O-2019-009

CITY OF ALBUQUERQUE
CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: Timothy M. Keller, Mayor

FROM: Stephanie M. Yara, Director of Council Services SMY 5/15/19

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. O-18-47 Granting A Cable Franchise Renewal To Comcast Of New Mexico, LLC, To Construct, Operate And Maintain A Cable System In The Public Right-Of-Way And To Provide Cable Service Within A Franchise Area Within The City Of Albuquerque ("City"); Establishing The Terms And Conditions Of The Franchise Renewal; Establishing Certain Remedies For The Violation Of The Franchise; Repealing Sections 13-5-3-1 Through 13-5-3-20 (Sanchez, by request), which was passed at the Council meeting of May 6, 2019, by a vote of 8 FOR AND 0 AGAINST.

Recused: Winter

In accordance with the provisions of the City Charter, your action is respectfully requested.

SY:dm
Attachment
5/8/2019

CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-18-47 ENACTMENT NO. O-2019-009

SPONSORED BY: Ken Sanchez, by request

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

ORDINANCE

GRANTING A CABLE FRANCHISE RENEWAL TO COMCAST OF NEW MEXICO, LLC, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE PUBLIC RIGHT-OF-WAY AND TO PROVIDE CABLE SERVICE WITHIN A FRANCHISE AREA WITHIN THE CITY OF ALBUQUERQUE ("CITY"); ESTABLISHING THE TERMS AND CONDITIONS OF THE FRANCHISE RENEWAL; ESTABLISHING CERTAIN REMEDIES FOR THE VIOLATION OF THE FRANCHISE; REPEALING SECTIONS 13-5-3-1 THROUGH 13-5-3-20.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. DEFINITIONS AND EXHIBITS.

(A) Definitions. 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) "Access" means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including but not limited to:

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

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

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

(2) "Access Channel" or "PEG Channel" means any Channel or portion thereof designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

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

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

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

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

(7) "Basic Service" is the level of programming service that includes the retransmission of local television Broadcast Channels and is made available to all Cable Services Subscribers in the Franchise Area.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(8) "Broadcast Channel" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

(9) "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience and received by a Cable System by antenna, microwave, satellite dishes or any other means.

(10) "Cable Act" means the Title VI of the Communications Act of 1934, as amended.

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

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

(13) "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include a facility:

(a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) A facility that serves Subscribers without using any Right-of-Way;

(c) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c))) to the extent such facility is used in the transmission of video

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(d) An open video system that complies with federal statutes; or

(e) Any facilities of any electric utility used solely for operating its electric utility systems.

(14) "Channel" means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

(15) "City" is Albuquerque, New Mexico, a body politic and incorporated with home-rule powers under the laws of the State of New Mexico.

(16) "City Council" means the Albuquerque City Council, or its successor, the governing body of the City of Albuquerque, New Mexico.

(17) "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

(18) "Designated Access Provider" means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

(19) "Digital Starter Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

(20) "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

(21) "Dwelling Unit" means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

(22) "FCC" means the Federal Communications Commission.

(23) "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulse.

(24) "Franchise" or Franchise Ordinance means the document in which this definition appears, i.e., the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

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

(26) "Franchise Fee" means that fee payable to the City described in Section 3.(A).

(27) "Grantee" means Comcast of New Mexico, LLC, or its lawful successor, transferee or assignee.

(28) "Gross Revenues" means and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliate that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the City.

(a) Gross Revenues include, by way of illustration and not limitation:

(i) fees for Cable Services, regardless of whether such Cable Services are provided to Residential or Commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);

(ii) Installation, reconnection, downgrade, upgrade or similar charges associated with changes in Subscriber Cable Service levels;

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(iii) Repair, maintenance or service call charges;

(iv) Payments made by non-Subscriber third parties to Grantee for access to Grantee's Cable System and derived from the operation of Grantee's Cable System for the provision of Cable Services within the City;

(v) Fees paid to Grantee for channels designated for commercial/leased access use, which shall be allocated on a *pro rata* basis using total Cable Service Subscribers within the City;

(vi) Converter, remote control, and other Cable Service equipment rentals, leases, or sales;

(vii) Advertising Revenues as defined herein;

(viii) Late fees, convenience fees, administrative fees and similar multi-service fees, which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Subscriber revenues within the City;

(ix) Revenues from program guides;

(x) Franchise Fees and PEG Fees;

(xi) FCC Regulatory Fees; and

(xii) Commissions from home shopping Channels and other Cable Service revenue sharing arrangements, which shall be allocated on a *pro rata* basis using total Cable Service Subscribers within the City.

(b) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the City and shall be allocated on a *pro rata* basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to Franchise Fees shall include all commissions, representative fees, Affiliate entity fees, or rebates paid to National Cable Communications and Comcast Spotlight or their successors associated with sales of advertising on the Cable System within the City, allocated according to this subsection using total Cable Service Subscribers reached by the advertising.

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

(c) "Gross Revenues" shall not include:

(i) Actual Bad Debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Subscriber revenues within the City;

(ii) Any taxes and/or fees on services furnished by Grantee imposed by any municipality, State or other governmental unit, provided that Franchise Fees, the PEG Fee and the FCC regulatory fee shall not be regarded as such a tax or fee;

(iii) Fees imposed by any municipality, state or other governmental unit on Grantee;

(iv) Launch fees and marketing co-op fees received as reimbursement by programmers for the introduction of new programming; and

(v) Unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

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

(e) Grantee reserves the right to change the allocation methodologies set forth in this Subsection 28 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB") the Emerging Issues Task Force ("EITF") and/or the U.S. Securities and

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City within three (3) months of making such changes and as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to Subsection 28(f) below.

(f) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

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

(30) "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

(31) "Mayor" means the Mayor of the City or designee.

(32) "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

(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.

(34) "Residential Subscriber" means any Subscriber who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

(35) "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, and similar public property and areas.

(36) "State" means the State of New Mexico.

(37) "Subscriber" means any Person that 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 that is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

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

(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)).

(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)).

(41) "Tier" means a group of Channels for which a single periodic subscription fee is charged.

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

(43) "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

(B) Exhibits.

(1) Exhibit A, Franchise Fee Reporting Form.

(2) Exhibit B, Customer Service Standards.

(3) Exhibit C, Dark Fiber Contract.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

SECTION 2. GRANT OF FRANCHISE.

(A) Grant.

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

(2) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as set forth in Section 2(E).

(3) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City, and the ordinances and regulations enacted pursuant thereto. The Charter and the City of Albuquerque Code of Ordinances, as they exist on the Effective Date of this Franchise, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Grantee retains the right to challenge any City ordinance or regulation to the full extent allowed by Applicable Law. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise. In the event of a conflict between the Albuquerque Cable and OVS Ordinance ("Cable Code") as it existed on the Effective Date of this Franchise Agreement and this Franchise Agreement, the Franchise Agreement shall control, except where expressly provided otherwise in this Franchise Agreement. While the exercise of rights hereunder is subject to the Cable Code, the Cable Code is not a contract. Nothing in this Section shall prevent Grantee from challenging a particular amendment to the Cable Code as an impairment to this Franchise Agreement.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(4) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Right-of-Way as allowed by Applicable Law, should Grantee provide service other than Cable Service, or to prevent Grantee from making any other lawful uses of the Cable System as permitted by Applicable Law.

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

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

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

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

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

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

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough Material~~] - Deletion

(8) This Franchise does not authorize Grantee to provide Telecommunications Service nor is this Franchise a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

(B) Use of Right-of-Way.

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

(2) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in the Right-of-Way, including the specific location of facilities in the Right-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Right-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove or require removal of

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

any facility that is not installed by Grantee in compliance with the requirements established by the City, or that is installed without prior City approval of the time, place or manner of installation, and may charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Right-of-Way through joint trenching and other arrangements.

(C) Effective Date and Term of Franchise. This Franchise and the rights, privileges and authority granted hereunder shall take effect on _____, 2019 (the "Effective Date"), and shall terminate on _____, 2029 unless terminated sooner as hereinafter provided.

(D) Franchise Nonexclusive. This Franchise shall be nonexclusive and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate, subject to Section 2(F) below.

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

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

lawfulness of any City ordinance. The City reserves all of its rights and defenses to such challenges.

(F) Competitive Equity.

(1) Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Right-of-Way in order to provide Cable Services or similar video programming service within the City. If the City grants such an additional franchise or other similar lawful authorization that permits a new entrant to utilize the Right-of-Way for Cable Services or similar video programming services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then the parties agree that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: Franchise Fees and Gross Revenues; complementary services; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.

(2) The modification process of this Franchise as provided for in Subsection 2(F)(1) shall only be initiated by written notice by Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following:

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

(a) Identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise;

(b) Identifying the Franchise terms and conditions for which Grantee is seeking amendments;

(c) Providing text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.

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

(4) In the alternative to Franchise modification negotiations as provided for in Subsection 2(F)(3), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another multi-channel video programming provider (with the understanding that Grantee may use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other multi-channel video programming provider.

(5) Notwithstanding anything contained in this subsection 2(F)(1) through (4) to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar video programming service available for

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough Material~~] - Deletion

purchase by Subscribers or customers under its franchise agreement with the City.

(6) Notwithstanding any provision to the contrary, at any time that a wireline-based entity with facilities used to deliver Cable Services or multiple Channels of video programming located in the City's Right-of-Way makes available for purchase by Subscribers or customers Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization that permits a new entrant to utilize the Right-of-Way granted by the City, then:

(a) Grantee may negotiate with the City to seek Franchise modifications as per Subsection 2(F)(2)-(4) above; or

(i) the term of Grantee's Franchise shall, upon ninety (90) days' written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice and Grantee shall be deemed to have timely invoked the renewal process under 47 USC 546; or,

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

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

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

(H) Effect of Acceptance. By accepting the Franchise, Grantee:

(1) Acknowledges and accepts the City's legal right to issue and enforce the Franchise;

(2) Accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and

(3) Agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS.

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

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

(C) Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

additional sums payable or for the performance of any other obligation of Grantee.

(D) Quarterly Franchise Fee Reports. Each payment shall be accompanied by a written report to the City, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues by product or service of the Cable System, an example of which is set forth on Exhibit A attached hereto.

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

(F) Audits. On an annual basis, upon thirty (30) days' prior written notice, the City, including the City's Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to Section 1(A)(28), as part of the Franchise Fee audit/review the City shall specifically have the right to review data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section:

(1) "Relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, including revenue codes, showing the Subscriber counts per package and the revenue allocation per package for each package that was available for City Subscribers during the audit period and Grantee's billing reports, financial reports, general ledgers, and sample Subscriber bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination.

(2) In addition, the relevant data shall include Grantee's reconciliation of revenue accounts with the Franchise Fees paid in the

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

audit year. Such reconciliations shall include monthly reconciliations of Franchise Fees owed with revenue accounts or ledgers; quarterly reconciliations of payments with revenue accounts, ledgers and annual reconciliations of Franchise Fees paid with financial statements.

(3) If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits), Grantee shall pay the total cost of the audit/review, such cost not to exceed five thousand dollars ($5,000) for each year of the audit period. The City's right to audit/review and Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

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

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

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

(K) Tax Liability. The Franchise Fees shall be in addition to any and all taxes or other levies or assessments, including the PEG Fee required under Section 9, which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers solely because of their status as such.

(L) Financial Records. Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of recordkeeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

(M) Payment on Termination. If this Franchise terminates for any reason, Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement signed by a representative of Grantee showing the Gross Revenues received by

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough~~ Material] - Deletion

Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of Grantee to the City by utilizing the funds available in the letter of credit or other security provided by Grantee.

SECTION 4. ADMINISTRATION AND REGULATION.

(A) Authority.

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

(2) Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

(B) Rates and Charges. All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws. Grantee shall comply with the notice requirements found at 47 C.F.R. §§ 76.1601 – 76.1630; *Negative Option Billing* protections found at 47 C.F.R. § 76.981; the customer service standards found at 47 C.F.R. § 76.309; the guides against bait advertising found at 16 C.F.R. Part 238, as applicable; the Customer Service Standards, Exhibit B of this Franchise Ordinance and any other Applicable Law. Grantee may not engage in any trade practice prohibited by State or federal law.

(C) Rate Discrimination.

(1) All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or, where consistent with any requirements of federal law, geographic location within the City.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge or penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee.

(2) Nothing herein shall be construed to prohibit lawful pricing programs which do not discriminate based on the categories identified herein. Such pricing programs may include:

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

(b) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

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

(d) The establishing of different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

(D) Filing of Rates and Charges.

(1) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns or to prohibit the City from auditing, reviewing or confirming that promotional campaigns are consistent with the terms of this Franchise.

(2) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels or portions of such Channels provided by Grantee. The

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough~~ Material] - Deletion

schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

(E) Cross Subsidization. Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

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

(G) Franchise Amendment Procedure. Either party may at any time seek an amendment of this Franchise, including amendments which are necessary to address any significant changes, e.g., changes in the community's cable-related needs and interests or changes in technology affecting cable services, by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

(H) Time Limits Strictly Construed. Subject to Section 4(K) and Section 4(L), whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise and sufficient grounds for the City to invoke any relevant remedy in accordance with Section 13(A) of this Franchise.

(I) Performance Evaluations.

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

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

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

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

(J) Late Fees.

(1) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with Applicable Law.

(2) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of Grantee to impose other assessments, charges, fees or sums other than those permitted by this subsection, for Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

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

(K) Force Majeure.

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

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

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough~~ Material] - Deletion

(L) Minor Violations. The parties hereby agree that it is not the City's intention to subject Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area, or where strict performance would result in practical difficulties and hardship to Grantee which outweighs the benefit to be derived by the City and/or Subscribers. The City and Grantee agree to abide by standard commercial practices and principles, including the application of the good faith doctrine to all aspects of this Franchise Ordinance.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS.

(A) Indemnification.

(1) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including without limitation copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City. Grantee shall not be obligated to indemnify the City to the extent of the City's negligence or willful misconduct.

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

(a) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

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

(4) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense, then Grantee shall not be liable for any attorneys' fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in subsection 5(A)(6) is required. In that event the provisions of subsection 5(A)(6) shall govern Grantee's responsibility for the City's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting the City without the City's approval.

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

(6) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and the City desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then the City shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The City's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided to the City by Grantee.

(B) Insurance.

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

(a) Commercial General Liability insurance with limits of no less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

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

(2) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage in at least the amounts required for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

(C) Deductibles and Certificate of Insurance.

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

(2) Endorsements. All policies shall contain or shall be endorsed so that:

(a) The City, its officers, officials, boards, commissions, employees and agents are to be covered as and have the rights of additional insureds with respect to liability arising out of activities performed by or on behalf of Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

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

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

(3) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A –" or better.

(4) Verification of Coverage. Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(5) Self-Insurance. In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and the City, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City, including the City's approval of an annual letter that certifies the coverage and the means through which the City can verify coverage.

(D) Letter of Credit.

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

(2) In the event that Grantee establishes a letter of credit pursuant to the procedures of subsection 5(D)(1), then the letter of credit shall be maintained at one hundred thousand dollars ($100,000) until the allegations of the uncured breach have been resolved.

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

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

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(c) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and

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

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

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

SECTION 6. CUSTOMER SERVICE.

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

(A) Customer Service Standards. Grantee shall comply with Customer Service Standards of the City as the same may be amended from time to time by the City Council in its sole discretion, acting by ordinance. Any requirement in Customer Service Standards for a "local" telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date of this Franchise are attached as Exhibit B. Notwithstanding any other provision of this Section 6(A), Grantee reserves the right to challenge any customer service ordinance that it believes is inconsistent with its contractual rights and obligations under this Franchise.

(B) Subscriber Privacy. Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law, including the Customer Service Standards of the City, attached as Exhibit B.

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

(D) Advance Notice to City. Grantee shall use reasonable efforts to furnish information provided to Subscribers in accordance with the Customer Service Standards and to the media in the normal course of business to the City in advance.

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

SECTION 7. REPORTS AND RECORDS.

(A) Open Records.

(1) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City's auditor or his/her authorized representative, shall have access to and the right to inspect any books and

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party.

(2) The City may, in writing, request copies of any such records or books, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous or for security reasons cannot be copied or removed, then Grantee may request, in writing, within ten (10) days that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

(B) Confidentiality.

(1) The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law.

(2) If the City believes it must release any such confidential books and records in the course of enforcing this Franchise or complying with a court order or other legal requirement or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough~~ Material] - Deletion

confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. Grantee shall reimburse the City for all reasonable costs and attorney's fees incurred in any legal proceedings pursued under this Section.

(C) Records Required.

(1) Grantee shall at all times maintain and shall make available to the City upon 30 days' written request and subject to Applicable Law:

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

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

(c) A list of Cable Services, rates and Channel lineups.

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

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

(1) A Gross Revenue statement, as required by Section 3(E) of this Franchise;

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(2) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year and the number of Subscribers for each class of Cable Service (i.e. Basic, Digital Starter and Premium);

(3) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any significant technological changes occurring in the Cable System;

(4) A statement of planned construction, if any, for the next year; and

(5) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

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

(F) Complaint File and Reports.

(1) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System in a manner consistent with the privacy rights of Subscribers and Grantee's actions in response to those complaints.

(2) Within thirty (30) days of a written request, Grantee shall provide the City a quarterly executive summary in the form attached to the Customer Service Standards, which shall include the following information from the preceding quarter:

(a) A summary of service calls, identifying the number and nature of the requests and their disposition;

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(b) A log of all service interruptions;

(c) A summary of customer complaints referred by the City to Grantee; and

(d) Such other information as reasonably requested by the City.

(3) The parties agree the City's request for the reports described in this Section 7 shall remain effective and need only be made once. Such a request shall require the Grantee to continue to provide the reports until further written notice from the City to the contrary.

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

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

SECTION 8. PROGRAMMING.

(A) Broad Programming Categories. Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

(1) Educational programming;

(2) New Mexico news, weather and information;

(3) Sports;

(4) General entertainment (including movies);

(5) Children/family-oriented;

(6) Arts, culture and performing arts;

(7) Foreign language;

(8) Science/documentary;

(9) National news, weather and information; and,

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(10) Public, Educational and Government Access, to the extent required by this Franchise.

(B) Deletion or Reduction of Broad Programming Categories.

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

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

(C) Ascertainment of Programming and Customer Satisfaction. Upon request of the City, Grantee shall, at the sole expense of Grantee, undertake a survey of community views of cable operations in the City, including but not limited to programming, response to community needs, satisfaction and dissatisfaction with Cable Services offered by Grantee, and customer service. The City may make such request no more than once every two (2) years. Grantee shall consult and cooperate with the City in developing and implementing an ascertainment methodology. The final form and content of the survey shall be as mutually agreed upon by Grantee and the City. Grantee shall provide the results of such survey to the City within two (2) months after completing the survey. Upon request, Grantee shall also provide a copy of results from any other ascertainment survey of Subscribers in the City conducted independently by Grantee within the previous year. Any survey results conducted within the City which are intended for external publication shall also be provided to the City. Nothing herein shall be construed to limit the right of the City to conduct its own surveys at its own expense.

(D) Obscenity. Grantee shall not transmit or permit to be transmitted over any Channel subject to its editorial control any programming which is obscene under or violates any provision of Applicable Law relating to obscenity and which is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

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

(F) Continuity of Service Mandatory.

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

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

(3) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the City, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator to operate the Cable System until such

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough~~ Material] - Deletion

time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

(G) Services for the Disabled. Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. PEG ACCESS.

(A) Designated Access Providers.

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

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

(B) Channel Capacity and Use.

(1) As of the Effective Date Grantee shall provide standard definition Access Channels and high definition Access Channels for use by the City or its Designated Access Providers, as set forth in subsections 9(B)(3) and (4).

(2) Grantee shall have the right to temporarily use any Channel or portion thereof which is allocated under this subsection for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to the City, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered "unduplicated programming." Character generated programming shall be included for purposes of this subsection but may be counted towards the total average hours only with respect to one (1) Channel provided to the City. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. City shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel or portion thereof in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(3) Standard Definition ("SD") Digital Access Channels.

(a) Grantee shall continue to provide four (4) Activated Downstream Channels for PEG Access use in a standard definition ("SD") digital format in Grantee's Basic Service ("SD Access Channel") until such time as the City actives additional Access Channels as set forth in Subsection 9(B)(4). Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including but not limited to closed captioning, stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD or high definition ("HD") format to the demarcation point at the designated point of origination for the SD Access Channel, and Grantee shall be responsible for downconverting any HD signal to SD for distribution on the Cable System. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and the application of any applicable FCC Rules &

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

Regulations, including without limitation Subpart K Channel signal standards.

(b) With respect to signal quality, Grantee shall not be required to carry a SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Subsection 9(B)(3).

(c) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point which, for the purposes of this subsection 9(B)(3)(c), shall mean up to and including the modulator where the City signal is converted into a format to be transmitted over a fiber connection to Grantee. The City or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

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

(4) High Definition ("HD") Digital Access Channels.

(a) Within one hundred twenty (120) days of the Effective Date and upon written request from the City, Grantee shall activate on its Cable System two (2) High Definition ("HD") digital format PEG Access Channels ("HD Access Channel"), for which the City shall provide Access Channel signals in HD format to the demarcation point at the designated point of origination for the Access Channel.

(b) After the first anniversary of the Effective Date, and if the City returns one (1) SD Access Channel provided under Subsection 9(B)(3), and with at least 120 days' written notice to Grantee, Grantee shall

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

provide on its Cable System one (1) additional HD Access Channels for PEG Access use.

(c) Activation of the one (1) HD Access Channels shall only occur after the following conditions are satisfied with respect to each of the HD Access Channels:

(i) The City shall, in its written notice to Grantee as provided for in this subsection, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for the newly Activated HD Access Channel and,

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

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

(e) Grantee shall transport and distribute the HD Access Channels signal on its Cable System and shall not unreasonably discriminate against the HD Access Channels with respect to accessibility, functionality and to the application of any applicable FCC Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry an HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough~~ Material] - Deletion

Designated Access Provider including but not limited to closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Grantee shall verify signal delivery to Subscribers with the City, consistent with the requirements of this subsection 9(B)(4).

(f) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those Tiers of Cable Service, upon which HD Channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

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

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

(5) Grantee shall simultaneously carry the two (2) HD Access Channels provided for in subsection 9(B)(4)(a) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the four (4) SD Access Channels provided pursuant to

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

subsection 9(B)(3). The total number of Access Channels shall be four (4) SD Access Channels and two (2) HD Access Channels. At such time as the City returns one (1) SD Access Channel and Grantee activates the third (3^{rd}) HD Access Channel in accordance with subsection 9(B)(4)(b), the number of SD Access Channels shall be reduced to three (3) and the number of HD Access Channels shall be three (3) and the total number of Access Channels shall be six (6) - three (3) SD Access Channels and three (3) HD Access Channels.

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

(7) At such time as Grantee provides ninety-eight percent (98%) of its video programming content on the Cable System exclusively in HD, all of the existing SD Access Channels will be converted to HD Access Channels. Prior to the time that Grantee provides ninety eight percent (98%) of its video programming content on the Cable System exclusively in HD, the parties may from time to time discuss transitioning SD Access Channels access to HD Access Channels, and such transition may occur if in Grantee's discretion such action is technically and commercially feasible.

(C) Access Channel Assignment. Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. In addition, Grantee will make reasonable efforts to locate the HD Access Channel provided pursuant to Section 9(B)(4) in a location on its HD Channel lineup that is easily accessible to Subscribers.

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough Material~~] - Deletion

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

(E) Web-Based Video On Demand and Streaming.

(1) Grantee shall provide at no cost to the City, at 400 Marquette NW, 1st Floor, Room 106, Albuquerque, a business class broadband connection, broadband service and all necessary hardware to enable the City's delivery of web-based PEG content. If during the term of this Franchise the City moves its location and such new location does not have the capacity to connect and receive the broadband service described in this subsection 9(E)(1), the cost of upgrading the network to enable such service shall be incurred by the City. The broadband connection provided herein shall be used exclusively for web-based on demand Access programming and/or web-based video streaming of Access content. Within ninety (90) days after written request of the City, Grantee shall additionally provide a one-time grant of funding, in an amount not to exceed twenty-five thousand dollars ($25,000), which the City shall use to acquire and/or for replacement costs for a video on-demand server for facilitating the web-based Access programming described in this subsection 9(E).

(2) The City's Designated Access Provider(s) may provide web-based video on-demand programming on line; provided, however, that such Designated Access Provider(s) shall be responsible for its own costs related to a video on-demand server, broadband connection and service and any other associated equipment.

(3) Any costs incurred by Grantee in facilitating the web-based on-demand Access programming described in this Subsection 9(E) may be recovered from Subscribers by Grantee in accordance with Applicable Law.

(F) Support for PEG Access and Network Costs.

(1) During the term of this Franchise Agreement, Grantee shall provide sixty-two cents ($0.62) per month per Residential Subscriber (the

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

"PEG Contribution") to be used solely for capital costs related to PEG Access, including the City's institutional network connections or as may be permitted by Applicable Law. At the fifth (5th) anniversary of the Effective Date of this Franchise, the City at its discretion, by ordinance or resolution after one hundred twenty (120) days' notice and an opportunity for the Grantee to be heard, may require Grantee to increase the PEG Contributions to sixty-five cents ($0.65) per month per Residential Subscriber for the remaining term of this Franchise. At the eighth (8th) anniversary of the Effective Date of this Franchise, the City at its discretion, by ordinance or resolution after one hundred twenty (120) days' notice and an opportunity for the Grantee to be heard, may require Grantee to increase the PEG Contributions to sixty-eight cents ($0.68) per month per Residential Subscriber for the remaining term of this Franchise.

(2) Grantee shall make PEG Contribution payments quarterly, following the Effective Date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter.

(3) The City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise shall provide the City discretion to utilize the PEG Contribution for new internal network connections and enhancements to the City's existing network.

(4) The PEG Contribution shall not be collected and remitted on:

(a) Subscribers residing in Multiple Dwelling Units billed on a bulk-billing basis for any additional services;

(b) Subscribers and/or employees receiving Cable Service on a gratis or complimentary basis; and

(c) Subscribers whose accounts are written off as uncollectable or are considered Bad Debt.

(G) Access Support Not Franchise Fees. Grantee agrees that capital support for Access costs arising from or relating to the obligations set

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

(H) Access Channels on Basic Service or Lowest Priced HD Service Tier. All SD Access Channels shall be available on the tier of service to which Grantee requires all Subscribers to subscribe (as of the Effective Date, the Basic Service tier), or if there is no such tier, the Access Channels will be made available to every Subscriber without charge beyond the charge the Subscriber pays for the Cable Services and equipment the Subscriber receives. The HD Access Channels under this Franchise Agreement shall be included by Grantee without limitation as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

then the City shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to Grantee's Headend for distribution to subscribers.

(J) Technical Quality. Grantee shall maintain all Upstream and Downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other Applicable Laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from the City's facilities for the Access Channels provided under this Franchise Agreement. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the demarcation point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment. The City shall also be responsible, at its own expense, to replace any of Grantee's equipment that is damaged by the gross negligence or intentional acts of City staff. Grantee shall be responsible, at its own expense, to replace any of Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any HD PEG Access transmission equipment that Grantee maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' HD Access programming.

(K) Access Cooperation. The City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, to receive any Access benefit due the City hereunder, or to share in the use of Access Facilities hereunder. The purpose of this Section shall be to allow cooperation in the use of Access and the application of any provision under this Section as the City in its sole discretion deems appropriate, and

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough Material~~] - Deletion

Grantee shall cooperate fully with, and in, any such arrangements by the City.

(L) Return Lines/Access Origination.

(1) Grantee shall continuously maintain the two (2) return lines previously constructed to the City Hall and the PEG Access Studio throughout the term of the Franchise, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels; provided, however, that Grantee's maintenance obligations with respect to either of these locations shall cease if a location is no longer used in the future by the City to originate Access programming.

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

(M) Access Program Listings in Subscriber Guide. To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow the City or the Designated Access Provider to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The City or the Designated Access Provider will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service.

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

(A) Right to Construct. Subject to Applicable Law, generally applicable regulations, rules, resolutions and ordinances of the City, and

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

the provisions of this Franchise, Grantee may perform all construction in the Right-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

(B) Right-of-Way Meetings. Grantee will regularly attend and participate in meetings of the City of which Grantee is made aware regarding Right-of-Way issues that may impact the Cable System.

(C) Joint Trenching/Boring Meetings. Grantee will regularly attend and participate in planning meetings of the City of which Grantee is made aware to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees in order to reduce as much as possible the number of Right-of-Way cuts within the City subject to the provisions in this Section including Sections 10(T) and 10(U).

(D) General Standard. All work authorized and required hereunder shall be done in a safe, thorough and workman-like manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

(E) Permits Required for Construction. Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for and obtain appropriate permits, including without limitation excavation and/or barricade permits, from the City pursuant to Chapter 6, Article 5, Part 2, of the Revised Ordinances of Albuquerque. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Right-of-Way, proper restoration of such Right-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic, and the joint use of trenches. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee. Grantee shall complete work in compliance with all permit, construction and building codes, and all other legal requirements; if work is non-compliant,

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough Material~~] - Deletion

Grantee shall be subject to applicable penalties, including the remediation or removal of the infrastructure or equipment improperly constructed and/or installed.

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

(G) Compliance with Applicable Codes.

(1) City Construction Codes. Grantee shall comply with all applicable City construction and zoning ordinances and codes, State of New Mexico construction and building codes, including without limitation the New Mexico Commercial Building Code, the New Mexico Residential Building Code; and other building codes, such as the International Fire Code, the New Mexico Mechanical Code, and other generally applicable zoning codes and regulations.

(2) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

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

(H) GIS Mapping. Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Right-of-Way. In addition,

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

Grantee shall comply with the following filing and reporting requirements, subject to Section 7(B):

(1) Preconstruction: Grantee shall submit preconstruction maps in hard copy printed form and in the City's Albuquerque Geographic Information System (AGIS) or compatible format which shall show the location and dimension of any facilities Grantee proposes for the placement in the City's Right-of-Way.

(2) Post-Construction: Grantee shall submit maps after the completion of construction which shall show the approximate location of installed facilities.

(3) Availability of Maps: Grantee shall maintain on file at all times maps, operational data, and reports showing Grantee's network and operations in the City. The City may inspect the maps and data at any time during business hours upon request without charge.

(I) Minimal Interference.

(1) Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other electrical, gas or telecommunications infrastructure, including without limitation pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Right-of-Way by or under the City's authority. Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Right-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

(2) Grantee shall not place any facilities on, over, under, or within any City park or the median portion of any boulevard or parkway except for perpendicular crossings without first having obtained the written permission of the City.

(3) The City reserves the right to regulate the time, location, and manner of work in the Right-of-Way. The City shall not unreasonably withhold or restrict a Grantee's access to particular locations in the Right-of-Way.

(4) Grantee shall employ trenchless technology in the placement of its facilities where technically and financially appropriate and required by generally applicable code or ordinance.

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

(K) Hazardous Substances.

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

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

(L) Locates. Prior to doing any work in the Right-of-Way, Grantee shall comply with each and every requirement found in Chapter 62, Article 14, of the New Mexico Statutes Annotated 1978, regarding the one-call notification system for the making and locating of underground facilities, as the same may be amended from time to time.

(M) Grantee Notice to Private Property Owners; Notice of Substantial Rebuilds and Upgrades.

(1) Work on Private Properties. Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution. Grantee shall not install any cable, line, wire, amplifier, converter or other piece of equipment inside a dwelling or other occupied structure without first securing the permission of the owner or the lawful occupant of the property.

(2) Substantial Rebuilds or Upgrades. Grantee shall publicize any substantial rebuild or upgrade of its Cable System in each affected neighborhood as follows:

(a) At least one week before commencing that work Grantee shall provide written notice to the City and those persons whose property is within three hundred (300) feet of the work in at least two of the following ways:

(i) Telephone;

(ii) In person;

(iii) Mail;

(iv) Distribution of flyers to residences;

(v) Publication in local newspapers and broadcast television public service announcements;

(vi) Email; or

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(vii) Any other notification practice that would reasonably provide notice to the affected Subscribers.

(b) The City may require Grantee to attend neighborhood meetings about substantial rebuilds and upgrades; and

(c) For the purposes of this subsection, the term "substantial rebuild or upgrade" means the planned replacement or addition of trunk or distribution cable (but not drops) affecting:

(i) More than ten percent (10%) of the Cable System Subscribers; or

(ii) Involving more than sixteen (16) square miles of plant.

(N) Underground Construction and Use of Poles.

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

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

(3) Grantee shall utilize existing poles and conduit wherever possible.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

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

(O) Undergrounding of Multiple Dwelling Unit Drops. In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

(P) Burial Standards.

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

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

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

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

(2) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one (1) calendar week of initial installation, or at a time mutually agreed upon between Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

(Q) Cable Drop Bonding. Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

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

(S) Repair and Restoration of Property.

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

(2) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at Grantee's sole expense. At a minimum, Grantee shall, subject to the terms of any permit issued to Grantee, remove all surplus material, reseed as necessary, and otherwise restore the public Right-of-Way no more than one day after completion of the work, weather permitting.

(3) Right-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by Grantee within a reasonable

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

time, the City may, after prior notice to Grantee or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Grantee shall pay the City.

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

(5) Grantee shall be responsible for the maintenance of its own equipment, facilities, and appurtenances placed upon, over, or under the public Right-of-Way, including the removal of all graffiti. If after notice from the City that such graffiti has not been removed, it will be removed by the City at Grantee's sole cost.

(6) Grantee shall ensure its facilities in the public Right-of-Way are located and constructed in a manner consistent with any requirements of the Americans with Disabilities Act (ADA) applicable at the time of construction. Following notice by the City of an ADA construction problem, Grantee shall have thirty (30) days or other reasonable time to remedy the problem, subject to a Grantee's right to contest the alleged ADA violation.

(T) City Use of Grantee's Trenches, Bores, Conduits, or Infrastructure.

(1) Grantee agrees to cooperate with the City in the City's use of Grantee's trenches, bores, conduits, and/or infrastructure, provided that the City has first notified Grantee in some manner that it is interested in sharing the trenches, bores, conduits or other infrastructure such as poles or towers in the area where Grantee's construction is occurring.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(2) The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's trenches, bores, conduits, or infrastructure in the Right-of-Way and other public places without charge to the City, provided space is reasonably available and such placement does not interfere with Grantee's use of its facilities.

(3) This right shall not extend to trenches, bores, conduits, or infrastructure owned by an affiliate of Grantee who has facilities in the public Right-of-Way for the provision of non-Cable Services.

(4) For the purposes of this subsection, "City purposes" include without limitation to the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service or transmission of telecommunications or information services to third parties in competition with Grantee.

(U) Common Users; Joint Trenching and Use.

(1) For the purposes of this subsection:

(a) "Conduit" or "Conduit Facility" means any structure or section thereof containing one or more ducts, conduits, manholes, hand hole, or other such facilities in Grantee's Cable System;

(b) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires;

(c) "Surplus Ducts or Conduits" are facilities other than those occupied and used by Grantee or prior Grantee, or used by Grantee as emergency use spares, or reasonably projected by Grantee for Grantee's use within two (2) years from the date of City's request for use.

(2) Grantee acknowledges that the Right-of-Way has a finite capacity for containing infrastructure such as conduits and ducts. Thus, Grantee agrees that whenever the City determines it is impracticable to permit construction of underground conduit, duct, or other infrastructure by any other person with the legal authority to do so, excluding persons providing Cable Services in competition with Grantee, the City may require Grantee to afford to such person (third party) the right to use Grantee's Surplus Ducts or Conduits pursuant to the terms and conditions of an

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

agreement for use of Surplus Ducts or Conduits entered into by Grantee and such other person. Nothing herein shall require Grantee to enter into an agreement with such person if in Grantee's reasonable determination such an agreement could compromise the integrity of the Cable System.

(V) Acquisition of Facilities. Upon Grantee's acquisition of Cable System-related facilities in any City Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any such facility, Grantee shall within fifteen (15 days) of the City's request submit to the City a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

(W) Use of Grantee's Facilities by Third Parties. Grantee acknowledges that, notwithstanding any legal rights that a telecommunications provider, cable television provider or any other service provider may have to use the Grantee's Facilities in the Right-of-Way, including pole attachments, the City retains a paramount interest in managing the Right-of-Way. The City shall be solely responsible for enforcement of its permitting requirements as a result of a third party's use of Facilities. Grantee agrees that it will comply with any generally applicable City ordinances regarding use of Grantee's Facilities in the Right-of-Way, provided, however, that Grantee retains its right to challenge any City ordinance or regulation to the full extent allowed by Applicable Law or this Franchise. Grantee shall use best efforts to ensure that no third party entity shall use Grantee's Facilities where such use violates any lawful City ordinance or regulation.

(X) Discontinuing Use/Abandonment of Cable System Facilities. Whenever Grantee intends to discontinue using any facility within the Right-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

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

(Y) Relocation and other Movement of Cable System Facilities For City Purposes.

(1) The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Right-of-Way or on any other property of the City for public purposes in the event of an emergency or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than forty-five (45) business days, and allow Grantee the opportunity to perform such action. In the event of any capital improvement project exceeding five hundred thousand dollars ($500,000) in expenditures by the City, which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60)

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Right-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Right-of-Way. If funds are generally made available to users of the Right-of-Way for such relocation, Grantee shall be entitled to its *pro rata* share of such funds.

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

(Z) Reimbursement of Grantee Costs. Grantee specifically reserves any rights it may have under Applicable Law for reimbursement of costs related to undergrounding or relocation of the Cable System, and nothing herein shall be construed as a waiver of such rights.

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

(BB) Temporary Changes for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder,

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough~~ Material] - Deletion

and Grantee may require a reasonable deposit of the estimated payment in advance.

(CC) Reservation of City Use of Right-of-Way. Nothing in this Franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers, grading, paving, repairing or altering any Right-of-Way, laying down, repairing or removing water mains, or constructing or establishing any other public work or improvement. Subject to applicable local, State and federal law, all such work shall be done insofar as practicable so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

(DD) Tree Trimming. Subject to City Ordinance, Article 16, Sections 6-6-2-1 to 6-6-2-9 regarding trees in the Right-of-Way, and State and federal law, Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Right-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) weeks' written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

(EE) Inspection of Construction and Facilities. The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so and to charge Grantee for its costs.

(FF) Stop Work.

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

(2) The stop work order shall:

(a) Be in writing;

(b) Be given to the Person doing the work, or posted on the work site;

(c) Be sent to Grantee by overnight delivery at the address given herein;

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

(e) Establish conditions under which work may be resumed.

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

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

requirements of this Franchise and other Applicable Law governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING.

(A) Subscriber Network.

(1) As of the Effective Date of this Franchise, Grantee upgraded its Cable System to a fiber to the fiber node Cable System architecture, with Fiber Optic cable deployed from Grantee's Headend to Grantee's fiber nodes, tying into Grantee's coaxial Cable System already serving Subscribers. Grantee's Cable System shall be equivalent to or exceed the technical characteristics of a traditional hybrid fiber coaxial ("HFC") 870 MHz Cable System and provide Activated Two-Way capability. The Cable System is capable of supporting video and audio. The Cable System shall be capable of delivering no less than one hundred ten (110) Channels of digital video programming services or its equivalent to Subscribers. Equipment must be installed so that:

(a) All closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards;

(b) All local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats;

(c) All PEG access channels shall meet the signal quality set forth in Section 9(B); and

(d) All channels have the technical means through which Subscribers will be able to block audio and/video in order to exercise their parental control.

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

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

(4) Grantee will take prompt corrective action consistent with the requirements of federal law and this Franchise if it finds that any facilities or equipment on the Cable System are not operating as expected,

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

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

(6) Grantee agrees to maintain the Cable System in a manner that:

(a) Is consistent with, or in excess of these specifications throughout the term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all the requirements of this Franchise, including the Exhibits hereto;

(b) Meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a signal is transmitted and as these federal standards are amended from time to time.

(c) Provides the quality of Cable Service, including signal quality, commensurate with an 870 MHz Cable System according to cable industry standards.

(B) Technology Assessment.

(1) The City may notify Grantee on or after the fourth (4^{th}) year anniversary of the Effective Date that the City will conduct a technology assessment of Grantee's Cable System during or after the fifth (5^{th}) year of the Franchise. The technology assessment may include but is not be limited to determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) U.S. cable systems owned and operated by Grantee's parent corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date, which cable systems serve approximately the same number of subscribers as are served by Grantee in the City.

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

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

(3) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546 or other proceedings authorized by State, federal or local law.

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

(D) Emergency Alert Capability. Grantee has provided and shall continue to provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards and any State of New Mexico and Bernalillo County ("County") requirements. If the City wishes to use the EAS system to transmit emergency signals, it shall work out procedures with the New Mexico – State Emergency Communications Committee and provide Grantee prior notice of not less than sixty (60) days. Grantee shall test the EAS as required by the FCC. Upon request, if the City is using the EAS, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

(E) Technical Performance and Enforcement Remedies. The technical performance of the Cable System shall meet or exceed all applicable federal (including but not limited to the FCC), State and local technical standards, including without limitation the Digital Cable Network Interface Standard, developed by the Society of Cable

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

Telecommunications Engineers ("SCTE" and "SCTE-40") and adopted by the FCC on September 22, 2017 at 47 C.F.R. Section 76.602, as any of these federal standards or any applicable State or local standards may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

(F) Cable System Performance Testing.

(1) Grantee shall at Grantee's expense perform all tests required by the FCC on its Cable System; all other tests reasonably necessary to determine Grantee's compliance with technical standards adopted by the FCC or effective at any time during the term of this Franchise; and all other tests otherwise specified in Section 11(G) of this Franchise. On the Effective Date of this Franchise, this shall include, without limitation, the digital signal leakage testing required if Grantee maintains coaxial cable in its Cable System and otherwise meets the FCC's parameters.

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

(3) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct ongoing and repeated material deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be retested following correction.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

(1) The nature of the complaint or problem which precipitated the special tests;

(2) The Cable System component tested;

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

(4) The method, if any, in which such complaint or problem was resolved; and

(5) Any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS.

(A) Service Availability.

(1) Except as otherwise provided herein, Grantee shall provide Cable Service within the Franchise Area within seven (7) days of a request or within FCC time limits established at any time during the term of this Franchise if less than seven (7) days from the request. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(a) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement;

(b) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty five (125) foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

non- discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City; and

(c) At non-discriminatory monthly rates for Residential Subscribers.

(2) Service to Multiple Dwelling Units. Consistent with this Section 12(A), Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon Grantee having legal access to said unit. The City acknowledges that Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(3) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of twenty-five (25) residences per mile of Cable System plant. If the residential density is less than twenty-five (25) residences per five thousand two hundred eighty (5,280) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and customers in the area in which service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals twenty-five (25). Customers who request service hereunder will bear the remainder of the construction and other costs on a *pro rata* basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

(4) Service to Annexed Areas. Grantee shall have the right but not the obligation to extend the Cable System into any annexed area which

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough Material~~] - Deletion

is not contiguous or is partially contiguous to the present Franchise Area of the City or to any area that is technically infeasible. Nothing herein shall require Grantee to expand its Cable System to serve or to offer service to any area annexed by the City if such area is then served by another Cable Operator.

(B) Connection of Public Facilities. Grantee shall upon the City's request and at no cost to the City provide one (1) activated subscriber network service drop and outlet and one (1) converter which shall deliver Basic Service and Digital Starter Service to all City-owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or the interconnection point on these facilities is located within one hundred fifty (150) feet of the distribution point on the Cable System. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.*, golf courses, airport restaurants and concourses, and recreation center workout facilities), and such Cable Service shall not be used in a way that might violate copyright laws. The City, public libraries and schools may use an outlet, drop and converter provided in accordance with this subsection to extend Cable Services throughout the qualifying building in which the outlet is located, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

(C) Institutional Network. In satisfaction of the City's request for institutional network capacity pursuant to 47 U.S.C §531(b), the City will enter into a Dark Fiber Lease Agreement with Comcast Business of New Mexico, an Affiliate of Grantee ("Dark Fiber Agreement"), a copy of which is attached as Exhibit C. Except as expressly provided herein, the terms

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

and conditions of the Dark Fiber Agreement will govern and supersede any inconsistent terms set forth in this Franchise. The term of the Dark Fiber Agreement shall run coterminous with the term of this Franchise. As the Dark Fiber Agreement is a commercial arrangement between Comcast Business of New Mexico and the City, the value of the fiber leased pursuant to such agreement shall not be deemed a part of the Franchise Fee or subject to offset from the Franchise Fee.

SECTION 13. FRANCHISE VIOLATIONS.

(A) Procedure for Remedying Franchise Violations.

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

(a) Respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with Subsection 13(A)(2), below;

(b) Cure the default; or,

(c) Notify the City that Grantee cannot cure the default within the thirty (30) days because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with Subsection 13(A)(2) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed and whether Grantee's proposed completion schedule and steps are reasonable.

(2) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under Subsection 13(A)(1), or denies the default and requests a meeting in accordance with Subsection 13(A)(1)(a), or the City orders a meeting in accordance with Subsection 13(A)(1)(c), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

of the meeting in writing, and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

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

(a) Withdraw an amount from the letter of credit as monetary damages;

(b) Recommend the revocation of this Franchise pursuant to the procedures in Section 13.2; or,

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

(4) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

(B) Revocation.

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

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

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

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

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

(2) Following the procedures set forth in Section 13(A) and prior to forfeiture or termination of the Franchise, the City shall give written notice to Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

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

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

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

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

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

(C) Procedures in the Event of Termination or Revocation.

(1) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is lawfully terminated or revoked, the City shall have the right to require Grantee to remove all or any portion of the System utilized exclusively for the provision of Cable Services from all Right-of-Way and public property within the City, and may, subject to Applicable Law:

(a) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or

(b) Purchase Grantee's Cable System in accordance with the procedures set forth in Section 13(D), below.

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

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

(3) If Grantee fails to complete any removal required by subsection 13.3(B) to the City's satisfaction, after written notice to Grantee the City may cause the work to be done, and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

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

(D) Purchase of Cable System.

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

(2) The City may at any time thereafter offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

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

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

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

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

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(E) Receivership and Foreclosure.

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

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

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

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

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

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

(F) No Monetary Recourse against the City. Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise are

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough Material~~] - Deletion

in addition to and shall not be read to limit any immunities the City may enjoy under federal, State or local law.

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

(H) Assessment of Monetary Damages.

(1) The City may assess against Grantee monetary damages:

(a) Up to five hundred dollars ($500) per day for general construction delays, violations of PEG obligations or payment obligations;

(b) Up to two hundred fifty dollars ($250) per day for any other material breaches, or

(c) Up to one hundred dollars ($100) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise.

(2) Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, the City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by Section 13(A)(1), or such later date if approved by the City in its sole discretion, but may not be assessed until after the procedures in Section 13(A) have been completed.

(3) The assessment does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages,

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

losses, costs and expenses that are incurred by the City by reason of the breach of this Franchise.

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

(J) What Constitutes Abandonment. The City shall be entitled to exercise its options in Section 13(I) if:

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

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

SECTION 14. FRANCHISE RENEWAL AND TRANSFER.

(A) Renewal.

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

(2) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

Grantee under the then-current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and the City agree that at any time during the term of the then-current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then-current Franchise, and the City may grant a renewal thereof. Grantee and the City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(B) Transfer of Ownership or Control.

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

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

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

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

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

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

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

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

(d) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee; and

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

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

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

(7) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

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

SECTION 15. SEVERABILITY.

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

SECTION 16. MISCELLANEOUS PROVISIONS.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(A) Preferential or Discriminatory Practices Prohibited. In connection with the performance of work under this Franchise, Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws and, in particular, FCC rules and regulations relating thereto.

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

Grantee's address shall be:
Comcast of New Mexico, LLC
8440 Washington St. NE
Albuquerque, NM 87113
Attn: Government Affairs

With a copy to:
Comcast of New Mexico, LLC
1899 Wynkoop Street, Suite 55
Denver, CO 80202
Attn: Franchising Department

The City's address shall be:
Chief Administrative Officer
City of Albuquerque
Mayor's Office
P.O. Box 1293
Albuquerque, NM 87103

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough Material~~] - Deletion

With a copy to:
City Attorney
City of Albuquerque
Office of the City Attorney
P.O. Box 2248
Albuquerque, NM 87103

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

(C) Descriptive Headings. The headings and titles of the Sections and subsections of this Franchise are for reference purposes only and shall not affect the meaning or interpretation of the text herein.

(D) Publication Costs to be Borne by Grantee. Grantee shall reimburse the City for all costs incurred in publishing this Franchise, if such publication is required.

(E) Binding Effect. This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

(F) No Joint Venture. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

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

(H) Reasonableness of Consent or Approval. Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

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

(J) Jurisdiction. Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in Bernalillo County District Court, New Mexico, or in the United States District Court in Albuquerque.

[Bracketed/Underscored Material] - New
[Bracketed/~~Strikethrough Material~~] - Deletion

SECTION 17. REPEALER. Section 13-5-3-1 through 13-5-3-20 is hereby repealed.

SECTION 18. COMPILATION. This Ordinance shall be incorporated and made part of the Revised Ordinances of Albuquerque, New Mexico.

SECTION 19. EFFECTIVE DATE. This Ordinance shall take effect _____.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

x:\city council\share\cl-staff_legislative staff\legislation\23 council\o-47final.docx

PASSED AND ADOPTED THIS 6th DAY OF May, 2019
BY A VOTE OF: 8 FOR 0 AGAINST.

Recused: Winter

Klarissa J. Peña, President
City Council

APPROVED THIS 17 DAY OF May, 2019

Bill No. O-18-47

Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:

Katy Duhigg, City Clerk

[+Bracketed/Underscored Material+] - New
[-Bracketed/Strikethrough Material-] - Deletion