Use and Construction.**

12 10.1 Right to Construct

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

16 10.2 Right-of-Way Meetings

17 Grantee will regularly attend and participate in meetings of the City, of which the  
18 Grantee is made aware, regarding Right-of-Way issues that may impact the Cable System.

19 10.3 Joint Trenching/Boring Meetings

20 Grantee will regularly attend and participate in planning meetings of the City, of which  
21 the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and  
22 reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other  
23 providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of  
24 Right-of-Way cuts within the City.

25 10.4 General Standard

1 All work authorized and required hereunder shall be done in a safe, thorough, and  
2 workmanlike manner. All installations of equipment shall be permanent in nature, durable, and  
3 installed in accordance with good engineering practices.

4 10.5 Permits Required for Construction

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

13 10.6 Emergency Permits

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

17 10.7 Compliance with Applicable Codes

18 (A) City Construction Codes. Grantee shall comply with all applicable City  
19 construction codes, including, without limitation, the Uniform Building Code and other building  
20 codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries  
21 Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable  
22 Plant, and zoning codes and regulations.

23 (B) Tower Specifications. Antenna supporting structures (towers) shall be designed  
24 for the proper loading as specified by the Electronics Industries Association (EIA), as those  
25 specifications may be amended from time to time. Antenna supporting structures (towers) shall

1 be painted, lighted, erected, and maintained in accordance with all applicable rules and  
2 regulations of the Federal Aviation Administration and all other applicable federal, state, and  
3 local codes or regulations.

4 (C) Safety Codes. Grantee shall comply with all federal, state, and local safety  
5 requirements, rules, regulations, laws, and practices, and employ all necessary devices as required  
6 by Applicable Law during construction, operation, and repair of its Cable System. By way of  
7 illustration and not limitation, Grantee shall comply with the National Electric Code, National  
8 Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

9 10.8 GIS Mapping

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

12 10.9 Minimal Interference

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



1 Grantee's expense.

2 10.10 Prevent Injury/Safety

3 Grantee shall provide and use any equipment and facilities necessary to control and carry  
4 Grantee's signals so as to prevent injury to the City's property or property belonging to any  
5 Person. Grantee, at its own expense, shall repair, renew, change, and improve its facilities to  
6 keep them in good repair and safe and presentable condition. All excavations made by Grantee in  
7 the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement  
8 of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and  
9 darkness, shall be clearly designated by warning lights.

10 10.11 Hazardous Substances

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

13 (B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in  
14 the Rights-of-Way to determine if any release of hazardous substances has occurred, or may  
15 occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities  
16 as provided in this Franchise, Grantee shall also remove all residue of hazardous substances  
17 related thereto.

18 (C) Grantee agrees to indemnify the City against any claims, costs, and expenses, of  
19 any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous  
20 substances caused by Grantee's Cable System.

21 10.12 Locates

22 Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to  
23 the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may  
24 be amended from time to time.

25 Within forty-eight (48) hours after any City bureau or franchisee, licensee, or permittee

1 notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

2 (A) Mark on the surface all of its located underground facilities within the area of the  
3 proposed excavation;

4 (B) Notify the excavator of any unlocated underground facilities in the area of the  
5 proposed excavation; or

6 (C) Notify the excavator that Grantee does not have any underground facilities in the  
7 vicinity of the proposed excavation.

8 10.13 Notice to Private Property Owners

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

12 10.14 Underground Construction and Use of Poles

13 (A) When required by general ordinances, resolutions, regulations, or rules of the  
14 City or applicable state or federal law, Grantee's Cable System shall be placed underground at  
15 Grantee's expense unless funding is generally available for such relocation to all users of the  
16 Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted  
17 appurtenances.

18 (B) Where electric, telephone, and other above-ground utilities are installed  
19 underground at the time of Cable System construction, or when all such wiring is subsequently  
20 placed underground, all Cable System lines shall also be placed underground with other wireline  
21 service at no expense to the City or Subscribers unless funding is generally available for such  
22 relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals,  
23 must be placed in accordance with the City's applicable code requirements and rules. In areas  
24 where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable,  
25 except when a property owner or resident requests underground installation and agrees to bear the

1 additional cost in excess of aerial installation.

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

3 (D) In the event Grantee cannot obtain the necessary poles and related facilities  
4 pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for  
5 Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting,  
6 laying, maintaining, repairing, and removing poles, supports for wires, and conductors, and any  
7 other facility needed for the maintenance or extension of Grantee's Cable System. All poles of  
8 Grantee shall be located as designated by the proper City authorities.

9 (E) This Franchise does not grant, give, or convey to the Grantee the right or  
10 privilege to install its facilities in any manner on specific utility poles or equipment of the City or  
11 any other Person. Copies of agreements for the use of poles, conduits, or other utility facilities  
12 must be provided upon request by the City.

13 (F) The Grantee and the City recognize that situations may occur in the future where  
14 the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores  
15 opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the  
16 Grantee that involves trenching or boring, provided that the City has first notified the Grantee in  
17 some manner that it is interested in sharing the trenches or bores in the area where the Grantee's  
18 construction is occurring. The Grantee shall allow the City to lay its cable, conduit, and Fiber  
19 Optic cable in the Grantee's trenches and bores, provided there is reasonable space available and  
20 the City shares in the cost of the trenching and boring on the same terms and conditions as the  
21 Grantee. The City shall be responsible for maintaining its respective cable, conduit, and Fiber  
22 Optic cable buried in the Grantee's trenches and bores under this paragraph.

23 10.15 Undergrounding of Multiple Dwelling Unit Drops

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

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

3 10.16 Burial Standards

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

9 Underground cable drops from the curb shall be buried at a  
10 minimum depth of twelve (12) inches, unless a sprinkler system  
11 or other construction concerns preclude it, in which case,  
12 underground cable drops shall be buried at a depth of at least six  
13 (6) inches.

14 Feeder lines shall be buried at a minimum depth of eighteen (18) inches.

15 Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

16 Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

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

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

1           10.17 Cable Drop Bonding

2           Grantee shall ensure that all cable drops are properly bonded at the home, consistent with  
3 applicable code requirements.

4           10.18 Prewiring

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

8           10.19 Repair and Restoration of Property

9           (A)    The Grantee shall protect public and private property from damage. If damage  
10 occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in  
11 writing.

12           (B)    Whenever Grantee disturbs or damages any Right-of-Way, other public property  
13 or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its  
14 prior condition, normal wear and tear excepted, at its own expense.

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

23           (D)    Private Property. Upon completion of the work which caused any disturbance or  
24 damage, Grantee shall promptly commence restoration of private property, and will use best  
25 efforts to complete the restoration within seventy-two (72) hours, considering the nature of the

1 work that must be performed. Grantee shall also perform such restoration in accordance with the  
2 City's Customer Service Standards, as the same may be amended from time to time by the City  
3 Council acting by ordinance or resolution.

4 10.20 Use of Conduits by the City

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

16 10.21 Common Users

17 (A) For the purposes of this subsection:

18 (1) "Attachment" means any wire, optical fiber, or other cable, and any  
19 related device, apparatus, or auxiliary equipment, for the purpose of voice, video, or data  
20 transmission.

21 (2) "Conduit" or "Conduit Facility" means any structure, or section thereof,  
22 containing one or more Ducts, conduits, manholes, hand-hole, or other such facilities in  
23 Grantee's Cable System.

24 (3) "Duct" means a single enclosed raceway for cables, Fiber Optics, or  
25 other wires.

1           (4)     "Licensee" means any Person licensed or otherwise permitted by the City  
2     to use the Rights-of-Way.

3           (5)     "Surplus Ducts or Conduits" are Conduit Facilities other than those  
4     occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as  
5     emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use  
6     within two (2) years from the date of a request for use.

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

17          (C)     A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

18          (D)     Grantee shall give a Licensee a minimum of one hundred twenty (120) days'  
19    notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first  
20    feasible action as follows:

21                 (1)     Pay revised Conduit rent designed to recover the cost of retrofitting the  
22     Conduit with multiplexing, Fiber Optics, or other space-saving technology sufficient to  
23     meet Grantee's space needs;

24                 (2)     Pay revised Conduit rent based on the cost of new Conduit constructed to  
25     meet Grantee's space needs;

1 (3) Vacate the needed Ducts or Conduit; or

2 (4) Construct and maintain sufficient new Conduit to meet Grantee's space  
3 needs.

4 (E) When two or more Licensees occupy a section of Conduit Facility, the last  
5 Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit.  
6 When Conduit rent is revised because of retrofitting, space-saving technology, or construction of  
7 new Conduit, all Licensees shall bear the increased cost.

8 (F) All Attachments shall meet local, state, and federal clearance and other safety  
9 requirements, be adequately grounded and anchored, and meet the provisions of contracts  
10 executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment  
11 deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines,  
12 fees, damages, or other costs the Licensee's attachments cause Grantee to incur.

13 (G) In order to enforce the provisions of this subsection with respect to Grantee, the  
14 City must demonstrate that it has required all similarly situated users of the Rights-of-Way to  
15 comply with the provisions of this subsection.

16 10.22 Acquisition of Facilities

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

23 10.23 Discontinuing Use/Abandonment of Cable System Facilities

24 Whenever Grantee intends to discontinue using any facility within the Rights-of-Way,  
25 Grantee shall submit for the City's approval a complete description of the facility and the date on



1 which Grantee intends to discontinue using the facility. Grantee may remove the facility or  
2 request that the City permit it to remain in place. Notwithstanding Grantee's request that any such  
3 facility remain in place, the City may require Grantee to remove the facility from the Right-of-  
4 Way or modify the facility to protect the public health, welfare, safety, and convenience, or  
5 otherwise serve the public interest. The City may require Grantee to perform a combination of  
6 modification and removal of the facility. Grantee shall complete such removal or modification in  
7 accordance with a schedule set by the City. Until such time as Grantee removes or modifies the  
8 facility as directed by the City, or until the rights to and responsibility for the facility are accepted  
9 by another Person having authority to construct and maintain such facility, Grantee shall be  
10 responsible for all necessary repairs and relocations of the facility, as well as maintenance of the  
11 Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee  
12 shall retain all liability for such facility. If Grantee abandons its facilities, the City may choose to  
13 use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

#### 14 10.24 Movement of Cable System Facilities For City Purposes

15 The City shall have the right to require Grantee to relocate, remove, replace, modify, or  
16 disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other  
17 property of the City for public purposes, in the event of an emergency, or when the public health,  
18 safety, or welfare requires such change (for example, without limitation, by reason of traffic  
19 conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or  
20 establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any  
21 other types of structures or improvements by the City for public purposes). Such work shall be  
22 performed at the Grantee's expense. Except during an emergency, the City shall provide  
23 reasonable notice to Grantee, not to be less than forty-five (45) business days, and allow Grantee  
24 with the opportunity to perform such action. In the event of any capital improvement project  
25 exceeding \$500,000 in expenditures by the City which requires the removal, replacement,

1 modification, or disconnection of Grantee's facilities or equipment, the City shall provide at least  
2 sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate,  
3 remove, replace, modify, or disconnect any of its facilities or equipment within any Right-of-  
4 Way, or on any other property of the City. If the City requires Grantee to relocate its facilities  
5 located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with  
6 an alternate location within the Rights-of-Way. If funds are generally made available to users of  
7 the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

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

#### 13 10.25 Reimbursement of Grantee Costs

14 Grantee specifically reserves any rights it may have under Applicable Law for  
15 reimbursement of costs related to undergrounding or relocation of the Cable System and nothing  
16 herein shall be construed as a waiver of such rights.

#### 17 10.26 Movement of Cable System Facilities for Other Franchise Holders

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

#### 23 10.27 Temporary Changes for Other Permittees

24 At the request of any Person holding a valid permit and upon reasonable advance notice,  
25 Grantee shall temporarily raise, lower, or remove its wires as necessary to permit the moving of a

1 building, vehicle, equipment, or other item. The expense of such temporary changes must be paid  
2 by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in  
3 advance.

4 10.28 Reservation of City Use of Right-of-Way

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

11 10.29 Tree Trimming

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

22 10.30 Inspection of Construction and Facilities

23 The City may inspect any of Grantee's facilities, equipment, or construction at any time  
24 upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior  
25 notice. The City shall have the right to charge generally applicable inspection fees therefore. If

1 an unsafe condition is found to exist, the City, in addition to taking any other action permitted  
2 under Applicable Law, may order Grantee, in writing, to make the necessary repairs and  
3 alterations specified therein forthwith to correct the unsafe condition by a time the City  
4 establishes. The City has the right to correct, inspect, administer, and repair the unsafe condition  
5 if Grantee fails to do so, and to charge Grantee therefore.

6 10.31 Stop Work

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

11 (B) The stop work order shall:

- 12 (1) Be in writing;
- 13 (2) Be given to the Person doing the work, or posted on the work site;
- 14 (3) Be sent to Grantee by overnight delivery at the address given herein;
- 15 (4) Indicate the nature of the alleged violation or unsafe condition; and
- 16 (5) Establish conditions under which work may be resumed.

17 10.32 Work of Contractors and Subcontractors

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

1 or other Persons performing work on Grantee's behalf are familiar with the requirements of this  
2 Franchise and other Applicable Law governing the work performed by them.

3 **Section 11. . Cable System, Technical Standards, and Testing.**

4 11.1 Subscriber Network

5 (A) Grantee's Cable System shall be equivalent to or exceed technical characteristics  
6 of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The  
7 Cable System shall be capable of supporting video and audio. The Cable System shall deliver no  
8 less than one hundred ten (110) Channels of digital video programming services to Subscribers,  
9 provided that the Grantee reserves the right to use the bandwidth in the future for other uses based  
10 on market factors.

11 (B) Equipment must be installed so that all closed captioning programming received  
12 by the Cable System shall include the closed caption signal so long as the closed caption signal is  
13 provided consistent with FCC standards. Equipment must be installed so that all local signals  
14 received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in  
15 those same formats.

16 (C) All construction shall be subject to the City's permitting process.

17 (D) Grantee and City shall meet, at the City's request, to discuss the progress of the  
18 design plan and construction.

19 (E) Grantee will take prompt corrective action if it finds that any facilities or  
20 equipment on the Cable System are not operating as expected, or if it finds that facilities and  
21 equipment do not comply with the requirements of this Franchise or Applicable Law.

22 (F) Grantee's construction decisions shall be based solely upon legitimate  
23 engineering decisions and shall not take into consideration the income level of any particular  
24 community within the Franchise Area.

25 11.2 Technology Assessment

1 (A) The City may notify Grantee on or after five (5) years after the Effective Date,  
2 that the City will conduct a technology assessment of Grantee's Cable System. The technology  
3 assessment may include, but is not be limited to, determining whether Grantee's Cable System  
4 technology and performance are consistent with current technical practices and range and level of  
5 services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's  
6 Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended  
7 since the Effective Date.

8 (B) Grantee shall cooperate with the City to provide necessary non-confidential and  
9 proprietary information upon the City's reasonable request as part of the technology assessment.

10 (C) At the discretion of the City, findings from the technology assessment may be  
11 included in any proceeding commenced for the purpose of identifying future cable-related  
12 community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

13 11.3 Standby Power

14 Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours  
15 of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a  
16 plan in place, along with all resources necessary for implementing such plan, for dealing with  
17 outages of more than four (4) hours. This outage plan and evidence of requisite implementation  
18 resources shall be presented to the City no later than thirty (30) days following receipt of a  
19 request.

20 11.4 Emergency Alert Capability

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

1 EAS, and the EAS shall be retested.

2 11.5 Technical Performance

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

8 11.6 Cable System Performance Testing

9 (A) Grantee shall, at Grantee's expense, perform the following tests on its Cable  
10 System:

11 (1) All tests required by the FCC;

12 (2) All other tests reasonably necessary to determine compliance with  
13 technical standards adopted by the FCC at any time during the term of this Franchise; and

14 (3) All other tests as otherwise specified in this Franchise.

15 (B) At a minimum, Grantee's tests shall include:

16 (1) Cumulative leakage index testing of any new construction;

17 (2) Semi-annual compliance and proof of performance tests in conformance  
18 with generally accepted industry guidelines;

19 (3) Tests in response to Subscriber complaints;

20 (4) Periodic monitoring tests, at intervals not to exceed six (6) months, of  
21 Subscriber (field) test points, the Headend, and the condition of standby power supplies;  
22 and

23 (5) Cumulative leakage index tests, at least annually, designed to ensure that  
24 one hundred percent (100%) of Grantee's Cable System has been ground or air tested for  
25 signal leakage in accordance with FCC standards.

1 (C) Grantee shall maintain written records of all results of its Cable System tests,  
2 performed by or for Grantee. Copies of such test results will be provided to the City upon  
3 reasonable request.

4 (D) If the FCC no longer requires proof of performance tests for Grantee's Cable  
5 System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of  
6 performance tests on the Cable System in accordance with the standards that were in place on the  
7 Effective Date, or any generally applicable standards later adopted, at least once a year, and  
8 provide written results of such tests to the City upon request.

9 (E) The FCC semi-annual testing is conducted in January/February and July/August  
10 of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15  
11 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7)  
12 days prior written notice of the actual date(s) for FCC compliance testing. If City notifies  
13 Grantee by the December 15th and June 15th dates that it wishes to have a representative present  
14 during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative  
15 can be present. Notwithstanding the above, all technical performance tests may be witnessed by  
16 representatives of the City.

17 (F) Grantee shall be required to promptly take such corrective measures as are  
18 necessary to correct any performance deficiencies fully and to prevent their recurrence as far as  
19 possible. Grantee's failure to correct deficiencies identified through this testing process shall be a  
20 material violation of this Franchise. Sites shall be re-tested following correction.

21 11.7 Additional Tests

22 Where there exists other evidence that, in the judgment of the City, casts doubt upon the  
23 reliability or technical quality of Cable Service, the City shall have the right and authority to  
24 require Grantee to test, analyze, and report on the performance of the Cable System. Grantee  
25 shall fully cooperate with the City in performing such testing and shall prepare the results and a



1 report, if requested, within thirty (30) days after testing. Such report shall include the following  
2 information:

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

8 **Section 12. Service Availability, Interconnection, and Service to Schools and**  
9 **Public Buildings.**

10 12.1 Service Availability

11 (A) In General. Except as otherwise provided in herein, Grantee shall provide Cable  
12 Service within seven (7) days of a request by any Person within the City. For purposes of this  
13 Section, a request shall be deemed made on the date of signing a service agreement, receipt of  
14 funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified  
15 verbal request. Except as otherwise provided herein, Grantee shall provide such service:

16 (1) With no line extension charge except as specifically authorized  
17 elsewhere in this Franchise Agreement.

18 (2) At a non-discriminatory installation charge for a standard installation,  
19 consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers,  
20 with additional charges for non standard installations computed according to a non  
21 discriminatory methodology for such installations, adopted by Grantee and provided in  
22 writing to the City; and

23 (3) At non discriminatory monthly rates for Residential Subscribers.

24 (B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the  
25 Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to

1 other Dwelling Units in the City; provided, however, that any such offering is conditioned upon  
2 the Grantee having legal access to said unit. The City acknowledges that the Grantee cannot  
3 control the dissemination of particular Cable Services beyond the point of demarcation at a  
4 Multiple Dwelling Unit.

5 (C) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable  
6 System to all persons living in areas with a residential density of thirty (30) residences per mile of  
7 cable-bearing strand feet of trunk or distribution cable. If the residential density is less than  
8 thirty (30) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service  
9 may be made available on the basis of a capital contribution in aid of construction, including cost  
10 of material, labor, and easements. For the purpose of determining the amount of capital  
11 contribution in aid of construction to be borne by the Grantee and customers in the area in which  
12 service may be expanded, the Grantee will contribute an amount equal to the construction and  
13 other costs per mile, multiplied by a fraction whose numerator equals thirty (30), less the actual  
14 number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and  
15 whose denominator equals thirty (30). Customers who request service hereunder will bear the  
16 remainder of the construction and other costs on a pro rata basis. The Grantee may require that  
17 the payment of the capital contribution in aid of construction borne by such potential customers  
18 be paid in advance.

19 12.2 Connection of Public Facilities

20 (A) Grantee shall, at no cost to the City, provide one outlet of Basic Service to all  
21 City owned and occupied buildings, schools, and public libraries located in areas where Grantee  
22 provides Cable Service, so long as these facilities are already served or the interconnection point  
23 on these facilities is located within 150 feet of the distribution point on the Cable System, from  
24 which Cable Service can be provided to these facilities. For purposes of this subsection, "school"  
25 means all State-accredited K-12 public and private schools. Such obligation to provide free Cable

1 Service shall not extend to areas of City buildings where the Grantee would normally enter into a  
2 commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and  
3 concourses, and recreation center work out facilities) and such Cable Service shall not be located  
4 in public waiting areas or used to entertain the public nor shall they be used in a way that might  
5 violate copyright laws. Outlets of Basic Service provided in accordance with this subsection may  
6 be used to distribute Cable Services throughout such buildings, provided such distribution can be  
7 accomplished without causing Cable System disruption and provided that general technical  
8 standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service  
9 provided shall not be distributed beyond the originally installed outlets without authorization  
10 from Grantee, which shall not be unreasonably withheld.

11 (B) The City acknowledges that the provision of one outlet of Basic Service to all  
12 City owned and occupied buildings, schools, and public libraries reflects a voluntary initiative on  
13 the part of the Grantee. Grantee does not waive any rights it may have regarding complimentary  
14 services under federal law or regulation. Subject to Applicable Law, should Grantee elect to  
15 offset governmental complimentary services against Franchise Fees, Grantee shall first provide  
16 the City with ninety (90) days' prior written notice.

17 **Section 13. Franchise Violations.**

18 13.1 Procedure for Remedying Franchise Violations

19 (A) If the City reasonably believes that Grantee has failed to perform any obligation  
20 under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in  
21 writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have  
22 thirty (30) days from the receipt of such notice to:

23 (1) respond to the City, contesting the City's assertion that a default has  
24 occurred, and requesting a meeting in accordance with subsection (B), below;

25 (2) cure the default; or,

1                   (3)     notify the City that Grantee cannot cure the default within the thirty (30)  
2     days, because of the nature of the default. In the event the default cannot be cured within  
3     thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and  
4     notify the City in writing and in detail as to the exact steps that will be taken and the  
5     projected completion date. In such case, the City may set a meeting in accordance with  
6     subsection (B) below to determine whether additional time beyond the thirty (30) days  
7     specified above is indeed needed, and whether Grantee's proposed completion schedule  
8     and steps are reasonable.

9                   (B)     If Grantee does not cure the alleged default within the cure period stated above,  
10    or by the projected completion date under subsection (A)(3), or denies the default and requests a  
11    meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection  
12    (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged  
13    default. The City shall notify Grantee of the meeting in writing and such meeting shall take place  
14    no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting,  
15    Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

16                  (C)     If, after the meeting, the City determines that a default exists, the City shall order  
17    Grantee to correct or remedy the default or breach within fifteen (15) days or within such other  
18    reasonable time frame as the City shall determine. In the event Grantee does not cure within such  
19    time to the City's reasonable satisfaction, the City may:

20                   (1)     Recommend the revocation of this Franchise pursuant to the procedures  
21    in subsection 13.2; or,

22                   (2)     Recommend any other legal or equitable remedy available under this  
23    Franchise or any Applicable Law.

24                  (D)     The determination as to whether a violation of this Franchise has occurred shall  
25    be within the discretion of the City, provided that any such final determination may be subject to

1 appeal to a court of competent jurisdiction under Applicable Law.

2 13.2 Revocation

3 (A) In addition to revocation in accordance with other provisions of this Franchise,  
4 the City may revoke this Franchise and rescind all rights and privileges associated with this  
5 Franchise in the following circumstances, each of which represents a material breach of this  
6 Franchise:

7 (1) If Grantee fails to perform any material obligation under this Franchise  
8 or under any other agreement, ordinance, or document regarding the City and Grantee;

9 (2) If Grantee willfully fails for more than forty-eight (48) hours to provide  
10 continuous and uninterrupted Cable Service;

11 (3) If Grantee attempts to evade any material provision of this Franchise or  
12 to practice any fraud or deceit upon the City or Subscribers;

13 (4) If Grantee becomes insolvent, or if there is an assignment for the benefit  
14 of Grantee's creditors; or

15 (5) If Grantee makes a material misrepresentation of fact in the application  
16 for or negotiation of this Franchise.

17 (B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or  
18 termination of the Franchise, the City shall give written notice to the Grantee of its intent to  
19 revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the  
20 exact nature of the noncompliance.

21 (C) Any proceeding under the paragraph above shall be conducted by the City  
22 Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior  
23 written notice of such proceeding.

24 (1) At such proceeding, Grantee shall be provided a fair opportunity for full  
25 participation, including the right to be represented by legal counsel, to introduce

1 evidence, and to question witnesses. A complete verbatim record and transcript shall be  
2 made of such proceeding and the cost shall be shared equally between the parties. The  
3 City Council shall hear any Persons interested in the revocation, and shall allow Grantee,  
4 in particular, an opportunity to state its position on the matter.

5 (2) Within ninety (90) days after the hearing, the City Council shall  
6 determine whether to revoke the Franchise and declare that the Franchise is revoked; or if  
7 the breach at issue is capable of being cured by Grantee, direct Grantee to take  
8 appropriate remedial action within the time and in the manner and on the terms and  
9 conditions that the City Council determines are reasonable under the circumstances. If the  
10 City determines that the Franchise is to be revoked, the City shall set forth the reasons for  
11 such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be  
12 bound by the City's decision to revoke the Franchise unless it appeals the decision to a  
13 court of competent jurisdiction within fifteen (15) days of the date of the decision.

14 (3) Grantee shall be entitled to such relief as the Court may deem  
15 appropriate.

16 (4) The City Council may at its sole discretion take any lawful action which  
17 it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation  
18 of the Franchise.

19 13.3 Procedures in the Event of Termination or Revocation

20 (A) If this Franchise expires without renewal after completion of all processes  
21 available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the  
22 City may, subject to Applicable Law:

23 (1) Allow Grantee to maintain and operate its Cable System on a month-to-  
24 month basis or short-term extension of this Franchise for not less than six (6) months,  
25 unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the

1 City's satisfaction that it needs additional time to complete the sale; or

2 (2) Purchase Grantee's Cable System in accordance with the procedures set  
3 forth in subsection 13.4, below.

4 (B) In the event that a sale has not been completed in accordance with subsections  
5 (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System  
6 facilities and such underground facilities from the City at Grantee's sole expense within a  
7 reasonable period of time as determined by the City. In removing its plant, structures, and  
8 equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall  
9 leave all Rights-of-Way, public places, and private property in as good condition as that  
10 prevailing prior to Grantee's removal of its equipment, without affecting the electrical or  
11 telephone cable wires or attachments. The indemnification and insurance provisions shall remain  
12 in full force and effect during the period of removal, and Grantee shall not be entitled to, and  
13 agrees not to request, compensation of any sort therefore.

14 (C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the  
15 City's satisfaction, after written notice to Grantee, the City may cause the work to be done and  
16 Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an  
17 itemized list of the costs.

18 (D) The City may seek legal and equitable relief to enforce the provisions of this  
19 Franchise.

20 13.4 Purchase of Cable System

21 (A) If at any time this Franchise is revoked, terminated, or not renewed upon  
22 expiration in accordance with the provisions of federal law, the City shall have the option to  
23 purchase the Cable System.

24 (B) The City may, at any time thereafter, offer in writing to purchase Grantee's Cable  
25 System. Grantee shall have thirty (30) days from receipt of a written offer from the City within

1 which to accept or reject the offer.

2 (C) In any case where the City elects to purchase the Cable System, the purchase  
3 shall be closed within one hundred twenty (120) days of the date of the City's audit of a current  
4 profit and loss statement of Grantee. The City shall pay for the Cable System in cash or certified  
5 funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

6 (D) For the purposes of this subsection, the price for the Cable System shall be  
7 determined as follows:

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

13 (2) In the case of revocation for cause, the equitable price of Grantee's Cable  
14 System.

15 13.5 Receivership and Foreclosure

16 (A) At the option of the City, subject to Applicable Law, this Franchise may be  
17 revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over  
18 and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy, or  
19 other action or proceeding, unless:

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

22 (2) The receivers or trustees have, within one hundred twenty (120) days  
23 after their election or appointment, fully complied with all the terms and provisions of  
24 this Franchise, and have remedied all defaults under the Franchise. Additionally, the  
25 receivers or trustees shall have executed an agreement duly approved by the court having



1 jurisdiction, by which the receivers or trustees assume and agree to be bound by each and  
2 every term, provision and limitation of this Franchise.

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

7 (1) The City has approved the transfer of the Franchise, in accordance with  
8 the procedures set forth in this Franchise and as provided by law; and

9 (2) The purchaser has covenanted and agreed with the City to assume and be  
10 bound by all of the terms and conditions of this Franchise.

11 13.6 No Monetary Recourse Against the City

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

18 13.7 Alternative Remedies

19 No provision of this Franchise shall be deemed to bar the right of the City to seek or  
20 obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation,  
21 requirement, or directive promulgated thereunder. Neither the existence of other remedies  
22 identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the  
23 right of the City to recover monetary damages for such violations by Grantee, or to seek and  
24 obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive  
25 relief or mandate, or any other remedy at law or in equity.

1           13.8   Assessment of Monetary Damages

2           (A)    The City may assess against Grantee monetary damages (i) up to five hundred  
3 dollars (\$500) per day for general construction delays, violations of PEG obligations, or payment  
4 obligations; (ii) up to two hundred fifty dollars (\$250) per day for any other material breaches; or  
5 (iii) up to one hundred dollars (\$100) per day for defaults; or collect the assessment as specified  
6 in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one  
7 hundred twenty (120) days per violation proceeding. Such damages shall accrue beginning thirty  
8 (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later  
9 date if approved by the City in its sole discretion, but may not be assessed until after the  
10 procedures in subsection 13.1 have been completed.

11          (B)    The assessment does not constitute a waiver by City of any other right or remedy  
12 it may have under the Franchise or Applicable Law, including its right to recover from Grantee  
13 any additional damages, losses, costs, and expenses that are incurred by City by reason of the  
14 breach of this Franchise.

15           13.9   Effect of Abandonment

16          If the Grantee abandons its Cable System during the Franchise term, or fails to operate its  
17 Cable System in accordance with its duty to provide continuous service, the City, at its option,  
18 may operate the Cable System; designate another entity to operate the Cable System temporarily  
19 until the Grantee restores service under conditions acceptable to the City, or until the Franchise is  
20 revoked and a new franchisee is selected by the City; or obtain an injunction requiring the  
21 Grantee to continue operations. If the City is required to operate or designate another entity to  
22 operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable  
23 costs, expenses, and damages incurred.

24           13.10 What Constitutes Abandonment

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

1 (A) The Grantee fails to provide Cable Service in accordance with this Franchise  
2 over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City  
3 authorizes a longer interruption of service; or

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

6 **Section 14. Franchise Renewal and Transfer.**

7 14.1 Renewal

8 (A) The City and Grantee agree that any proceedings undertaken by the City that  
9 relate to the renewal of the Franchise shall be governed by and comply with the provisions of  
10 Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein  
11 shall be deemed to be preempted and superseded by the provisions of any subsequent provision of  
12 federal or state law.

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

22 (C) Should the Franchise expire without a mutually agreed upon, renewed Franchise  
23 Agreement, and Grantee and City are engaged in an informal or formal renewal process, the  
24 Franchise shall continue on a month-to-month basis, with the same terms and conditions as  
25 provided in the Franchise, and the Grantee and City shall continue to comply with all obligations

1 and duties under the Franchise.

2 14.2 Transfer of Ownership or Control

3 (A) The Cable System and this Franchise shall not be sold, assigned, transferred,  
4 leased, or disposed of, either in whole or in part, either by involuntary sale, by voluntary sale,  
5 merger, or consolidation; nor shall title thereto, either legal or equitable, or any right, interest, or  
6 property therein pass to or vest in any Person or entity without the prior written consent of the  
7 City, which consent shall be by the City Council, acting by ordinance/resolution.

8 (B) The Grantee shall promptly notify the City of any actual or proposed change in,  
9 transfer of, or acquisition by any other party of control of the Grantee. The word "control" as  
10 used herein is not limited to majority stockholders but includes actual working control in  
11 whatever manner exercised. Every change, transfer, or acquisition of control of the Grantee shall  
12 make this Franchise subject to cancellation unless and until the City shall have consented in  
13 writing thereto.

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

16 (D) In seeking the City's consent to any change in ownership or control, the proposed  
17 transferee shall indicate whether it:

18 (1) Has ever been convicted or held liable for acts involving deceit including  
19 any violation of federal, state, or local law or regulations, or is currently under an  
20 indictment, investigation, or complaint charging such acts;

21 (2) Has ever had a judgment in an action for fraud, deceit, or  
22 misrepresentation entered against the proposed transferee by any court of competent  
23 jurisdiction;

24 (3) Has pending any material legal claim, lawsuit, or administrative  
25 proceeding arising out of or involving a cable system or a broadband system;

1           (4)     Is financially solvent, evidenced by submitting financial data including  
2     financial statements that are audited by a certified public accountant who may also be an  
3     officer of the transferee, along with any other data that the City may reasonably require;  
4     and

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

7           (E)     The City shall act by ordinance on the request within one hundred twenty (120)  
8     days of the request, provided it has received all information required by this Franchise and/or by  
9     Applicable Law. The City and the Grantee may by mutual agreement, at any time, extend the 120  
10    day period. Subject to the foregoing, if the City fails to render a final decision on the request  
11    within one hundred twenty (120) days, such request shall be deemed granted unless the  
12    requesting party and the City agree to an extension of time.

13          (F)     Within thirty (30) days of any transfer or sale, if approved or deemed granted by  
14    the City, Grantee shall file with the City a copy of the deed, agreement, lease, or other written  
15    instrument evidencing such sale or transfer of ownership or control, certified and sworn to as  
16    correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing  
17    to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of  
18    a change in control, in which the Grantee is not replaced by another entity, the Grantee will  
19    continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and  
20    will not be required to file an additional written acceptance.

21          (G)     In reviewing a request for sale or transfer, the City may inquire into the legal,  
22    technical, and financial qualifications of the prospective controlling party or transferee, and  
23    Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon  
24    such terms and conditions as it deems reasonably appropriate, in accordance with Applicable  
25    Law.

1 (H) Notwithstanding anything to the contrary in this subsection, the prior approval of  
2 the City shall not be required for any sale, assignment, or transfer of the Franchise or Cable  
3 System to an entity controlling, controlled by, or under the same common control as Grantee,  
4 provided that the proposed assignee or transferee must show financial responsibility as may be  
5 determined necessary by the City and must agree in writing to comply with all of the provisions  
6 of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of  
7 financing without the consent of the City; provided that such pledge of assets shall not impair or  
8 mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the  
9 provisions of this Franchise.

10 **Section 15. Severability.**

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

16 **Section 16. Miscellaneous Provisions.**

17 16.1 Preferential or Discriminatory Practices Prohibited

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

1           16.2   Notices

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

7           Grantee's address shall be:

8                   Comcast of Eastern Shore, LLC and

9                   Comcast of New Mexico/Pennsylvania, LLC

10                  8440 Washington St NE

11                  Albuquerque, NM 87113

12                  Attn: Government Affairs Dept.

13           The City's address shall be:

14                  City of Santa Fe

15                  200 Lincoln Ave.

16                  Santa Fe, NM 87504

17                  Attn: City Manager

18           16.3   Descriptive Headings

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

21           16.4   Publication Costs to be Borne by Grantee

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

24           16.5   Binding Effect

25           This Franchise shall be binding upon the parties hereto and their permitted successors and

1 assigns.

2 16.6 No Joint Venture

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

6 16.7 Waiver

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

11 16.8 Reasonableness of Consent or Approval

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

15 16.9 Entire Agreement

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

19 16.10 Jurisdiction

20 Venue for any judicial dispute between the City and Grantee arising under or out of this  
21 Franchise shall be in Santa Fe County District Court, New Mexico, or in the United States  
22 District Court in Santa Fe.

23 IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Santa Fe,  
24 New Mexico this \_\_\_\_ day of \_\_\_\_\_, 2019.



1 APPROVED AS TO FORM:

2

3

4 ERIN K. McSHERRY, CITY ATTORNEY

5 Accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 2019.

6 ATTEST:

COMCAST OF EASTERN SHORE, LLC

7

COMCAST OF NEW MEXICO/PENNSYLVANIA,

8 LLC

9

10

11 Public Notary

12

Name/Title: \_\_\_\_\_

13

14

15

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25 *Legislation/2019/Bills/2019-22 Comcast Cable Franchise Agreement*