

ORDINANCE NO. 18-5

AN ORDINANCE ESTABLISHING THE TERMS, FEES, COMPENSATION, CONDITIONS AND OTHER MATTERS RELATING TO THE GRANTING OF A CABLE FRANCHISE TO FALCON BROADBAND, INC. AND APPROVING A CABLE FRANCHISE AGREEMENT BETWEEN FALCON BROADBAND, INC. AND THE CITY OF COLORADO SPRINGS

WHEREAS, in January 2007 the City of Colorado Springs granted a franchise to Falcon Broadband, Inc. ("Falcon Broadband") for the provision of cable television services within the City of Colorado Springs; and

WHEREAS, Falcon Broadband has requested a renewal of its franchise with the City of Colorado Springs for the provision of cable television services within the City of Colorado Springs; and

WHEREAS, Section 10-30(a) of the City Charter, which provides that no franchise shall be granted except upon the approval of the electors voting on the franchise, has been preempted by federal law; and

WHEREAS, Section 10-30(b) of the City Charter provides that unless the terms, fees, compensation, conditions, or any other matter relating to the granting of franchises are set by the vote of the electorate, the City Council shall establish those terms by ordinance; and

WHEREAS, City Council has reviewed the proposed Cable Franchise Agreement between the City of Colorado Springs, Colorado and Falcon Broadband, which is attached hereto as Exhibit 1, ("Cable Franchise Agreement"); and

WHEREAS, the Cable Franchise Agreement contains the material terms of the proposed franchise, including the terms, fees, compensation, conditions and other matters relating to the granting of the cable television franchise.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. As provided in in Section 10-30(b) of the Charter of the City of Colorado Springs, the City Council hereby establishes the terms, fees,

compensation, conditions and other matters relating to the granting of the cable television franchise by approving the Cable Franchise Agreement attached hereto as Exhibit 1.

Section 2. The Mayor is hereby authorized to execute the Cable Franchise Agreement.

Section 3. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 23<sup>rd</sup> day of January, 2018.

**Finally passed:** February 13<sup>th</sup>, 2018

  
\_\_\_\_\_  
Council President

**Mayor's Action:**


- Approved on February 16, 2018.
- Disapproved on \_\_\_\_\_, based on the following objections:

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\_\_\_\_\_  
Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Council President

ATTEST:

  
\_\_\_\_\_  
Sarah B. Johnson, City Clerk

I HEREBY CERTIFY, that the foregoing ordinance entitled “AN ORDINANCE ESTABLISHING THE TERMS, FEES, COMPENSATION, CONDITIONS AND OTHER MATTERS RELATING TO THE GRANTING OF A CABLE FRANCHISE TO FALCON BROADBAND, INC. AND APPROVING A CABLE FRANCHISE AGREEMENT BETWEEN FALCON BROADBAND, INC. AND THE CITY OF COLORADO SPRINGS” was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on January 23<sup>rd</sup>, 2018; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 13<sup>th</sup> day of February, 2018, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 16<sup>th</sup> day of February, 2018.

  
Sarah B. Johnson, City Clerk



1<sup>st</sup> Publication Date: January 26<sup>th</sup>, 2018  
2<sup>nd</sup> Publication Date: February 21<sup>st</sup>, 2018

Effective Date: February 26<sup>th</sup>, 2018

Initial: SBJ  
City Clerk

**CABLE FRANCHISE AGREEMENT**  
**BETWEEN**  
**THE CITY OF COLORADO SPRINGS**  
**AND**  
**FALCON BROADBAND, INC.**

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## AGREEMENT

**THIS AGREEMENT** ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between THE CITY OF COLORADO SPRINGS, a Colorado municipal corporation (hereinafter referred to as the "City") and FALCON BROADBAND, INC., a Colorado corporation doing business as FALCON BROADBAND, INC. (hereinafter referred to as "the Operator") with its primary place of business in Colorado Springs, Colorado.

### I. DEFINITIONS

The following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number and words in lower case include words in upper case. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

The headings, titles and subtitles of the several sections of this Agreement are intended for reference or to indicate the contents of the sections, and shall not be taken as part of the substantive agreement or the sections to which they refer.

A. **"Access"** means the availability for 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/or distribute non-profit, non-commercial, non-competitive video, telecommunications, internet and security services, including, but not limited to:

1. **"Public Access"** means access where community-based, non-commercial organizations, groups or individual members of the general public, on a nondiscriminatory basis are the primary users.

2. **"Educational Access"** means access where Schools are the primary users having editorial control over programming and services.

3. **"Government Access"** means access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

B. **"Access Channel"** means any channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

C. **"Affiliate"** means an entity which owns or controls, is owned or controlled by, or is under common ownership with the Operator.

D. **"Applicable Law"** means any Municipal Code, City Charter, 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.

E. **"Basic Service"** means any service tier which includes the retransmission of local television broadcast signals, Access Channels, and any other signals or carriage as permitted by any federal law or regulation.

F. **"Bi-Directional Capability" and "Activated Bi-Directional Capability"** means the ability of the System to transmit signals for Services in both upstream and downstream directions between the System Headend and subscriber locations without the installation of any major System components other than Headend equipment, return modules, user equipment at Subscriber locations and service specific equipment throughout the System.

G. **"Broadcast Signal"** means a television or radio signal transmitted over the air to a wide geographic audience, and received by a System off-the-air by antenna or any other means.

H. **"Cable Act"** mean the Cable Communications Policy Act of 1984, as amended, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any amendments thereto and any future cable television legislation.

I. **"Cable Operator"** means any Person or groups of Persons, including Operator, 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.

J. **"Cable Service(s)"** means the two-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.

K. **"Cable System" or "System"** means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide video service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public 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 video System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services or (D) any facilities of any electric utility used solely for operating its electric utility systems.

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

M. **"City Code"** means the Code of the City of Colorado Springs, as amended and any subsequent amendment thereto.

N. **"City"** means the City of Colorado Springs, Colorado, or the lawful transferee, or assignee thereof. City includes Colorado Springs Utilities where not inconsistent with the context.



O. **"Colorado Springs Utilities"** means the Utilities of the City of Colorado Springs created and operated as an enterprise pursuant to Article VI of the City Charter.

P. **"Connection"** with regard to connections to public buildings or Schools, means installation of fiber optic or coaxial cable, at Operator's discretion (except as provided elsewhere herein), or other System related facilities through the outer wall of the building leaving adequate excess space to permit further connection to other facilities or plant within the building.

Q. **"Downstream"** shall mean signals originating at the Headend or hubs and transmitted to Subscribers.

R. **"Dwelling Unit"** means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

S. **"FCC"** shall mean the Federal Communications Commission or successor governmental entity thereto.

T. **"Force Majeure"** shall mean any delays caused by events, such as, but not limited to (i) civil commotion; (ii) riots; (iii) Acts of God, such as floods, earthquakes, and tornadoes; and any other circumstances reasonably beyond the control of the Operator.

U. **"Franchise Fee"** means that fee payable to the City described in Section XVIII.

V. **"Gross Revenues"** means and shall be construed broadly to include all revenues derived directly or indirectly by Operator and/or an Affiliated entity that is the Cable Operator of the Cable System from the operation of Operator's Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, disconnection, reconnection, downgrade, upgrade, change in service fees, or similar charges associated with changes in subscriber Cable Service levels;
- Leased Access Channel fees;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;

- revenues from program guides, including electronic guides;
- Franchise Fees;
- FCC Regulatory Fees;
- Customer service representative surcharges, pay by phone fees;
- Cable trip charges, in person cable store fees;
- other consideration received by the Operator from programmers for carriage of Cable Services on the Cable System and recognized as revenue under generally accepted accounting principles (“GAAP”); and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a *pro rata* basis using total Cable Service Subscribers within the Franchise Area.

1. “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Operator’s Cable System Subscribers within the Franchise Area and shall be allocated on a *pro rata* basis using total Cable Service Subscribers reached by the advertising. Additionally, Operator agrees that Gross Revenues subject to franchise fees shall include all commissions, representative fees, Affiliated entity fees, or rebates paid to National Cable Communications or its successors associated with sales of advertising on the Cable System within the City, allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

2. “Gross Revenues” shall not include:

- actual Bad Debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Subscriber revenues within the City;
- any taxes and/or fees on services furnished by Operator imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Operator, including but not limited to Public, Educational and Governmental (PEG) Fees; and
- launch fees and marketing co-op fees; and,
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

3. To the extent revenues are received by Operator for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Operator 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 being 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 Operator derives revenues in the Franchise Area. The City reserves its right to review and to challenge Operator's calculations.

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

5. 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 GAAP, as promulgated and defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing, the City reserves its right to challenge Operator's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

W. "**Headend**" shall mean any facility for signal reception and dissemination on a System, including cable, antennas, wires, satellite dishes, monitors, switches, modulators, processors for television broadcast signals and the facility, including antennas and associated electronics which receives, controls, and switches the electronic information transmitted over the System.

X. "**Leased Access Channels**" means any channel or portion of a channel commercially available for programming for a fee or charge by persons other than the Operator.

Y. "**Node**" means an electrical transmission signal distribution locale or facility or a branching or exchange point. In the case of fiber optics, this may be a fiber optic patching facility, aerial splice case or handhole/manhole suitable for splicing of fiber optic cable.

Z. "**PEG**" means public, educational and governmental access.

AA. "**Person(s)**" or "**person(s)**" means an individual, sole proprietorship, partnership, association, joint stock company, trust, corporation, governmental entity, limited liability company, or any other form of organization or entity.

BB. "**Rebuild**" means to replace System plant which includes an upgrade of the Operator's System.

CC. "**Residential Services**" means services delivered to single or multiple-dwelling units.

DD. **"Residential Subscriber"** means any Subscriber receiving residential services.

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

FF. **"School or Schools"** shall mean and include the members and participant institutions of the **Southern Colorado Educational Television Consortium (SCETC)** whose members and participants are listed on Exhibit A, any duly accredited public educational institution (Grades K-12), including elementary, middle and secondary schools, residential living facilities at The Colorado School for The Deaf and The Blind, but excluding home schools and other residential living facilities at educational institutions.

GG. **"Service Area" or "Agreement Area"** means those areas within the City which are North of Highway 24 and East of Interstate 25.

HH. **"State"** means the State of Colorado.

II. **"Subscriber"** means a person or user of the System who elects to subscribe to and lawfully receives Service with the Operator's express permission.

JJ. **"Tiers of Service"** shall mean a category of Service or other services provided by the Operator and for which a separate rate is charged by the Operator.

KK. **"Universal Service"** means Service to all Residential Subscribers in the agreement area.

LL. **"Upgrade"** means an improvement in channel capacity or other technical aspect of System in accordance with the terms provided in this Agreement.

MM. **"Upstream"** shall mean the transmission of signals through a System from Subscribers to the Headend or hubs.

NN. **"Upstream Channel"** means a channel capable of carrying a transmission to the Headend from points on the Video System or from interconnection points on the System.

OO. **"Video Programming"** means programming that is provided in a television format which typically includes the news, entertainment, informational or educational presentations customarily carried on a System or broadcast by a television broadcast station.

PP. **"Year", "Annual", or "Annually"** means the period consisting of a full calendar year, beginning January 1 and ending December 31 unless otherwise provided in this Franchise.

#### **Exhibits.**

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

- 1) *Exhibit A*, entitled Customer Service Standards.
- 2) *Exhibit B*, entitled Report Form.

## II. GRANT OF AGREEMENT

A. The City hereby grants to the Operator, subject to the terms and conditions of this Agreement, a nonexclusive agreement which authorizes the Operator to construct and operate a Cable System and offer Cable Service in, along, among, upon, across, above, over, under, or in any manner connected with Rights-of-Way within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Rights-of-Way and all extensions thereof and additions thereto, such fiber optics, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the System; provided that this Agreement does not confer any rights to attach to poles or other facilities owned by Colorado Springs Utilities or any other utility. The right to make such attachment and the terms, conditions and fees for such attachments shall be governed by a separate agreement with Colorado Springs Utilities or such other utility and by the City Charter, City Code and all applicable City ordinances as amended.

B. This Agreement shall constitute a right and an obligation to provide the services required by, and subject to the terms of this Agreement and Applicable Law, including without limitation, 47 USC Section 545. This Agreement is subject to the general police power of the City. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the City.

C. 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 Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Operator under this Franchise.

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

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

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

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

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

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

G. 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 nor of sufficient space within any Rights-of-Way for placement of devices, conduit or other facilities; it does not provide the Operator with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

H. This Franchise does not authorize Operator to provide Telecommunications Service. This Franchise is not a bar to the provision of non-Cable Services or to the imposition of any lawful conditions on Operator with respect to Telecommunications whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Operator of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services or relieve Operator of its obligation to comply with any such authorizations that may be lawfully required.

I. Use of Rights-of-Way

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

2. Operator must follow City established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, including aesthetic appearance of public areas and the Rights-of-Way, 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 Operator is not willing to comply with City's requirements; and may remove or require removal of any facility that is not installed by Operator in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Operator for all the costs associated with removal; and may require Operator to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

### **III. RIGHT OF CITY TO GRANT FRANCHISE**

The Operator acknowledges and accepts the legal right of the City to grant this Franchise on the date of grant thereof.

The Operator by acceptance of this Agreement acknowledges that it has not been induced to enter into this Agreement by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any other third person concerning any term or condition of this Agreement not expressed herein. The Operator further acknowledges by the acceptance of this Agreement that it has carefully read the terms and conditions hereof and is willing to and does accept all of the risks of the meaning of such terms and conditions, as defined and/or provided herein and has willingly and voluntarily signed this Agreement.

### **IV. EFFECTIVE DATE OF AGREEMENT**

This Agreement shall be effective after approval by the City Council of the City provided, however, that if the Operator fails to file an unconditional written acceptance of this Agreement and post the security required hereunder, the Franchise granted under this Agreement shall be null and void and any right of the Operator to own or operate a Cable System within the area under this or any other agreement or license is hereby terminated.

Upon this Agreement being effective any other agreement or license with respect to the Operator shall be null and void and of no further force or effect. However, the grant of the Agreement shall have no effect on the Operator's duty under any agreement, license or any ordinance in effect prior to the effective date of this Agreement to indemnify or insure the City against acts and omissions occurring during the period that such agreement was in effect.

### **V. TERM**

The Agreement and the rights, privileges, obligations and authority granted hereunder shall take effect, as provided in Section IV, the term of this Agreement shall be for a period term of ten (10) years from the effective date, unless sooner terminated or extended as provided in this Agreement.

### **VI. AGREEMENT NONEXCLUSIVE**

This Agreement shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any Person to use any property, right-of-way, easement, 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 the Operator hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose compatible with the Operator's authority under this Agreement and for such additional agreements for Cable Systems. The City agrees that any grant of additional agreements by the City to any other entity to provide Cable Services similar to those provided by the Operator pursuant to this Agreement (although the parties expressly agree that direct broadcast satellite services are not similar services) and over which the City has regulatory authority similar to the City's regulatory authority over the Operator shall not be on terms and conditions when taken as a whole, are more favorable or less burdensome to the Operator of any such additional agreement than those which are set forth herein.

The Operator's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and the Operator agrees to comply with all generally applicable laws and ordinances enacted, or hereafter enacted, by the City pursuant to that power that do not alter Operator's material obligations under this Agreement.

## **VII. FAMILIARITY WITH AGREEMENT**

The Operator further acknowledges and states that it has fully studied and considered the requirements relating to the operation of the System, and all other requirements and provisions of this Agreement, and finds that the same are commercially practicable at this time and consistent with all Applicable Law currently in effect including the Cable Act.

## **VIII. SERVICE AREA AND LINE EXTENSIONS**

It shall be the obligation of the Operator to furnish Cable Service within the Service Area to all who request service whether they are residential or commercial Subscribers and regardless of and whether service is requested to residential, commercial or industrial areas. However, for unusual circumstances, such as the existence of more than one hundred twenty-five feet (125') of distance from distribution fiber to connection of service to Subscribers, Cable Service may be made available on the basis of a capital contribution in aid of construction, including reasonable cost of material, labor and easements. The Operator may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

A. General Requirements. The Operator shall meet or exceed all construction, extension, and service availability requirements set forth in this Agreement or the attached exhibits.

B. Equivalent Service. Except as otherwise provided in this Section VIII, it is the City's general policy that all residential, commercial and industrial establishments, serviceable dwelling units, and multiple dwelling unit addresses in the Operator's Agreement Area have equivalent service availability from the Operator's System under rates established in accordance with federal law and reasonable terms and conditions. The Operator shall not arbitrarily refuse to provide Cable Service to any Person within its Agreement Area provided such Persons have fulfilled their obligations to the Operator including, but not limited to timely payment of bills.



C. Cable Service Availability. In general, except as otherwise provided herein, the Operator shall provide Cable Service within seven (7) days of a request by any Person within its Agreement Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of appropriate funds by the Operator, receipt of a written request by the Operator or receipt by the Operator of a verified verbal request. Except as otherwise provided herein, the Operator shall provide such service:

1. With no line extension charge except as specifically authorized elsewhere herein;

2. At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five foot (125') drop connecting to an inside wall for residential, commercial and industrial subscribers, with additional charges for non-standard installations computed according to federal law and federal rate regulations adopted by the Operator and provided in writing to the City;

3. At monthly rates for residential, commercial and industrial subscribers established in accordance with Applicable Law.

D. Inspection of Construction. The City shall have the right to inspect any construction or installation work performed under this Agreement. The City shall have the right to make such tests as it deems necessary to ensure compliance with the terms of this Agreement and Applicable Law.

E. Quality and Workmanship. The Cable System constructed or erected by the Operator shall be of good quality and workmanship and shall be maintained in good repair and condition, and shall meet or exceed all FCC technical standards.

F. Connection of Public Facilities. The free basic, video programming (expanded basic) service provided herein shall include two (2) outlets and free service, for all accredited primary and secondary public Schools, residential and other facilities for The School for The Deaf and The Blind, the Pikes Peak Library District (including all branches), Pikes Peak Community College and CU-Colorado Springs (excluding residential living facilities) if such service is requested by the public facility and if the public facility is located within one hundred fifty feet (150') of Operator's distribution plant. The Operator will provide additional service outlets in each room or area where television reception is desired and the entity using the additional outlets shall reimburse the Operator for its actual cost basis for labor and material required in the installation of each outlet and for the receipt of service to those outlets (except there shall not be a monthly charge where the public entities have provided distribution to other outlets) which are additional to the main outlet. In addition, the Operator shall provide, at no cost, outlets of basic and expanded basic programming to all other public and educational buildings if requested by the public facility if the drop line is less than one hundred fifty feet (150') of Operator's distribution plant or if the City or other agency agrees to pay the incremental cost of such drop line in excess of one hundred and fifty cable feet (150'), including the cost of such excess labor and materials. Such outlets shall

not be located in public waiting areas, break rooms, nor used to entertain public groups, nor shall the outlets be used in any way that might violate copyright laws.

G. City Web Site. To the extent that it is economically and technically feasible to do so, the Operator shall link the City Web Site with any Web Site developed by the Operator with respect to its program offerings and other services provided within the City.

## **IX. ACCESS CHANNELS AND SUPPORT**

### **A. Channel Capacity and Use**

1. As of the Effective Date, there are six (6) standard definition Access Channels in use by the City or its Designated Access Providers which shall remain in use subject to subsection IX.D.

2. Operator shall have the right to temporarily use any Channel or portion thereof which is allocated under this Section for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to City, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection but may be counted towards the total average hours only with respect to two (2) Access Channels provided to City. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Operator 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. The City shall request return of such Channel space by delivering written notice to Operator 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 Operator of such written notice. Notwithstanding the foregoing, the criteria for the number of hours that an Educational Access Channel must be programmed shall not apply during the summer months when school is not in session for four (4) of the Educational Access Channels.

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

a. Operator shall provide six (6) Activated Downstream Channels for PEG Access use in a standard definition ("SD") digital format ("SD Access Channel"). Operator 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 HD format to the Demarcation Point at the designated point of origination for the SD Access Channel, and Operator shall be responsible for up/down or cross converting any HD signal to SD for distribution on the Cable System. Operator shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any

applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards.

b. With respect to signal quality, Operator 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 Operator, but Operator shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Operator shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this subsection IX.A.3. In the event Operator makes any change in the Cable System and related equipment and facilities or in signal delivery technology, which change directly or indirectly affects the signal quality or transmission of any Access Channel programming or services, the Operator shall, at its own expense, take necessary technical steps or acquire new equipment so that the Access facilities and equipment may be used as intended to ensure that delivery of Access Channel programming signals is not diminished or adversely affected including, among other things, so that live and recorded programming can be cablecast with as good as or better signal quality than existed prior to such change.

c. Operator shall be responsible for costs associated with the transmission of SD Access Channel signals on its side of the Demarcation Point. The City or Designated Access Provider shall be responsible for costs associated with SD Access Channel 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 Access Channels are made available. Operator is not required to provide free SD equipment to Subscribers, including complimentary government and educational accounts, except as provided herein, 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, Operator shall activate on its Cable System one (1) High Definition (“HD”) digital format PEG access channel (“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. After the second anniversary of the Effective Date and if the City returns two (2) SD Access Channels, and with at least 120 days’ written notice to Operator, Operator shall provide on its Cable System one (1) additional HD Access Channel for PEG Access use. Activation of the additional HD Access Channel shall only occur after the following conditions are satisfied, in addition to the return of two (2) SD Access Channels:

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

(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. Notwithstanding the foregoing, the criteria for the number of hours that an Educational Access Channel must be programmed shall not apply during the summer months when school is not in session for four (4) of the Educational Access Channels.

b. The City and its Designated Access Providers shall be responsible for providing the HD Access Channel signal in an HD digital format to the Demarcation Point at the designated point of origination for the HD Access Channel. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution as Operator utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

c. Operator shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and the application of any applicable FCC rules and regulations including without limitation Subpart K Channel signal standards. With respect to signal quality, Operator shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Operator, but Operator shall distribute the HD Access Channel signal without degradation. Operator shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including but not limited to closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Operator shall verify signal delivery to Subscribers with the City, consistent with the requirements of this subsection IX.A.4.

d. 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 Access Channels are made available. Except as provided herein, Operator 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.

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

f. Operator 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 Operator's headend and through Operator's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator and encoder or decoder equipment and multiplex equipment required in order for Operator 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 Operator 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. Section 542(g)(2)(C) and, therefore, is an appropriate use of revenues derived from those PEG fees, if any, provided for in Section IX.C of this Franchise.

5. Operator shall simultaneously carry the two (2) HD Access Channels provided for in Section IX.A.4 in HD format on the Cable System in addition to simultaneously carrying in SD format the four (4) SD Access Channels provided pursuant to Section IX.A.3. The total number of Access Channels shall not exceed seven (7) Access Channels (6 SD Access Channels and 1 HD Access Channel). At such time as the City returns two (2) SD Access Channels and Operator activates the second HD Access Channel, the number of SD Access Channels shall be reduced from six (6) to four (4), and the total number of Access Channels shall be six (6) Access Channels (4 SD Access Channels and 2 HD Access Channels).

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

7. At such time as all other Basic Service Channels (or its equivalent tier) excluding Access Channels are carried in HD, the SD Access Channels will also be carried by Operator in HD, at which time the SD Access Channels will be discontinued and the maximum number of Access Channels shall be six (6) HD Channels.

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

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

10. Web-Based Video On Demand and Streaming. After the Effective Date and within one hundred twenty (120) days after written notice from the City, Operator shall provide at no cost to the City, at a location designated by the City, a business class broadband connection, broadband service with a static IP address and all necessary hardware to enable the City's delivery of web-based PEG content. Notwithstanding the foregoing, the City shall be responsible for the cost of the connection from the Cable System located in the street at the designed location into the building. 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, 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.

a. 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.

b. For all of the City's and its Designated Access Provider's web-based on demand Access programming facilitated through the broadband connection and service described in this subsection IX.A.10, Operator shall be permitted to provide its logo which shall be displayed on the main web page for the web-based Access programming, in a manner reasonably similar to the Operator's logo display found on its Project Open Voice web-based supported programming. Notwithstanding the foregoing, the size of the City's or Designated Access Provider's logos may be as large as or larger than Operator's logo, in the City's or Designated Access Provider's sole reasonable discretion.

c. Any costs incurred by Operator in facilitating the web-based on demand Access programming described in this subsection IX.A.10, may be recovered from Subscribers by Operator in accordance with Applicable Law.

#### 11. Access Channels Availability

All SD Access Channels shall be available on the tier of service to which Operator 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. Operator will make reasonable efforts to locate HD Access Channels in reasonable proximity to HD local broadcast channels or similar public interest HD channels, or as close as the existing channel line-up will allow at the time the HD Access Channel is launched, or as otherwise agreed to with the City.

#### C. Support for Access Costs.

The City has determined that it will not require a fee for capital costs related to Public, Educational and Governmental Access and the web based on demand Access programming described in Section IX.A.10, or as may be permitted by Applicable Law ("PEG Contribution") as of the Effective Date of this Franchise. During the term of this Franchise Agreement, but no sooner than six (6) months after the Franchise Fee has been increased to five percent (5%) of Gross Revenues pursuant to Section XVIII.A, the City may provide written notice to Operator indicating an intent to impose a PEG Contribution of up to fifty cents (\$0.50) per month per Residential Subscriber. Within thirty (30) days of such notice, or such other time as the parties may mutually agree, the City and Operator shall meet to review prior PEG expenditures and future capital plans of the City and/or its Designated Access Providers. Upon the City's presentation of information that it and/or its Designated Access Providers have reasonable PEG capital needs which will benefit from the PEG Contribution of up to fifty cents (\$0.50) per month per Residential Subscriber, and if the City Council by resolution confirms that such PEG Contribution meets the

community's needs and interests, taking into account the costs, and provided that all other Cable Operators providing Cable Services in the City are required to pay the same PEG Contribution, Operator shall begin making PEG Contribution payments no later than ninety (90) days after approval by the City Council.

All PEG Contribution payments shall be made quarterly for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter. City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. To the extent the City makes Access capital investments using City funds prior to receiving necessary PEG Contribution funds, the City is entitled to apply subsequent PEG Contribution payments from Operator toward such City capital investments.

D. Access Support Not Franchise Fees

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

E. Change In Technology

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

2. If Operator incorporates new or emerging improvements in Channel delivery or display on Operator's Channels made available to Residential Subscribers, including but not limited to ultra-high definition and "4K" display, the City or any Designated Access Provider may submit a written request to meet with the Operator. Without further obligation, following receipt of such request, Operator will participate in discussions of these improvements or enhancements with the City and its Designated Access Providers. These discussions shall address potential options for

improvements and enhancements on the delivery of PEG Access Channels to Subscribers in comparable format, including possible technical means and costs of incorporating such improvements or enhancements for the PEG Access Channels.

F. Technical Quality.

Operator, at its cost and expense, shall maintain all Upstream and Downstream Access services and Channels, equipment, facilities and lines 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. Operator shall provide routine maintenance for all transmission equipment on its side of the Demarcation Point including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's and Designated Access Provider's facilities for the Access Channels provided under this Franchise Agreement, and including the business class broadband equipment and services necessary for the video on demand and streaming service described in this Franchise Agreement. Operator 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. In the event of a public safety emergency, where a technical quality problem exists with a PEG signal, Operator shall respond upon verbal notice to investigate and take reasonable steps to repair the problem as quickly as possible. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The City shall also be responsible, at its own expense, to replace any of the Operator's equipment that is damaged by the gross negligence or intentional acts of City staff. The Operator shall be responsible, at its own expense, to replace any of the Operator's, City's or Designated Access Provider's equipment that is damaged by the gross negligence or intentional acts of Operator's staff. The City will be responsible for the cost of repairing and/or replacing any HD PEG Access and web-based video on demand transmission equipment that Operator maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' HD Access programming.

G. Management and Control of Access Channels

1. City may from time to time authorize, change and revoke authorizations of Designated Access Providers to control, operate, and manage the use of any and all Access facilities provided by Operator under this Franchise including, without limitation, the operation of Access Channels. The SCETC is presently the Designated Access Provider for Educational Programming. City or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise. Nothing herein shall prohibit City from authorizing itself to be a Designated Access Provider.

2. Operator shall cooperate with City and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access Channels.

3. City shall have the responsibility for identifying the Designated Access Providers and sole and exclusive responsibility for allocating the Access resources under this Section. The City may authorize Designated Access Providers to control and manage the use of any and all Access



facilities provided by Operator under this Franchise including, without limitation, the operation of Access Channels. To the extent of such designation by the City, a Designated Access Provider shall have the responsibility for operating and managing such Access facilities. The City or its designee may formulate rules for the non-commercial operation of the Access Channels, consistent with this Franchise. Operator shall cooperate with the City and its Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access. PEG Access Channels are for noncommercial programming to be promoted and administered by the City and its Designated Access Providers. Permitted noncommercial uses of the PEG Access Channels may include, by way of example and not limitation: (i) the identification of financial supporters similar to what is provided on public broadcasting stations; or (ii) the solicitation of financial support for the provision of PEG Access programming by the City and its Designated Access Providers for public, charitable, educational or governmental purposes; or (iii) programming offered by accredited, non-profit, educational institutions which may offer telecourses over a PEG Access Channel.

#### H. Access Interconnections

1. Operator shall be obligated to continue any Access Channel interconnections that are in place as of the Effective Date of this Franchise.

2. Operator shall not object to nor impede any connection established by the City or a Designated Access Provider, or a competing provider, whether on the property of the City or a Designated Access Provider by means of which a competing provider obtains access solely to the PEG Access Channels, nor shall the Operator object to or impede the transmission of such PEG Access Channel signals by any competing provider; provided, however, that Operator may terminate any interconnection for any period where an interconnecting system is delivering signals in a manner that endangers the technical operation of Operator's Cable System. For additional interconnections which occur after the Effective Date of this Franchise, Operator shall have no obligation to provide such connections or contribute financially to the cost of establishing any such connection.

3. It is Operator's responsibility to ensure that any signals it provides on a return path to a City or Designated Access Provider facility meet FCC technical standards. It is not the Operator's responsibility to ensure that any signals provided by another cable operator meet industry standards.

4. Any equipment and construction costs borne by Operator in connection with the obligation to provide for Access Channel interconnection shall be considered a capital cost. City agrees that such cost is an "external cost" as such term is used in 47 C.F.R. Section 76.922(f) on the date of this Franchise and, as such, the cost is permitted under federal law and regulation to be passed through to Subscribers to the extent and in a manner provided for in federal regulations governing the same.

#### J. PEG Signals

All costs associated with the PEG Access Channels or signals after the PEG Access Channels/signals leave the City's or Designated Access Provider's Demarcation Point shall be

borne entirely by Operator, except as provided in Section 9.2(D)(6). Costs associated with the PEG Access Channels or signals before the PEG Access Channels/signals leave the City's or Designated Access Provider's Demarcation Point shall be borne entirely by City or its Designated Access Provider(s), respectively, unless the cost of same is to be borne by Operator as provided elsewhere in this Franchise.

K. PEG Signal Quality Meetings

Except for emergency or technical problems, not more often than once a year, City and Operator may meet to discuss and examine the signal quality of PEG Access Channels.

L. Access Program Listings in Subscriber Guides

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Operator 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.

M. Access Cooperation

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

N. Return Lines/Access Origination

1. Operator currently obtains Access programming through an interconnection agreement with another operator. Operator shall take commercially reasonable efforts consistent with the provisions of Section X.D to continuously maintain, throughout the Term of the Franchise, its ability to enable the distribution of Access programming to Residential Subscribers on the Access Channels.

2. Operator shall construct and maintain new Fiber Optic return lines within the Service Area 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 Operator 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.

## X. SYSTEM

A. Initial System. The parties understand and agree that the Cable System in the City consists of a network with a channel capacity of one hundred and thirty-five (135) channels.

B. Relocation of Access Channels. The Operator shall provide the City with a minimum of sixty (60) days notice and use its best efforts to provide one hundred twenty (120) days notice, prior to the time educational, and governmental access channel designations are changed. In addition, if relocation is required more than twice during the term of this Agreement, the Operator shall pay to City and educational institutions, as applicable, an amount equal to costs in remarketing the location of the access channels and managing the relocation administratively and technologically, up to a maximum of Fifty Cents (\$.50) per Subscriber. Any such amounts paid by the Operator may be added, at the Operator's discretion and in accordance with the applicable FCC regulations, to the price of video services and collected from such Subscribers as external costs as such term is used in 47 C.F.R. Section 76.922, if the Operator's decision to relocate such access channels is required by federal, state, or local law. The Operator, at the Operator's expense, will place the notices of any channel change under this Subsection on its regular monthly billings, upon request. Any relocated or new channel designations for the educational and governmental access channels provided pursuant to this Agreement shall be in full compliance with FCC signal quality, and proof of performance standards.

C. Undergrounding Requirements. The Operator shall construct, operate and maintain all of its transmission or distribution facilities in accordance with the following requirements:

1. All Utilities Underground. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Operator likewise shall construct, operate and maintain all of its transmission and distribution facilities underground.

2. One of the Utilities Underground. In those areas of the Service Area where either the transmission or distribution facilities of the respective public utilities providing telephone communications or electric services are underground, the Operator shall construct, operate and maintain all of its transmission and distribution facilities underground.

3. Overhead to Underground Conversion. In the event that all of the transmission and distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Agreement, if the Operator receives sufficient advance notice of the same, the Operator shall convert, operate and maintain all of its transmission and distribution facilities underground in concert with such other utilities. Receipt by the Operator of ninety (90) days' notice shall constitute sufficient advance notice. If sufficient advance notice is not received by the Operator to place its facilities underground when the other utilities are placed underground, the Operator agrees to place its facilities underground within one hundred eighty (180) days after such request by the City. Where all utilities owned by Colorado Springs Utilities are to be placed underground, the City agrees to provide ninety (90) days notice to the Operator to the extent reasonably necessary for the Operator to place its facilities underground when the electric facilities are placed underground. All

placement by the Operator of its property underground shall be at the pro rata cost and expense of the Operator.

D. Interconnection with Other Video and Cable Systems.

1. The Operator shall enter into good faith negotiation, in accordance with this Section, to interconnect the public, educational and government access channels of the System with other video or cable systems in the Agreement Area not owned or operated by the Operator or an affiliate of the Operator upon the directive of the City. Interconnection of channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. The Operator may not be required to interconnect under circumstances where excessive costs would be incurred.

2. Upon receiving a directive from the City to interconnect, the Operator shall immediately initiate negotiations with the other affected system or systems and shall report to the City the results of such negotiations no later than sixty (60) days after such initiation. All costs of interconnection shall be shared on a pro rata basis among the Video or Cable Operators for both construction and operation of the interconnect link. If the Operator provides a direct feed for Access, and if a negotiated agreement cannot be reached between the affected operators, the City may direct the Operator to allow for a direct connection to its access feed to assure that Access is carried on each operator's System.

3. The Operator shall cooperate with any public interconnection authority, regional interconnection authority or city, county, state or federal regulatory agency which may hereafter be established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the Agreement Area.

## XI. TECHNICAL STANDARDS

The Cable System shall at all times operate so that, at a minimum and in accordance with applicable law, it continuously meets or exceeds all federal technical specifications (as they now exist or may hereafter be amended) in FCC rules and regulations (as they may be amended), or any other applicable law which may supersede such rules.

A. The Operator, at its cost, shall perform all tests necessary to determine compliance with the prescribed technical standards.

1. Proof of Performance Tests. After the Effective Date of this Agreement, the Operator shall provide to the City at the Operator's expense its first proof of performance test which indicates that the Cable System meets FCC performance specifications. This proof of performance test shall be used by the City as the baseline to track technical performance. Within thirty (30) days after providing video services to its first Subscriber, the Operator shall provide to the City at the Operator's expense, the written opinion of its general contractor indicating that the Cable System meets all FCC performance specifications.

2. Certifications and Recertification. The Operator shall, no less often than as provided by law provide to the City at the Operator's expense, a proof of performance test to verify that the System conforms to all requirements specified by Applicable Law.

3. Signal Leakage Tests and Reports. The Operator shall specifically monitor the complete plant, Downstream and Upstream, on a continual basis for signal leakage and shall submit to the City, on request a written report detailing the section tested, measurements recorded at specified locations, and corrections made. Written records of test results also shall be maintained and shall be available for City inspection upon request.

4. Technical Tests. The City may perform technical tests of the System by qualified persons with proper equipment during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Operator or the System in order to determine whether or not the Operator is in compliance with the terms hereof and applicable federal laws. Such tests may be undertaken only after giving the Operator reasonable notice thereof, and providing a representative of the Operator an opportunity to be present during such tests. In the event that such testing demonstrates that the Operator has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Operator. In the event that such testing demonstrates that the Operator has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the City. Except in emergency circumstances, the City agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the Operator upon the Operator's request.

5. Technical and Safety Standards.

a. The Operator shall at all times employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public or to employees of the Operator.

b. The Operator shall install and maintain its System in accordance with the requirements of the National Electrical Safety Code and all applicable FCC regulations, and in such manner that the System shall not interfere with any pre-existing installations of the City, Colorado Springs Utilities, educational institutions nor any public utility or telecommunication or broadband entity, nor any franchisee, licensee or permittee of the City.

c. The Operator shall provide and put in use such equipment and appliances so as to prevent injury to the wires, pipes, structures, and property belonging to the City and Colorado Springs Utilities, the educational institutions and to any person within the City's jurisdiction.

d. The City or Colorado Springs Utilities shall have the right to require the Operator to change the location or grade of any of the Operator's System within the Right-of-Way when the public convenience or the provision of utility services requires such change, and the expense thereof shall be paid by the Operator. Should the Operator fail to remove or relocate

any such facilities by the date established by the City or Colorado Springs Utilities as applicable, the City or Colorado Springs Utilities may effect such removal or relocation, and the expense thereof shall be paid by the Operator including all costs and expense incurred by the City or Colorado Springs Utilities due to the Operator's delay. If the City or Colorado Springs Utilities requires the Operator to relocate its facilities located within the Right-of-Way, the City or Colorado Springs Utilities shall make a reasonable effort to provide the Operator with an alternate location within the Right-of-Way. If the funds are generally made available to users of public Right-of-Way for such relocation (excluding funds made available by Colorado Springs Utilities), the Operator shall be entitled to its pro rata share of such funds. The Operator may not be required to move its lines or facilities due to the placement of lines or facilities of a competitive video or cable system operator including any competitive video or cable system of the City or Colorado Springs Utilities without payment of the reasonable costs of such relocation.

**B. Further Cable System Performance Testing.**

1. In addition to the foregoing, the Operator shall, at the Operator's expense, perform tests in response to subscriber complaints.

2. The Operator shall maintain written records of all results of its System tests, performed by or for the Operator. Such test results shall be available for inspection by the City upon request.

3. If the FCC no longer requires proof of performance tests for the Operator's System during the term of this Agreement, the Operator agrees that it shall continue to conduct proof of performance tests on the System in accordance with the standards current at the time of execution of this Agreement, or any generally applicable standards later adopted, at least twice a year, and provide written results of such tests to City upon request. All tests may be witnessed by representatives of the City, and the Operator shall inform the City in writing of the time and place when each test will be conducted no less than three (3) weeks prior to the test.

4. In the event that the System does not pass a Proof of Performance or CLI test, retesting shall be done and results submitted to the City within thirty (30) days of such retesting until passing results occur.

**C. Specific Technical Facilities or Capabilities.** The following specific technical facilities or capabilities shall be provided on the System by the Operator:

1. **Emergency Standby Power.** The Video Operator shall provide standby power generating capacity at key locations throughout the System and at its Headend, all in conformance with standby power at the following levels: 22 hours in the field and 12 hours at the Headend.

**D. Notice of Shutdown.** At least twelve (12) hours before any planned shutdown, the Operator shall give notice to affected Subscribers when possible, of maintenance or major equipment changeouts which require loss of service to twenty-five (25) or more customers.

## XII. SYSTEM DESIGN AND CAPACITY

The following provisions shall govern and be applicable to the installation of the Cable System by the Operator:

A. Two-Way Services. The System shall be activated so as to provide for two-way services or a telephone ordering alternative, until such time as two-way services over the System are technically and financially feasible.

B. Reliable Equipment. The Operator shall use in the System equipment generally used in high-quality, reliable, modern systems of similar design, including modulators, antennas, amplifiers and other electronics that permit and are capable of passing through the signal received at the Headend with minimal alteration or deterioration.

C. Buried Drops. Wherever service lines of utilities are buried, the Operator shall whenever possible bury any underground Subscriber drops, buried as part of any routine maintenance or repairs or any other underground drops buried subsequent to the effective date of this Agreement, at a minimum depth of 12-18 inches. Prior to burying any drop that will cross the lot of a dwelling unit, the Operator, or its representative, shall make reasonable efforts to contact the occupant of the dwelling unit to discuss the location of the drop to be buried. The purpose of the discussion shall be for the Operator to work in good faith with the occupant of the dwelling unit to bury the drop in a location that will: (1) minimize the physical disruption to the lot of the dwelling unit; (2) minimize interference with the occupant's use of the lot; and (3) provide the Operator with a reasonable path for burying its drop. In the event that a Subscriber drop not buried a minimum of 12-18 inches is damaged, by the City or Colorado Springs Utilities because such does not meet the minimum depth requirements as set forth above, the Operator waives any claims against the City or Colorado Springs Utilities for reinstallation, repair, or as otherwise may be asserted by the Operator.

D. Parental Control Device. Upon request by any subscriber, and consistent with federal law, the Operator shall make available a parental control or lockout device to enable a Subscriber to control access to any or all channels. The Operator shall inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

E. Leased Access Channels. The Operator shall meet the leased access channel requirements imposed by federal law.

F. Broadcast Channels. To the extent required by federal law and this Agreement, Operator shall provide to all residential Subscribers the signals of:

1. Local commercial television stations and qualified low power stations; and
2. Qualified local noncommercial educational television stations.

G. Continuity of Service. It shall be the right of all Subscribers to continue to receive service from the Operator insofar as their financial and other obligations to the Operator are honored. Subject to the force majeure provisions of Section XXXVII of this Agreement, the Operator shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances.

H. Local Office. The Operator shall maintain one (1) local office in the City which shall be open Monday through Friday from 8:00 a.m. to 5:00 p.m. with extended evening hours of at least ten (10) hours per week, and shall be fully staffed with customer service representatives offering the following services to customers who come to the office: bill payment, equipment exchange, processing of change of service requests, and response to customer inquiries and requests. More stringent hours and days of operation may be imposed by the City.

I. Additional Construction Codes. Construction, installation and maintenance of the video system shall be performed in an orderly and workmanlike manner. All fibers and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple fiberoptic configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

The Operator shall at all times comply with all provisions of Applicable Law.

J. Construction Standards. The Operator shall comply with Applicable Law, including without limitation all City construction codes.

All construction practices shall be in accordance with all applicable sections of federal and state Occupational Safety and Health Acts and any amendments thereto as well as all State and local codes and standards where applicable. In addition, such construction shall comply with the Colorado Springs Utilities Facility Separation Standards.

Nothing herein authorizes the construction of a Headend, Antenna or Tower on City or SCETC property. Such related matters are subject to City Code and any lease to be negotiated between the parties.

Neither the Operator's plant and equipment, nor any work the Operator performs, shall endanger or interfere in any manner with the rights of any property owner, or hinder or obstruct pedestrian or vehicular traffic.

The Operator shall at all times employ professional care and shall install and maintain in use methods and devices to prevent failures and accidents which risk damage, injury or nuisance to the public.

In any event, the System shall not endanger or interfere with the safety of persons or property in the City or other areas where the Operator may have equipment located to serve the City.



The Operator shall abide by the City Code with respect to overlay excavations including, without limitation with regard to the following: Excavation shall be done in accordance with the City Code by the Operator which shall award its work as provided in the City Code with respect to excavations overlays and related construction and maintain established specifications on the depth of its excavations.

### **XIII. SYSTEM CONSTRUCTION**

A. The Operator shall submit a schedule for construction work. The Operator shall meet with the City and Colorado Springs Utilities to discuss its progress.

B. Construction Plans. The Operator shall provide to the City and the Colorado Springs Utilities work schedules depicting all key project dates for System installations, enhancements and upgrades. Work shall not commence until such times as design drawings are reviewed and approved by the City and Colorado Springs Utilities. Within thirty (30) days after the completion of construction, the Operator is to furnish the City and Colorado Springs Utilities with as-built drawings of the work completed. This requirement may be waived in instances where the work that is planned is deemed by the City and Colorado Springs Utilities to be minor in nature. Every effort shall be made by the Operator to coordinate work to be performed in the right-of-way with work to be performed in the same area of the right-of-way during the same approximate time by the City, Colorado Springs Utilities and with other video and cable operators. The Operator shall adhere to the construction schedule as submitted, within customary industry norms. The Operator shall update the City and Colorado Springs Utilities of the need to deviate from the planned project scope and/or work schedule. Such maps and related information shall be provided in an electronic format.

Operator shall provide construction drawings to be submitted to the City and Colorado Springs Utilities for review and approval along with electronic files.

The Operator agrees the City and Colorado Springs Utilities may use the drawings and other construction drawings it submits to update Colorado Springs Utilities' FIMS database and other facilities databases and records, and at a later date, Colorado Springs Utilities may have such data/records registered with the U.S. Copyright Office.

Upon agreement between the Operator and the City and Colorado Springs Utilities, the provisions set forth in this Subsection may be modified. In addition, the requirements under this Subsection may be changed by the City in the event the City adopts subsequent standards or requirements generally applicable to all users of the Right-of-Way.

C. Right of Inspections. The City shall have the right to inspect all construction and installation work performed subject to the provisions of this Agreement, and shall make such tests as it shall find necessary to ensure compliance with the terms of this Agreement and other pertinent provisions of the law; provided, however, that the City shall be permitted to charge the Operator its usual and customary fees of general applicability (if any) for the inspection of construction in the Right-of-Way; and provided, further, that such inspection and tests shall not interfere with the provision of Subscriber services.

#### **XIV. GENERAL PROVISIONS**

The following provisions shall be applicable to the Cable System as contemplated herein upon the effective date of this Agreement and shall be applicable throughout the life of this Agreement.

A. **Emergency Alert Capabilities.** In addition to other requirements herein, the Operator shall provide an Emergency Alert System which shall be operational at all times, and which shall comply with FCC Standards.

B. **Employee Identification.** The Operator shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, the Operator shall use its best efforts to clearly identify all personnel, vehicles, and other major equipment that are operating under the authority of the Operator.

C. **Services for the Disabled.** The Operator shall comply with the Americans With Disabilities Act, any amendments thereto, any other applicable federal or state laws or regulations.

D. **Programming Service.** In addition to the service requirements in this Agreement, the Operator agrees to provide programming responsive to the programming needs and interests of Subscribers in the City.

E. **Reporting.** In addition to the other reporting requirements provided herein, the Operator shall submit to the City, upon request, the following reports: (i) a report on trouble calls and service outages (no more than quarterly), (ii) proof of performance testing, (iii) a signal leakage or CLI test.

F. **Annexation by Municipality.** It is understood that the annexation by the City of areas presently in the unincorporated part of El Paso County and which may be served by the Operator shall be governed by the provisions of this Agreement.

#### **XV. EQUAL OPPORTUNITY**

The Operator shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, disability, national origin, age, ancestry or marital status.

#### **XVI. AGREEMENT RENEWAL**

The Operator shall pay the costs of any publication related to any renewal of this Agreement. The City and the Operator agree that any future proceedings undertaken by the City that relate to the renewal of this Agreement shall be governed by and comply with the provisions of Applicable Law.

In addition to the procedures set forth in the Cable Acts, the City agrees to notify the Operator of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as, the past performance of the Operator under the then current term of this Agreement. Notwithstanding anything to the contrary set forth herein, the Operator and the City agree that at any time during the then current term of this Agreement, while affording the public adequate notice and opportunity for comment, the City and the Operator may agree to undertake and finalize negotiations regarding renewal of the then current agreement and the City may grant a renewal thereof.

## **XVII. RIGHT TO PURCHASE THE SYSTEM**

In accordance with Section 10-80 of the Charter of the City of Colorado Springs, and subject to any rights Operator may have under Applicable Law, the City may purchase and take over the property of the Operator in whole or in part. No such action by the City under this provision shall occur except upon the City providing written notice thereof to the Operator of the City's intent to purchase and take over the property of the Operator in whole or in part. In the event that the City and the Operator are unable to agree upon a purchase price, determination of just compensation of the value of the Operator's property to be acquired shall be in accordance with Colorado Constitution and statutes authorizing municipalities to condemn as now existing or hereinafter amended and such other requirements as may be imposed by law. The inclusion of this paragraph in the Agreement does not constitute a waiver by the Operator of any rights that it may have, including rights to challenge any aspect of any attempt/effort the City might make to purchase or condemn the property of the Operator.

## **XVIII. FRANCHISE FEES 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 Rights-of-Way, Grantee shall pay the City an amount equal to three and one-half percent (3.5%) of Grantee's Gross Revenues as a Franchise Fee. The Franchise Fee shall be increased to four and one-half percent (4.5%) to be effective as of January 1, 2019, and shall be increased to five percent (5%) to be effective as of January 1, 2020. The Franchise Fee may be recovered from Subscribers by Grantee in accordance with Applicable Law.

### **B. Payments**

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

### **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 additional sums payable or for the performance of any other obligation of Operator.

D. Quarterly Franchise Fee Reports

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

E. Annual Franchise Fee Reports

Operator 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 Operator's records reasonably related to the administration or enforcement of this Franchise. Pursuant to Section I.T, as part of the Franchise Fee audit/review, the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Operator offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include at a minimum Operator's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City Subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Operator to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits), Operator shall pay the total cost of the audit/review, such cost not to exceed ten thousand dollars (\$10,000.00) for each year of the audit period. The City's right to audit/review and the Operator'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 thirty (30) days from the end of the calendar quarter, Operator 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, Operator 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 Operator remits the underpayment to the City.

#### I. Alternative Compensation

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

#### 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, by resolution of City Council, to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Operator to the City hereunder, provided that Operator has received at least ninety (90) days' prior written notice from the City of such amendment, and so long as all Cable Operators in the City are paying the same Franchise Fee amount commencing within ninety (90) days of the Effective Date of the increase for Operator.

#### K. Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise, including the funding required by Section IX.C, shall in any way modify or affect Operator's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Operator's Gross Revenues in any twelve (12) month period, Operator agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees unless the additional commitments are expressly exempted by this Franchise from this Section K.

#### L. Tax Liability

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

M. Financial Records

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

N. Payment on Termination

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

## **XIX. REGULATION, RATES, AND CHARGES**

A. The City and the Operator acknowledge that any rates and charges relating to the provision of Cable Services and equipment under this Agreement shall be governed by applicable federal, state and local laws and the rules and regulations of the FCC (as amended). In addition, the City may from time to time elect not to regulate the Operator's rates and charges, but any such election shall not waive the City's right to regulate in the future. The City and the Operator, in evaluating and resolving any matters which arise concerning rates and charges, will adhere to applicable laws and FCC rules and regulations.

B. All Operator rates and charges for Cable Services and equipment under this Agreement shall be published (in the form of a publicly-available rate card), made available to the public and shall be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. The Operator shall apply its rates in accordance with governing law and 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 geographic location in the Operator's Agreement Area. To the extent consistent with applicable law, nothing herein shall be construed to prohibit:

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

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

3. The offering of rate discounts or free service as provided in this Agreement or video service to governmental agencies, or educational institutions.

4. The offering of bulk discounts.

5. The offering of bundled services.

C. Upon request of the City, the Operator shall provide a complete schedule of current rates and charges for any and all leased access channels, or portions of such channels, provided by the Operator.

D. The Operator shall comply with all applicable federal laws regarding rates for Cable Services and all applicable federal laws covering issues of cross subsidization. The Operator reserves the right to charge Subscribers costs authorized by the Cable Acts and to itemize such legally authorized costs on Subscriber bills.

E. Late Fees

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

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

3. The Operator'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.

## **XX. CONSTRUCTION PROVISIONS**

A. The Operator shall not erect or authorize or permit others to erect any poles within the Right-of-Way for operation of its System without first obtaining approval of the City and Colorado Springs Utilities which may be granted or withheld in its sole and absolute discretion.

All poles of the Operator shall be erected between the sidewalk and the property line unless otherwise designated by the proper City authorities, and each pole shall be set whenever practicable at an extension lot line. The City or Colorado Springs Utilities shall have the right to require the Operator to change location of any pole, conduit, structure or other facility within the Streets or Public Utility Easements when in the opinion of the City or Colorado Springs Utilities the public convenience or the provision of utility services requires such change, and the expense thereof shall be paid by the Operator.

This Agreement does not confer any rights to attach to poles or other facilities owned by Colorado Springs Utilities or any other utility. The right to make such attachment and the terms, conditions and fees for such attachments shall be governed by a separate agreement with Colorado Springs Utilities or such other utility and by the City Charter, City Code and all applicable City ordinances as amended.

Nothing herein shall exempt the Operator from compliance with all Charter and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto.

B. Upon its receipt of reasonable advance notice, not to be less than fifteen (15) days, except in the event of an emergency, the Operator shall, at its own expense, protect, support, temporarily disconnect, relocate in the Right-of-Way, or remove from the Right-of-Way, any property of the Operator when lawfully required by the City or Colorado Springs Utilities by reason of traffic conditions, public safety, street abandonment or vacation, street construction, change or establishment of street grade, installation of City or Colorado Springs Utilities owned and operated sewers, drains, gas or water pipes, or electric facilities or any other type of structures or improvements owned or operated by the City or Colorado Springs Utilities. In the event the City or Colorado Springs Utilities determines that an emergency exists, the City or Colorado Springs Utilities may require compliance by the Operator with the provisions of this subsection B without advance notice. If an emergency exists and compliance is not undertaken by the Operator as required by the City or Colorado Springs Utilities, this subsection shall not be construed to prohibit such action by the City or Colorado Springs Utilities as permitted by law.

C. The Operator shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building, provided: (i) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Operator, making such payment in advance; and (ii) the Operator is given not less than five (5) business days advance written notice to arrange for such temporary wire changes.

D. Subject to the requirements imposed under the City Code the Operator shall have the authority to trim trees or other natural growth overhanging any of its System in the Service Area so as to prevent branches from coming in contact with the Operator's wires, cables, or other equipment. The Operator shall reasonably compensate the property owner for any damages caused by such trimming as provided by law or the City Code.



E. Minimum Interference. All transmission lines, equipment, and structures shall be installed, constructed, maintained and located so as to cause minimum interference with the rights and reasonable convenience of property owners and at all times be kept and maintained in a safe and adequate condition, and in good order and repair. The Operator shall, at all times, employ necessary and reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which would likely cause damage, injury or nuisance to the public or to facilities of the City, Colorado Springs Utilities or other public utilities. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any use of other public ways, places or parks other than a Right-of-Way shall require prior written approval by the City or Colorado Springs Utilities, as appropriate. The Operator shall have the right to continue to use all Right-of-Way and public ways currently occupied.

G. The Operator at its own cost and expense and in the manner approved by the City shall replace and restore all landscaping, paving, sidewalks, driveways, or the surface of any Right-of-Way or private property disturbed as may be reasonably required by the City. As required by the City shall mean as required by the City Code, resolution, or policy. If such replacing or restoration is not covered by a City Code, resolution, or policy, then such shall be as may be reasonably required by the City. Failure of the Operator to replace or restore such landscaping, paving, sidewalk, driveway, or the surface of any Right-of-Way or private property disturbed within the time required under any City Code, resolution, or policy or in the absence of any applicable City Code, resolution, or policy within seventy-two (72) hours (weather permitting) after notification by the City shall entitle the City to cause the proper replacing or restoration to be made at the Operator's expense. The Operator shall also be subject to any street cut fee.

H. As required by City ordinances, regulation or policies, no installation of any facility shall be performed or conducted within any of the Right-of-Way unless such plans have first been submitted to the City for design, review and approval by the City and Colorado Springs Utilities.

I. Upon any failure of the Operator to commence, pursue or complete any work required of it by law or by the provisions of this Agreement to be done in any Right-of-Way, the City, at its option, may cause such work to be done and the Operator shall pay to the City the cost thereof in the itemized amounts reported by the City to the Operator, within thirty (30) days after receipt of such itemized report.

J. Subject to applicable laws, regulations and ordinances of the City and the provisions of this Agreement, the Operator may perform all construction necessary for the operation of its System. All construction and maintenance of any and all facilities within Right-of-Way incident to the Operator's System shall, regardless of who performs the construction, be and remain the Operator's responsibility. The Operator shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities, within the Right-of-Way. The Operator shall pay all generally applicable fees upon issuance of the requisite construction permits by the City to the Operator.

K. Prior to beginning any construction, the Operator shall provide the City with a construction schedule for work in the Right-of-Way. Within thirty (30) days of when the Operator's construction of facilities in the Right-of-Way is completed, the Operator shall provide

the City with a map showing the location of the installed facility in the Right-of-Way, as built, in detail, excluding proprietary electronics. All as-builts shall be presented to the City in a GIS or other format acceptable to the City and Colorado Springs Utilities.

L. The Operator may make excavations in Right-of-Way for any facility needed for the maintenance or extension of the Operator's System. Prior to doing such work, the Operator shall apply for, and obtain, appropriate permits from the City, and give appropriate notices to City and the notification association established in Article 1.5 of Title 9 C.R.S. When obtaining a permit, the Operator shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, the Operator shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the City.

M. In the event that emergency repairs are necessary, the Operator shall immediately notify the City of the need for such repairs. The Operator may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency. The Operator shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permit or license fees.

N. Within forty-eight (48) hours after the City or Colorado Springs Utilities, or a licensee or permittee notifies the Operator of a proposed Right-of-Way excavation, the Operator shall, at the Operator's expense:

1. Mark on the surface all of its locatable underground facilities within the area of the proposed excavation;
2. Notify the excavator of any unlocatable underground facilities in the area of the proposed excavation; or
3. Notify the excavator that the Operator does not have any underground facilities in the vicinity of the proposed excavation.

O. If the Operator excavates the surface of any Right-of-Way, the Operator shall warrant the work performed within the Right-of-Way for two (2) years or such period of time as the City ordinances or regulations provide and be responsible for restoration of the Right-of-Way and surface in accordance with applicable ordinances and regulations in the area affected by the excavation. When any opening is made by the Operator in a hard surface pavement in any Right-of-Way, the Operator shall promptly refill the opening and restore the surface to a condition satisfactory to the City or Colorado Springs Utilities.

P. The Operator's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, drains, water pipes, electric and natural gas distribution facilities, or any other property of the City or Colorado Springs Utilities, or with any other pipes, wires, conduits, pedestals, structures, drainage or other facilities that may have been or are in the future laid in the Right-of-Way by, or under, the authority of the City or as otherwise authorized by law

or in connection with the franchise granted to the Pikes Peak Historical Street Railway Foundation to construct, operate and maintain a railway system in the City.

The Operator shall provide and use any equipment and appliances necessary to control and carry the Operator's signals so as to prevent injury to the City's property, the property of Colorado Springs Utilities, or property belonging to any person. The Operator shall maintain, repair, renew, change and improve its facilities in good repair, and safe and presentable condition.

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

R. Nothing in this Agreement shall prevent the City or Colorado Springs Utilities from constructing sewers; establishing grading, paving, repairing and/or altering any Right-of-Way; laying down, repairing or removing water mains; constructing, removing or repairing any electric or natural gas distribution facility; or constructing, removing, maintaining or repairing any communications or telecommunications facilities; or any other public work or improvement. All such work shall be done, insofar as reasonably practicable, so as not to obstruct, injure or prevent the use and operation of the Operator's System. However, if any of the Operator's System interferes with the construction, removal, maintaining or repair of any Right-of-Way or public improvement, as set forth above, the Operator's System shall be removed, relocated or replaced in the manner the City shall direct, and City and Colorado Springs Utilities shall in no event be liable for any damage to any portion of the Operator's System. Any such removal or replacement shall be at the expense of the Operator, except that the Operator may not be required to move its lines or facilities due to the placement of lines or facilities of a competitive cable system operator including any competitive cable system of the City or Colorado Springs Utilities without payment of the reasonable costs of such relocation. Should the Operator fail to remove, adjust or relocate its facilities by a reasonable date established by the City's written notice to the Operator, the City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by the Operator, including all reasonable costs and expenses incurred by the City or Colorado Springs Utilities due to the Operator's delay.

S. If any Right-of-Way or portion thereof used by the Operator is vacated or conveyed by the City during the term of this Agreement, unless the City specifically reserves to the Operator the right to continue its installation in the vacated Right-of-Way, the Operator shall, without delay or expense to the City, remove its facilities from such Right-of-Way, and restore, repair or reconstruct the Right-of-Way where such removal has occurred, and place the Right-of-Way in such condition as may be required by the City or Colorado Springs Utilities. In the event of failure, neglect or refusal of the Operator, after thirty (30) days notice by the City or Colorado Springs Utilities, to restore, repair or reconstruct such Right-of-Way, the City or Colorado Springs Utilities may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by City or Colorado Springs Utilities, shall be paid by the Operator within thirty (30) days of

receipt of invoice and documentation, and failure to make such payment shall be considered a material breach of this Agreement.

The Operator shall comply with all applicable state and federal laws, statutes, regulations and orders concerning hazardous substances relating to the System in the Streets.

The Operator shall maintain and inspect its System located in the Right-of-Way . Upon reasonable notice to the Operator, the City may inspect the Operator's facilities in the Right-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to the System. In removing or modifying the Operator's facilities as provided in this Agreement, the Operator shall also remove all residue of hazardous substances related thereto.

The Operator agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City and Colorado Springs Utilities arising out of a release of hazardous substances caused by the System in the Right-of-Way.

## **XXI. ADDITIONAL DESIGN AND CONSTRUCTION REQUIREMENTS**

A. System Design. The Operator shall submit to the City and Colorado Springs Utilities prior to construction, any construction drawings, design plans, and specifications for review on all projects; provided that plans need not contain proprietary electronic information.

B. Undergrounding of Multiple-Dwelling Units. In cases of single site multiple-dwelling units, the Operator shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and dwelling unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the multiple-dwelling units.

C. Rights-of-Way Occupancy.

1. In any case where the Operator has the required written permission from City not to underground its System facilities, the Operator shall enter agreements to utilize existing poles, conduits and other facilities whenever possible and economically feasible, and may not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of the City is obtained as provided in this Agreement.

2. The Operator shall:

a. Locate and install all transmission and distribution lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;

b. Keep and maintain all transmission and distribution lines, equipment and structures in a safe, adequate and substantial condition, and in good order and repair;

c. Employ professional care and install and maintain methods and devices for preventing failures and accidents that are likely to cause damage, injuries or nuisances to the public;

d. Use suitable barricades, flags, lights, flares or other devices as necessary for the safety of all members of the public;

e. Place any poles or other fixtures in any Right-of-Way in such manner as not to interfere with the usual travel of the right-of-way or cause unsafe conditions of any sort;

f. Before beginning any excavation or other construction activity on a Right-of-Way or easement which crosses or abuts any private property, the Operator shall clearly mark and delineate with flags, stakes or non-polluting water-soluble spray paint the boundaries of that Right-of-Way or easement where it abuts or crosses the private property; and

g. The Operator shall locate, mark and map any of its installed System at no expense to City. The Operator shall install the underground portion of its System with appropriate technology so as to be able to receive accurate information identifying the location of damaged underground facilities when such damage occurs.

D. Removal of Facilities. On receipt of written notice, the Operator at its own expense shall:

1. As provided in this Agreement, protect, support, temporarily disconnect, relocate or remove any of its property as necessary because of traffic conditions, public safety, street vacation or street grade, separation or realignment, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other type of structure or improvements; and

2. Nothing described in this Agreement shall be considered a taking of the property of the Operator and the Operator is not entitled to additional compensation because of these actions.

E. Stop Work.

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

2. The stop work order shall be:

a. In writing;

b. Given to the individual doing the work, or posted on the work site;

and

c. Sent to the Operator by overnight or hand delivery at the address given herein; and may:

(1) Indicate the nature of the alleged violation or unsafe condition, and

(2) Establish conditions under which work may be commenced or continued.

Any act or omission of any contractor of the Operator which violates any provision of this Agreement shall be considered an act or omission of the Operator for the purposes of this Agreement.

F. Private Property. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the Operator shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed, provided that in the case of construction operations, such notice as provided in this Agreement shall be delivered or provided at least two (2) days prior to entry. If any damage is caused by any Operator activity or omission, the Operator shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace the damaged property. For major construction involving excavation, property owners shall also be notified by mail at least five (5) days in advance. In the case of an emergency (as defined above), the Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law.

## **XXII. FINANCIAL, INSURANCE AND INDEMNIFICATION PROVISIONS**

### **A. Indemnification**

1. General Indemnification. Operator 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 Operator, its agents, or its employees, or by reason of any neglect or omission of Operator. Operator shall consult and cooperate with the City while conducting its defense of the City. Operator shall not be obligated to indemnify the City to the extent of the City's negligence or willful misconduct.

2. Indemnification for Relocation. Operator 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, Operator's failure to remove, adjust or

relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City.

3. Additional Circumstances. Operator 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 Operator 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 Operator, which defense shall be at Operator's expense. The City may participate in the defense of a claim, but if Operator provides a defense at Operator's expense then Operator shall not be liable for any attorneys' fees, expenses or other costs the City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in subsection A.6 is required. In that event, the provisions of subsection A.6 shall govern Operator's responsibility for City's attorney's fees, expenses or other costs. In any event, Operator may not agree to any settlement of claims affecting the City without the City's approval.

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

6. Expenses. If separate representation is or becomes necessary to fully protect the interests of both parties, such as a conflict of interest between the City and the counsel selected by Operator to represent the City, Operator shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Operator. Provided, however, that in the event that such separate representation is or becomes necessary, and City desires to hire counsel or any other outside experts or consultants and desires Operator to pay those expenses, then City shall be required to obtain Operator'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 Operator.

## B. Insurance

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

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

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 or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Operator shall provide a replacement policy. Operator 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 / Certificate of Insurance

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

1. Endorsements.

a. All policies shall contain or shall be endorsed so that:

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

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



(3) Operator'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.

2. Acceptability of Insurers. The insurance obtained by Operator shall be placed with insurers with a Best's rating of no less than "A VII."

3. Verification of Coverage. The Operator shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

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

D. Letter of Credit

1. If there is a claim by the City of an uncured breach by Operator 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 Operator shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Operator of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of fifty thousand dollars (\$50,000.00).

2. In the event that Operator establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at fifty thousand dollars (\$50,000.00) until the allegations of the uncured breach have been resolved.

3. After completion of the procedures set forth in Section 13.1 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 Operator 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 Operator;

c. Monetary remedies or damages assessed against Operator 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 Operator written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Operator shall restore the letter of credit to the amount required under this Franchise.

5. Operator shall have the right to appeal to the City Council for reimbursement in the event Operator believes that the letter of credit was drawn upon improperly. Operator shall also have the right of judicial appeal if Operator 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 Operator with interest from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

### **XXIII. LIQUIDATED DAMAGES**

A. Subject to the notice and cure requirements referred to in Subsection B of this Section, the City shall be authorized to withdraw from the Letter of Credit required by Section XXIII of this Agreement the following amounts as liquidated damages in the event of the failure of the Operator to perform faithfully the following requirements of this Agreement.

1. Failure to continuously operate the System as required hereunder - the sum of Five Hundred Dollars (\$500.00) per day;

2. Failure to provide the Access channels, equipment or facilities required hereunder - the sum of Two Hundred Dollars (\$200.00) per day;

3. Failure to test the system or failure to provide or maintain data or reports thereof as required hereunder - the sum of One Hundred Dollars (\$100.00) per day;

4. Failure to comply with Customer Service as attached hereto and as may be amended by the City, operation or maintenance standards following the City's resolution to undertake action - the sum of Two Hundred Dollars (\$200.00) per day;

5. Failure to provide any other report as required hereunder - the sum of One Hundred Dollars (\$100.00) per day;

6. Failure to comply with any other material provision of this Agreement – the sum of One Hundred Dollars (\$100.00) per day.

The amount of liquidated damages provided above shall be adjusted annually on the anniversary of the effective date of this Agreement by a percentage equal to the increase, if any, during the preceding twelve months in the Consumer Price Index, all Urban customers (CPI-U) for the Denver, Colorado Metropolitan area, published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index.

The City and the Operator recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of the Operator's breach of this Agreement. Accordingly, instead of requiring such proof, the City and the Operator agree that the Operator shall pay to the City the sums set forth above for each day that the Operator shall be in breach of the specific provisions of this Agreement, described in numbers 1 through 6 inclusive, above. Such amounts are agreed to be a reasonable estimate of the actual damages the City would suffer in the event of the Operator's breach of such provisions of this Agreement, and are not intended as a penalty.

B. Notwithstanding anything contained herein to the contrary, the City may not collect liquidated damages as provided herein until the City has given notice of default as provided in Section XXV and the Operator has failed to cure such default within the applicable cure period. In the event the Operator shall fail to cure the default, liquidated damages shall be payable from the date written notice is received by the Operator.

C. The Subscriber rates and charges imposed by the Operator shall not be affected either directly or indirectly by reason of any payments the Operator may be required to make pursuant to this Section XXIV or Section XXV.

#### **XXIV. DEFAULT**

A. An event of default shall include but not be limited to a situation whereby the Operator shall either:

1. fail to construct the System as hereinbefore and hereinafter provided;
2. fail to substantially perform any of the material terms, covenants or agreements to be kept, done or performed by the Operator under the terms of this Agreement, or practice any fraud or deceit upon the System Subscribers or the City;
3. fail to maintain a conveniently located business office;
4. abandon the System, or terminate the System's operations without first requesting modification of franchise obligations as defined under 47 USC Section 545;
5. fail to restore service to the System after three (3) consecutive days of an outage or interruption in service except when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the System;
6. have made a material misrepresentation of fact in the application, proposal or during the negotiations related to the granting of this Agreement;
7. in the event the Operator fails to operate the system for seven (7) consecutive days without prior approval of the City or without just cause;

8. the Operator becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, or all or part of the Operator's System are sold under an instrument to secure a debt and are not redeemed by Operator within thirty (30) days from said sale; or

9. the appointment of a receiver or trustee to take over and conduct the business of the Operator 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 Agreement and have remedied all defaults under this Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

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

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

2. The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Agreement.

C. In the event of default, the City shall notify the Operator in writing of the nature of such default. Within thirty (30) days following receipt of such notice, the Operator shall correct such default; or, in the event of a default not capable of being corrected within thirty (30) days, the Operator shall commence correcting the default within thirty (30) days of receipt of notification thereof and thereafter correct the default with due diligence or may request a hearing as provided in Section XXVII. The Operator may contest such allegation of default by written notice to the City, and in the event of a dispute as to whether a default has occurred, the parties shall meet and attempt to arrive at a settlement of the dispute before either party may attempt to enforce the remedies referred to in this Agreement.

D. If, after the public hearing, the City determines that a default still exists, the City shall order the Operator 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 the Operator does not cure within such timeframe to the City's reasonable satisfaction, the City may:

1. Withdraw an amount from the Letter of Credit as monetary damages; or

2. Revoke this Agreement; and

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

E. The assessment does not constitute a waiver by the City of any other right or remedy it may have under this Agreement or applicable law including its right to recover from the Operator any additional damages, losses, costs and expenses that are incurred by the City by reason of the breach of this Agreement. The City shall hear any persons interested in the revocation, and shall allow the Operator, in particular, an opportunity to state its position on the matter. Within ninety (90) days after the hearing, City shall determine whether to revoke the Agreement and declare that the Agreement is revoked and the Letter of Credit forfeited; or if the breach at issue is capable of being cured by the Operator, direct the Operator to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City determines are reasonable under the circumstances. The City may at its sole discretion take any lawful action which it deems appropriate to enforce City's rights under the Agreement in addition to revocation of the Agreement.

F. Additionally, the Operator acknowledges and agrees that the obligations referred to herein as they pertain to the SCETC or educational access, facilities, equipment services or receipt of monetary payments and other amounts are material obligations of this Agreement. If the Operator fails to correct a default as provided in this Agreement, and if the default is one for which liquidated damages have been provided in Section XXV, the City shall have the right without further notice to withdraw such funds from the Letter of Credit and seek to collect on the performance bond as shall be required to pay the liquidated damages. If the default is not one for which liquidated damages have been provided, the City shall have the right to recover such damages as shall be entitled by law.

G. The City may seek legal and equitable relief to enforce the provisions of this Agreement, and to recover any damages not covered by the Letter of Credit or any bond.

H. Nothing herein contained shall limit or restrict any legal rights that the City may have arising from a default in the performance of the terms, conditions and covenants of this Agreement by the Operator.

## **XXV. TERMINATION**

A. In addition to all other rights and powers retained by the City under this Agreement, the City reserves the right to terminate this Agreement, and the Operator's rights hereunder, in the event the Cable Operator defaults in the substantial performance of any material term, covenant or agreement of this Agreement specified in Section XXV, and fails to cure such default.

B. Before the City may terminate this Agreement and the Operator's rights hereunder, the City conduct a public hearing, at which time the Operator shall be given an opportunity to present evidence and argument in opposition to the forfeiture or termination of this Agreement.

The Operator shall be provided with not less than thirty (30) days' notice prior to such public hearing.

C. If this Agreement expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law allow the Operator to maintain and operate its Video System on a month-to-month basis unless Operator demonstrates to City's satisfaction that it needs additional time to complete a sale.

D. In the event that a sale has not been completed in accordance with Subsection C above, the City may order the removal of the above-ground system facilities and such underground facilities as required by the City in order to achieve reasonable engineering or Street use purposes, from the Agreement Area at the Operator's sole expense within a reasonable period of time as determined by the City. The indemnification and insurance provisions and the Letter of Credit shall remain in full force and effect during the period of removal.

## **XXVI. DISCONTINUANCE OF SERVICE OVER THE CABLE SYSTEM**

To the extent that it is not utilizing its Cable System infrastructure for the lawful provision of any other communications service;

A. The Operator shall promptly remove from the Rights-of-Way where its properties are located all or any part of its facilities so located when one or more of the following enumerated conditions occurs:

1. The Operator ceases to operate its System for a continuous period of seven (7) days from the date of said occurrence;
2. This Agreement is terminated or revoked as provided in this Agreement; or
3. Upon the non-renewal of this Agreement, including the exhaustion of any rights of appeal.

B. The City is authorized to enforce the provisions of this Section as provided herein:

1. City shall notify the Operator in writing of any occurrence provided for in Section A above. Within one hundred eighty (180) days following receipt of said notice, the Operator shall remove from the Rights-of-Way upon, over and under which its properties are located all of said properties except for underground direct burial cable and unless otherwise authorized and permitted by the City or as otherwise provided for in this Section XXVII.

2. If the Operator has failed to remove its property or not made a reasonable effort to remove same, then in that event, the City may cause the same to be removed and the cost of same shall be recovered from the Operator either by legal process or applying the cost toward the Letter of Credit deposited with the City and any deficiency may be collected through a legal action in a court of competent jurisdiction.

C. Any property abandoned by the Operator shall become the property of the City, and the Operator agrees to execute and deliver an instrument in writing transferring its ownership interest in any such property to the City. Any notice given the Operator by the City as provided in this Section shall be deemed notice to any other person claiming interest in said property of the Operator and said persons shall be subject to all the provisions provided herein.

D. All removals under this Section are to be done at the expense of the Operator.

E. In addition to the foregoing, at the expiration of the term for which this Agreement has been granted, or upon its termination or revocation as provided herein, the Operator shall forthwith, upon notice by the City, remove at the Operator's own expense all portions designated by the City of the System (except for direct burial cable) from all Right-of-Way within the City, and shall restore said Right-of-Way to their former condition; provided however, the Operator shall have the right to sell its physical plant, subject to City approval in which case said plant need not be removed. Any property of the Operator remaining in place one hundred eighty (180) days after the expiration, termination or revocation of this Agreement shall be considered permanently abandoned and may become the property of the City at the City's discretions as provided herein, and may be used for public, governmental or any other educational purposes.

F. When service to any Subscriber is terminated, the Operator shall comply with all rules and regulations of the FCC concerning ownership and removal of wiring.

## **XXVII. TRANSFER OF OWNERSHIP OR CONTROL**

A. The Cable System and this Agreement shall not be sold, assigned (excluding granting a security interest therein), transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, partnership, joint venture, 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.

B. In this Section, the following words have the meanings indicated:

1. "Control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised.

2. "Proposed Transferee" means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the Agreement or the Operator.

C. The Operator shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the Agreement or any of the rights or privileges herein granted, without the prior written consent of the City. The consent required by the City may not be unreasonably withheld, but may be conditioned upon the financial, legal and technical ability of the proposed assignee or transferee and as set forth in Subsection E herein.

D. Every change, transfer or acquisition of control of the Operator shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto. For the purpose of determining whether it should consent to change, transfer or acquisition of control, the City may inquire into the qualifications of the proposed transferee.

E. For purposes of determining whether it should consent to any proposed transaction under either Subsection C. or D. above, the City may also inquire into compliance issues under the Agreement, except that, in lieu of consideration of compliance issues, the Cable Operator, and any Person that proposes to acquire the Agreement or control of the Operator may acknowledge in writing that, by consenting to any proposed transaction, the City will not waive or otherwise adversely affect any right it may have with respect to any Agreement compliance issue.

F. The Process for Operator to seek consent to any transaction for which it must obtain City consent is as follows:

1. 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.

2. The City shall render a final written decision on the request within one hundred twenty (120) days of the request and receipt by the City of all required and requested information.

3. If the City fails to render a final decision on the request within such one hundred twenty (120) days (as provided in Subsection 2 above), such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

4. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, the Operator shall file with the City a written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by the Operator and the transferee shall file its sworn acceptance and agreement to abide by each and every provision of this Agreement.

G. In seeking the City's consent to any change in ownership or control, the Operator shall require the proposed transferee to provide information to the City, indicating whether it:

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

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

3. Is financially solvent by submitting the financial data including financial statements that are audited by a certified public accountant who may also be an officer of the proposed assignee or transferee along with any other data that the City may reasonably require; or



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

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

H. The consent or approval of the City to any transfer by the Operator does not constitute a waiver or release of the rights of the City in or to its Rights-of-Way and any transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement.

I. A sale, transfer or assignment of the Agreement may not be approved without the successor in interest becoming a signatory to this Agreement.

J. Notwithstanding anything contained in this Agreement, the Operator may pledge the assets of the System for the purpose of financing; provided that such pledge of assets shall not impair the Operator's or mitigate the Operator's responsibility and capability to meet all its obligations under the provisions of this Agreement.

K. Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, the Operator shall notify the City of such fact and such notification or the occurrence of such event shall be treated as a notification that a change in control of this Agreement has taken place and such change in control is subject to the consent of the City.

L. The City may condition said transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee.

## **XXVIII. PERIODIC REEVALUATION**

A. Since the field of video and electronic communications is rapidly evolving and many technological, regulatory, financial, marketing, legal, competitive, and other changes are likely to occur during the term of this Agreement, a degree of flexibility is needed in order to achieve and maintain a video and electronic communications system that adequately serves the public interest. To this end, it shall be the policy of the City to amend this Agreement upon application of the Operator when necessary to enable the Operator to take advantage of advancements in the State-of-the-Art which will afford it an opportunity to more effectively, efficiently or economically serve its Subscribers; provided, however, such amendments must be acceptable to the City in its sole and absolute discretion. Subject to applicable law, this Agreement may be amended in writing signed by both the City and Operator at any time in order to conform with the applicable federal law and FCC rules and regulations after notice and public hearing.

B. The City may reevaluate the Operator's Cable Service and operations two (2) years following the award date of this Agreement and every two (2) years thereafter for the life of this Agreement.

C. All regular evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Agreement Area. The Operator shall notify its subscribers of all regular and special evaluation sessions by announcement on at least one channel of its System between the hours of 7:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

D. The City and the Operator may meet at other times to discuss and negotiate changes to this Agreement which are mutually agreed upon by both parties.

E. Topics which may be discussed at any evaluation session may include, but are not limited to, service rate structures, liquidated damages, free or discounted services, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to this Agreement, judicial and FCC rulings, line extension policies, and City or the Operator's rules; provided that nothing in this Section shall be construed as requiring the renegotiation of this Agreement.

F. During any review and evaluation session, the Operator shall cooperate with the City and shall provide without cost such reasonable and relevant information as the City may request.

## **XXIX. COOPERATION**

The parties recognize that it is in their mutual best interests for the Cable System to be operated as efficiently as possible, and for construction of the System to occur in accordance with the requirements set forth in this Agreement. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Agreement.

## **XXX. WAIVER**

The failure of the City at any time to require performance by the Operator of any provision hereof shall in no way affect the right of the City hereafter to enforce the same or the rights and remedies provided to the City in this Agreement, by law and in equity. Nor shall the waiver by the City of any breach of any provision hereof or the failure of the City to require or enforce prompt compliance 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. The Operator is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of the City to enforce prompt compliance. The Operator's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to prevent any subsequent enforcement of such provision or any other provision in this Agreement.

## **XXXI. BOOKS AND RECORDS**

A. Open Records. The City shall have access to, and the right to inspect, any books and records of the Operator, its parent companies and affiliated entities which are reasonably necessary for the City's administration or enforcement of the terms of this Agreement. The

Operator shall not deny the City access to any of the Operator's records on the basis that the Operator's records are under the control of any parent company, affiliated entity or a third party. The City may, in writing, request copies of any such records or books and the Operator 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 Section shall be furnished to the City at the sole expense of the Operator. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Operator may request, in writing within ten (10) days, that the City inspect them at the Operator's local offices. If any books or records of the Operator are not kept in a local metro 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 to the performance of any of the City's duties, administration or enforcement of this Agreement, then all reasonable travel and maintenance expense(s) incurred in making such examination shall be paid by the Operator.

B. Confidentiality. The City agrees to treat as confidential any books/or records that constitute confidential commercial, financial or proprietary information under applicable federal or state law, to the extent the Operator makes the City aware of such confidentiality and to the extent that the City concludes that such information comes within an exception to nondisclosure under applicable federal or state law. The Operator shall be responsible for clearly and conspicuously stamping the work "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise the Operator in advance so that the Operator may take appropriate steps to protect its interests. If the City receives a demand from any person for disclosure of any information designated by the Operator as confidential, the City shall, so far as consistent with Applicable Law, advise the Operator and provide the Operator with a copy of any written request by the party demanding access to such information within a reasonable time. The City agrees that, to the extent permitted by Applicable Law, it shall deny access to any of the Operator's books and records marked confidential as set forth above to any person, provided that the Operator shall indemnify the City for any of the City's losses, costs, damages, attorney fees, or other expenses in connection therewith. The information required to be submitted under Section XIII, Subsection B, "Construction Plans" shall not be treated as confidential under this Subsection.

C. Records Required. The Operator shall at all times maintain:

1. A full and complete set of plans, records, and as built maps showing the exact location of all System equipment installed or in use in the Agreement Area within thirty (30) days after such installation or use exclusive of electronics, Subscriber service drops and equipment provided in Subscribers' homes. This information shall be available to the City and to the Colorado Springs Utilities.
2. A copy of all FCC filings on behalf of the Operator, its parent companies or affiliates which are material to the operation of the System;
3. All Subscriber records and information;

4. A summary of the prior year's activities, including services added or dropped, changes, number of Subscribers added or terminated, all construction activity, and total homes passed;

5. A list of company services, rates, and channel lineups;

6. A statistical compilation of customer or Subscriber complaints, action taken and resolution, if any, and a log of service calls which shall be submitted quarterly to the City within thirty (30) days after the close of each quarter of the year.

Provided, however, that the information specified in Subsections 3, 4, 5 and 6 need only to be maintained for one (1) year from the date it is created.

D. Annual Reports. Within ninety (90) days after the close of the Operator's fiscal year, the Operator shall submit to the City a written annual report, in a form acceptable to the City, which shall include the following information for the franchise area:

1. A revenue statement, certified by an officer of the Operator;

2. A summary of the previous year's activities in development of the Video System, including, but not limited to, services begun or discontinued during the reporting year, and the number of Subscribers for each class of service (i.e., basic, expanded basic, or premium);

3. A statement of planned construction, if any, for the next year.

E. Plant Survey Report. At the City's request, the Operator shall submit to the City an annual plant survey report which shall be provided in conformity with FCC technical standards. The City shall be provided the ability to inspect "as built" maps, upon request.

F. Copies of Federal and State Reports. The Operator shall submit to the City, upon request, copies of all pleadings, applications, notifications, communications, and documents of any kind, submitted by the Operator or its parent corporation(s), to any federal, state, or local courts, regulatory agencies and other government bodies if such documents specifically relate to the operations of the Operator's System within the Agreement Area; provided, however, they shall be limited to those items which do not violate Subscriber rights of privacy under the Cable Acts. The Operator shall submit such documents to the City no later than thirty (30) days after receipt of a request. The Operator shall not claim confidential, privileged, or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. Any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the City and its authorized agents and shall not be made available for public inspection unless otherwise provided by law.

G. Complaint File and Reports.

1. The Operator shall keep an accurate and comprehensive file of any and all complaints regarding the technical service of the System, and any other written complaints, in a manner consistent with the privacy rights of Subscribers, and the Operator's actions in response to those complaints.

2. A summary of service requests for any specific month or quarter within a given year, identifying the number and nature of the requests and their disposition, shall be provided upon request to the City within thirty (30) days of the Operator's receipt of the request.

3. A log of all service interruptions shall be maintained and provided to the City quarterly.

H. **Inspection of Facilities.** The City may inspect any of the Operator's facilities and equipment at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice.

I. **False Statements.** Any intentional false statement or representation in any report required by this Agreement may be deemed a material breach of this Agreement and may subject the Operator to all remedies, legal and equitable which are available to the City under this Agreement or otherwise provided by law.

The Operator agrees that the City may upon fifteen (15) days written request review (at a location within the City) such of its books and records, during normal business hours and on a non-disruptive basis, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Operator pursuant to the rules and regulations of the FCC. The Operator shall maintain sufficient books and records in the City of customer service, customer complaints and billings.

## **XXXII. CUMULATIVE RIGHTS**

The City reserves all regulatory authority arising from any provisions Applicable Law.

The rights and remedies reserved to the City by this Agreement are cumulative and shall be in addition to and not in derogation of any other legal or equitable rights or remedies which the City may have with respect to the subject matter of this Agreement, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time. This provision shall be construed in a manner consistent with the doctrine of election of remedies.

## **XXXIII. COMPLIANCE WITH APPLICABLE LAW**

The Operator, its contractors, employees, and agents shall comply with all Applicable Laws.

## **XXXIV. NOTICES**

Every notice or response to be served upon the City or the Operator shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid.

The notices or responses to the City shall be addressed as follows:

The City of Colorado Springs, Colorado  
Attention: \_\_\_\_\_  
107 North 30 South Nevada Avenue, Suite 101  
Colorado Springs, CO 80901

With a copy to: City of Colorado Springs  
Attention: City Attorney  
30 South Nevada Avenue, Suite 501  
Colorado Springs, CO 80901

The notices or responses to the Operator shall be addressed as follows:

Falcon Broadband, Inc.  
General Manager  
555 Hathaway Dr.  
Colorado Springs, CO 80915

The City and the Operator may designate such other new or changed address or addresses from time to time by giving notice to the other.

#### **XXXV. CAPTIONS**

The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

#### **XXXVI. FORCE MAJEURE**

The Operator shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by reasons of Force Majeure.

However, in the event that the Operator is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond the reasonable control of the Operator such as acts of God, floods, fires, hurricanes, tornadoes, earthquakes, or other unavoidable casualty, acts of public enemy, insurrection, war, riot, sabotage, vandalism, epidemic, or unusually severe weather conditions, litigation brought by third parties that prevents Operator from

performance of this Agreement or shortages of materials or qualified labor which are not reasonably foreseeable, the Operator shall have a reasonable time, under the circumstances to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the City. The same force majeure exception shall apply to the City with regard to any of its obligations under this Agreement.

#### **XXXVII. CONSTRUCTION OF AGREEMENT**

Except as otherwise provided for herein, this Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Colorado (as amended), the Cable Acts as amended, any applicable rules, regulations, and orders of the FCC and any other Applicable Laws (as such now exist, are later amended or subsequently adopted).

#### **XXXVIII. 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.

#### **XXXIX. ENTIRE AGREEMENT**

This Agreement and all attachments and Exhibits represent the entire understanding and agreement between the City and Operator with respect to the subject matter hereof and supersede all prior oral negotiations between the City and Operator.

#### **XL. SEVERABILITY**

If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, unconstitutional or unenforceable, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of this Agreement. In this regard, the Operator specifically agrees that it will not challenge the City's authority to enter into this Agreement with its terms and provisions set forth herein as of the effective date hereof.

#### **XLI. BILL INSERTS**

Four (4) times a year, the City may provide the Operator at no extra cost to the Operator with an insert to be mailed with the Subscribers' bills for service. At all times throughout this Agreement, the Operator shall make available two (2) lines on each of its bills for messages to be included by the City.

#### **XLII. CUSTOMER SERVICE STANDARDS**







## **EXHIBIT A**

### **CUSTOMER SERVICE STANDARDS**

#### **I. POLICY**

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application, and are expected to be met under Normal Operating Conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supersede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the City of Colorado Springs.

#### **II. DEFINITIONS**

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Affiliate" shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

“Applicable Law” means, with respect to these standards and any Cable Operator’s privacy policies, 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.

"Cable Operator" shall mean any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. Source: 47 U.S.C. § 522(5).

“Cable Service” shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). “Other programming service” is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

“Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

"City" shall mean the City of Colorado Springs, Colorado.

“Contractor” shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

“Escalated complaint” shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

"Franchising Authority" shall mean the City of Colorado Springs.

"Necessary" shall mean required or indispensable.

"Non-cable-related purpose" shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a Cable Service or Other Service provided by a Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products that are not related to a Cable Service or Other Service provided by a Cable Operator to a Customer shall be considered Non-cable-related purposes.

"Normal Business Hours" shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, "Normal Business Hours" must include at least some evening hours one night per week, and include some weekend hours. Source: 47 C.F.R. § 76.309.

"Normal Operating Conditions" shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

"Other Service(s)" shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information. "Personally Identifiable Information" shall not mean any aggregate information about Customers which does not identify particular persons, or information gathered by a Cable Operator necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

"Service interruption" or "interruption" shall mean the loss or substantial impairment of picture and/or sound on one or more cable television channels.

"Service outage" or "outage" shall mean a loss or substantial impairment in reception on all channels.

"Subcontractor" shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

"Writing" or "written" as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

### **III. CUSTOMER SERVICE**

#### **A. Courtesy**

Cable Operator employees, Contractors and Subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

#### **B. Accessibility**

1. A Cable Operator shall provide customer service centers/business offices (“Service Centers”) which are conveniently located, and which are open during Normal Business Hours. For purposes of these Standards, conveniently located means within the Operator’s Service Area or within El Paso County so long as no Subscriber is more than fifteen (15) miles away from such Service Center. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and requests.

Unless otherwise requested by the City, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.

The Cable Operator shall use commercially reasonable efforts to implement and promote “self-help” tools and technology in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer’s own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology MAY include providing self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer’s residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the Customer's address if the equipment has not been damaged in any manner due to the fault or negligence of the Customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the Customer with various menu options to address the Customer's concern, the recorded message must provide the Customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient CSRs and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a CSR within thirty (30) seconds or less from the time a Customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message leads to a direct connection with a CSR. Under Normal Operating Conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90%) percent of the time measured quarterly.

5. Under Normal Operating Conditions, a Customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90%) percent or more of the time, measured quarterly.

### **C. Responsiveness**

#### **1. Guaranteed Seven-Day Residential Installation**

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by Customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty-five (125) feet from the existing distribution system. If the Customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the Customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the Customer.

#### **2. Residential Installation and Service Appointments**

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., five (5) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of Customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the Cable Operator must arrive at the Customer's location.

b. A Cable Operator may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment, unless the Customer's issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the customer, within Normal Business Hours or as may be otherwise agreed to between the Customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the Customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the Customer within forty-eight (48) hours.

### 3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within (two) 2 hours after the third ( 3<sup>rd</sup>) Customer call is received.

b. All other Service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

#### c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the cable System or its operation of the Cable System, in a manner consistent with the privacy rights of customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during Normal Business Hours at the Cable Operator's business office, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. Upon written request a Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning Customer complaints referred by the Franchising Authority to the Operator and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required.

iii. Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each quarter and submitted to the Franchising Authority by the fifteenth (15th) day of the month after each calendar quarter. Once a request is made, it need not be repeated and quarterly summaries of service requests shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required. Complaints shall be broken out by the nature of the complaint and the type of Cable Service subject to the complaint.

d. Records of Service Interruptions and Outages. A Cable Operator shall maintain records of all outages and reported Service interruptions. Such records shall indicate the type of Cable Service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly, upon written request, within fifteen (15) days after the end of each quarter. Such records shall be submitted to the Franchising Authority with the records identified in Section 3.c.ii above if so requested in Writing and shall be retained by the Cable Operator for a period of three (3) years.

e. All Cable Service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

#### 4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a Customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

- i. Assess the problem within one (1) day of notification;
- ii. Communicate with the Customer regarding the nature of the problem and the expected time for repair;
- iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in Section III.C.2.a. At the Customer's request, the



Cable Operator shall repair the problem at a later time convenient to the Customer, during Normal Business Hours or at such other time as may be agreed to by the Customer and Cable Operator. A Cable Operator shall maintain periodic communications with a Customer during the time period in which problem ascertainment and repair are ongoing, so that the Customer is advised of the status of the Cable Operator's efforts to address the problem.

#### 5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the CSR shall be referred to the appropriate supervisor who shall contact the customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the Customer and the Cable Operator.

#### 6. Billing, Credits, and Refunds

a. In addition to other options for payment of a Customer's service bill, a Cable Operator shall make available a telephone or online payment option where a Customer without account irregularities can enter payment information through an automated system without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a Customer's service bill for that period. If a Customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the Customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with Applicable Law. If the Customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the Customer's service. If a Customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the Customer's service, provided it has provided two (2) weeks' notice to the Customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a Customer within 30 days after determining the Customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

#### 7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any private property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100%) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, "reasonable notice" shall be considered:

i. For pedestal installation or similar major construction, seven (7) days.

ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### **D. Services for Customers with Disabilities**

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at customers' homes at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.

2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that is in compliance with the Americans With Disabilities Act and other Applicable Law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired Customer at no charge.

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) Customers.

4. Any Customer with a disability may request the special services described above by providing a Cable Operator with a letter from the Customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician where the need for the special services can be visually confirmed.

#### **E. Cable Services Information**

1. At any time a customer or prospective customer may request, a Cable Operator shall provide the following information in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish when requested by the customer):

- a. Products and services offered by the Cable Operator, including its channel lineup;
- b. The Cable Operator's complete range of service options and the prices for these services;
- c. The Cable Operator's billing, collection and disconnection policies;
- d. Privacy rights of customers;
- e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator and the FCC;
- f. Use and availability of parental control/lock-out device;

g. Special services for Customers with disabilities;

h. Days, times of operation, and locations of the service centers;

2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards or a summary of these Standards, in a format to be approved by the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;

If acceptable to a Customer, Cable Operator may fulfill Customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.

3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to Customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective in order to inform the Franchising Authority of such changes.

4. Copies of notices provided to the Customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority.

5. A Cable Operator shall provide Customers with written notification of any change in rates for nondiscretionary Cable Services, and for service tier changes that result in a deletion of programming from a Customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a Customer has subscribed to at the time the change in rates is announced by the Cable Operator.

6. All officers, agents, and employees of the Cable Operator or its Contractors or Subcontractors who are in personal contact with Customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with Customers or public employees, a supervisor must be able to communicate clearly with the Customer or public employee. Every vehicle of a Subcontractor or Contractor shall be labeled with the name of the Contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a Customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service

or before any work is performed, and shall provide the Customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the Customer before the actual work is performed.

## **F. Customer Privacy**

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.

2. Collection and Use of Personally Identifiable Information.

a. A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications, or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by Applicable Law.

b. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent any Affiliate from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This subsection F.2.b shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection F.

c. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.

3. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by Applicable Law.

a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this

subsection F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection III.F.9, the Cable Operator shall notify each Customer (that the Cable Operator intends to disclose information about) of the Customer's right to prohibit the disclosure of such information for Non-Cable related purposes. The notice to Customers may refer the Customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection III.F.9.

b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

c. To the extent authorized by Applicable Law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena, court order, warrant or other valid legal process authorizing such disclosure.

4. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information about himself or herself at the local offices of the Cable Operator or other convenient place within the City designated by the Cable Operator, or electronically, such as over a website. Upon a reasonable showing by the Customer that such Personally Identifiable Information is inaccurate, a Cable Operator shall correct such information.

5. Privacy Notice to Customers

a. A Cable Operator shall annually mail or provide a separate, written or electronic copy of the privacy statement to Customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide the Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service. The written notice shall be in a clear and conspicuous format, which at a minimum shall be in a comparable font size to other general information provided to Customers about their account as it appears on either paper or electronic Customer communications.

b. In or accompanying the statement required by subsection F.5.a, a Cable Operator shall state substantially the following message regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in Writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

i. Disclosure pursuant to valid legal process authorized by Applicable Law.

ii. Disclosure of the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable Services provided by the Cable Operator that do not

directly or indirectly disclose: (A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) The extent of any other use by a Customer of a Cable Service; (C) The nature of any transactions made by a Customer over the Cable System; or (D) The nature of programming or websites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a Customer in connection with programming available from their account for Cable Services.”

The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection F.3.a or this subsection, such prohibition against disclosure shall remain in effect, unless and until the Customer subsequently changes their disclosure preferences as described in subsection F.9 below.

6. Privacy Reporting Requirements. The Cable Operator shall include in its regular periodic reports to the Franchising Authority required by its Franchise Agreement information summarizing:

- a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period.
- b. For each type of Personally Identifiable Information collected or disclosed, a statement from an authorized representative of the Cable Operator certifying that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator; (B) used to the extent Necessary to detect unauthorized reception of cable communications; (C) disclosed pursuant to valid legal process authorized by Applicable Law; or (D) a disclosure of Personally Identifiable Information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by Applicable Law.
- c. The standard industrial classification (SIC) codes or comparable identifiers pertaining to any entities to whom such Personally Identifiable Information was disclosed, except that a Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by Applicable Law.
- d. The general measures that have been taken to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator. A Cable Operator shall meet with Franchising Authority if requested to discuss technology used to prohibit unauthorized access to Personally Identifiable Information by any means.

7. Nothing in this subsection III.F shall be construed to prevent the Franchising Authority from obtaining Personally Identifiable Information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551 and Applicable Laws.

8. Destruction of Personally Identifiable Information. A Cable Operator shall destroy any Personally Identifiable Information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection 4 of this subsection III.F, pursuant to a court order or other valid legal process, or pursuant to Applicable Law.

9. Notice and Choice for Customers. The Cable Operator shall at all times make available to Customers one or more methods for Customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection III.F. These methods may include, for example, online website “preference center” features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the Customer’s monthly bill for Cable Service, the privacy notice specified in subsection III.F.5, or such other comparable methods as may be provided by the Cable Operator. Website “preference center” features shall be easily identifiable and navigable by Customers, and shall be in a comparable size font as other billing information provided to Customers on a Cable Operator’s website. A Customer who provides the Cable Operator with permission to disclose Personally Identifiable Information through any of the methods offered by a Cable Operator shall be provided follow-up notice, no less than annually, of the Customer’s right to prohibit these disclosures and the options for the Customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the Cable Operator’s bill (or other direct mail piece) to the Customer or a notice or message printed on the Cable Operator’s bill to the Customer, and on the Cable Operator’s website when a Customer logs in to view his or her Cable Service account options. The form of such notice shall also be provided on an annual basis to the Franchising Authority. These methods of notification to Customers may also include other comparable methods as submitted by the Cable Operator and approved by the Franchising Authority in its reasonable discretion.

## **G. Safety**

A Cable Operator shall install and locate its facilities, cable System, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

## **H. Cancellation of New Services**



In the event that a new Customer requests installation of Cable Service and is dissatisfied with their initial Cable Service, and provided that the Customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such Customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the Customer's account consistent with this Section. The Customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new Customer's first thirty (30) days of Cable Service and any charges paid for installation. This provision does not apply to existing Customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to Customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

#### **IV. COMPLAINT PROCEDURE**

##### **A. Complaints to a Cable Operator**

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving Customer complaints, and crediting Customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.

2. Said written procedures shall prescribe a simple manner in which any Customer may submit a complaint by telephone or in writing to a Cable Operator that it has violated any provision of these Standards, any terms or conditions of the Customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a Customer complaint that has not previously been made by the Customer to the Cable Operator, the complaint shall be deemed to have been made by the Customer as of the date of the Franchising Authority's notice to the Cable Operator.

3. At the conclusion of the Cable Operator's investigation of a Customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the Customer of the results of its investigation and its proposed action or credit.

4. A Cable Operator shall also notify the Customer in writing of the Customer's right to file a complaint with the Franchising Authority in the event the Customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures and time limitations for filing such complaint with the Franchising Authority. The written notification shall be in an easily readable font.

5. A Cable Operator shall immediately report all Customer Escalated complaints that it does not find valid to the Franchising Authority.

6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

## **B. Complaints to the Franchising Authority**

1. Any Customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.
2. The Customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.
3. The Customer shall make such filing and notification within forty-five (45) days of receipt of the Cable Operator's decision or, if no decision has been provided, within sixty (60) days after filing the original complaint with the Cable Operator.
4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the Customer to submit, within twenty (20) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.
5. The Cable Operator and the Customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.
6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the Customer complaint, or after examining the materials submitted, setting forth its basis for the determination.
7. Any of these time limits may be extended at the discretion of the Franchising Authority or by mutual agreement of the Cable Operator and the Customer. The Franchising Authority may also intercede and attempt to negotiate an informal resolution of the complaint.

## **C. Security Fund or Letter of Credit**

A Cable operator shall comply with any Franchise Agreement regarding letters of credit. If a Franchise Agreement is silent on letter of credit the following shall apply:

1. Within thirty (30) days of the written notification to a Cable Operator by the Franchising Authority that an alleged Franchise violation exists, a Cable Operator shall deposit with an escrow agent approved by the Franchising Authority fifty thousand dollars (\$50,000) or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, it may provide to the Franchising Authority an irrevocable letter of credit in the same amount.

The escrowed funds or letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds or letter of credit shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these Standards, until any claims related to the alleged Franchise violation(s) are paid in full.

2. The Franchising Authority may require the Cable Operator to increase the amount of the security fund, if it finds that new risk factors exist which necessitate such an increase.

3. The security fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Standards.

4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

#### **D. Verification of Compliance**

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

#### **E. Procedure for Remediating Violations**

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement the Franchising Authority may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the security fund in addition to any franchise fee until the non-compliance is remedied; and/or

b. Order such rebates and credits to affected Customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or

- c. Reverse any decision of the Cable Operator in the matter and/or
- d. Grant a specific solution as determined by the Franchising Authority; and/or
- e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its Subcontractors in accordance with Applicable Law.

## **V. MISCELLANEOUS**

### **A. Severability**

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

### **B. Non-Waiver**

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision or any other provision of these Standards.

**EXHIBIT B  
REPORT FORM**

Falcon Broadband  
Quarterly Executive Summary – Escalated Complaints

Quarter Ending \_\_\_\_\_, Year  
COLORADO SPRINGS, COLORADO

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

Compliments