

**RESTATED AND AMENDED JOINT AND COOPERATIVE
INTERGOVERNMENTAL AGREEMENT
AND RESTATED AND AMENDED MEMORANDUM OF UNDERSTANDING**

This Restated and Amended Joint and Cooperative Intergovernmental Agreement (“IGA”), is made and entered into as of the ____ day of _____, 2017 by and between the City of Colorado Springs (“City”), a Colorado municipal corporation, and the Southern Colorado Educational Television Consortium (“SCETC”), a Colorado nonprofit corporation formed by political subdivisions of the State of Colorado.

RECITALS

WHEREAS, the City and the SCETC entered into a Joint and Cooperative Intergovernmental Agreement dated November 7, 2000, which was subsequently amended on October 23, 2007, (collectively the “Prior IGA”); and

WHEREAS, the City and the SCETC entered into a Memorandum of Understanding dated August 16, 2004 (the “Prior MOU”); and

WHEREAS, the City and the SCETC wish to amend and restate the terms of the Prior IGA and the Prior MOU and extend the terms of the Prior IGA and the Prior MOU for the duration of the new cable franchise between the City and Comcast of Colorado/Pennsylvania/West Virginia, LLC which was approved by ordinance of the City Council on July 11, 2017 (Ord. No. 17-52) (the “Comcast Franchise Agreement”) as provided herein; and

WHEREAS, the City entered into a franchise agreement with Century Colorado Springs Partnership d/b/a Adelphia Cable Communications as of November 7, 2000, which was subsequently amended (franchise agreement and subsequent amendments collectively the “Adelphia Franchise Agreement”); and

WHEREAS, Comcast of Colorado/Pennsylvania/ West Virginia, LLC (“Comcast”) is the successor under the Adelphia Franchise Agreement and is the current cable operator; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes authorizes Colorado governments to cooperate or contract to provide any lawfully authorized function, service or facility; and

WHEREAS, Section 29-1-401 of the Colorado Revised Statutes authorizes Colorado political subdivisions to form and maintain associations to promote, through cooperative effort, the interest and welfare of each; and

WHEREAS, under the terms of the Adelphia Franchise Agreement, a ring of dark fibers was installed within the City’s rights of way for the benefit of the SCETC (the “Fiber Ring”), and from time to time the City acquired ownership of or utilized or there has been or will be in-line equipment, other equipment, related facilities and other property which is used in connection with the Fiber Ring (the

“Other Fiber Property”); the Fiber Ring and the Other Fiber Property are collectively referred to herein as the “I-Net”); and

WHEREAS, the provisions of federal law applicable to cable communications at 47 USC Section 531 and 546 (the “PEG Cable Laws”) provide that a franchising authority may require a cable operator to designate channel capacity for educational or governmental use, and to designate channel capacity on institutional networks for educational or governmental use; and further provide that a determination of whether the operator’s proposed franchise application is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests, is an element to be considered in determining whether a cable franchise should be renewed or awarded; and

WHEREAS, the sharing of resources and information, and the cooperation of the operation of PEG facilities benefits the citizenry; and

WHEREAS, in connection with the negotiation of the Comcast Franchise Agreement, the City and Comcast have acknowledged that a portion of the resources and benefits provided by Comcast to the City will be passed along by the City for public use to the SCETC in satisfaction of Comcast’s obligations to meet current and future cable-related community needs and interests relating to educational and governmental programming as mandated by the federal government pursuant to the PEG Cable Laws; and

WHEREAS, the City has designated the SCETC as the entity responsible for educational access within the City; and

WHEREAS, the City and the SCETC for many years have been involved in extensive work and cooperation with each other; and

WHEREAS, the City and the SCETC want to set forth their agreement with respect to the benefits received under the Comcast Franchise Agreement that are passed on to the SCETC and related matters; and

WHEREAS, the City and the SCETC desire to amend, consolidate, and restate the Prior IGA and Prior MOU in this IGA and this IGA shall be effective January 1, 2018.

TERMS

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

1. Term. The provisions of this IGA will be considered valid and binding until the expiration, non-renewal or earlier termination of the Comcast Franchise Agreement and will also continue so long as the Comcast Franchise Agreement continues or is extended or renewed, or is transferred to any third parties via an assignment, or if there are successors to Comcast or if there is a change in control or merger and shall also continue during the ownership or operation of the cable television system by Comcast or its successors or assigns in the City under separate State or

Federal authorization or agreement and for such additional duration as otherwise provided in this IGA Agreement; provided, however, any obligations to provide payments from the City to the SCETC (as provided in this IGA) shall continue until such payment obligations accruing prior to the expiration, non-renewal or termination are satisfied.

2. Educational Access and Channel Usage Rights. The City hereby acknowledges its prior designation of the SCETC as the entity responsible for educational access within the City under the Comcast Franchise Agreement.
3. Channels. The Parties acknowledge that under the Comcast Franchise Agreement, the City has been provided with six (6) Standard Definition (“SD”) channels and one (1) High Definition (“HD”) Channel on the Comcast Cable System. The City and the SCETC agree that the SCETC shall be entitled to use five (5) of the City’s SD channels on the Comcast Cable System as a Designated Access Provider. In the event Comcast makes available additional HD channels, as provided in Section 9.2 of the Comcast Franchise Agreement, the SCETC shall be entitled to those HD channels available for Designated Access Providers providing Educational Access. If Section 9.2(G) of the Comcast Franchise Agreement is triggered, the SCETC shall be entitled to the number of HD channels necessary to replace all of the SCETC’s SD channels that are in use at the time 9.2(G) is triggered.
4. Educational Channels. The SCETC shall make good faith efforts to offer all bona fide nonprofit educational institutions serving the educational needs of the public in the City of Colorado Springs reasonable access, upon reasonable request, to the educational channels and centralized equipment and facilities controlled by the SCETC pursuant to this Agreement; provided that the SCETC may charge such institutions a reasonable fee to reimburse the SCETC for the actual costs of providing such equipment and related usage, and further provided that the SCETC may establish reasonable requirements for the use of such equipment including without limitation a requirement that the SCETC designated personnel oversee the operation of the facilities and equipment.
5. Franchise Fee Payments. The Prior IGA and Prior MOU shall remain in full force and effect until December 31, 2017 and payments from the City to the SCETC shall continue to be made by the City for the 3rd and 4th quarters of 2017 (with the payment for the 3rd quarter being made in 2017 and payment for the 4th quarter being made in 2018 in accordance with the timeframe in the Prior IGA). Subject to appropriations and the adjustments provided in the next sentence, the City shall pay the SCETC \$218,354 per year, starting in 2018, from the Franchise Fee the City receives pursuant to the Comcast Franchise Agreement for the duration of the Comcast Franchise Agreement, as that agreement may be extended or renewed. The amount of the fee payable to the SCETC under this provision shall increase by two percent (2%) annually as of the first day of each year of the term of this IGA; provided however, that if the Franchise Fees received by the City under the Comcast Franchise Agreement decrease below \$1,091,770 in a year, the fee payable to the SCETC under this provision shall also decrease by an amount proportionate to the year-over-year decrease in the Franchise Fee from the \$1,091,770 threshold received by the City provided however if there is such a year-over-year decrease, in any event, the yearly amount payable by the City to the SCETC shall be at least 20% of the Franchise Fee the City receives from Comcast or its successors or assigns. The City shall pay the SCETC as provided in Section 13 of this IGA.

6. PEG Contribution Payments. In the event City triggers its right to a PEG Contribution as provided in Section 9.6 of the Comcast Franchise Agreement, the City may pay up to one-half of the fees payable to the SCETC pursuant to Section 5 of this IGA from the PEG Contribution the City receives pursuant to the Comcast Franchise Agreement.
7. The SCETC hereby acknowledges that the funds received by it pursuant Section 5 of this IGA will be used to further the development and dissemination of diverse educational programming in the City of Colorado Springs. Money received by the SCETC pursuant to Section 5 of this IGA may be used for equipment and related facilities and for operational purposes, including but not limited to: (i) lighting up the fibers for the interconnection between the SCETC members and the City at designated locations for the transmission and reception of voice, video, and data information, programming, and services. Funds received by the SCETC from Franchise Fees herein may also be used for facilities, equipment and operational purposes with respect to the production and distribution of educational programming, including but not limited to: (ii) distance education, (iii) production of educational programming of local, state, national and international interest, and (iv) training of teachers and other education personnel which will benefit students, adults, the business community, and the community at large and other stakeholders.
8. Subject to appropriations, in addition to the per year payments as described above the City shall pay to the SCETC thirty-one thousand dollars (\$31,000) to connect SCETC members to the Fiber Ring and three hundred five thousand dollars (\$305,000) to be utilized to construct or lease fiber or trench and run fiber to connect SCETC members to the Fiber Ring and to facilitate HD upgrades by the SCETC members at their respective institutions. Subject to appropriations, the City shall pay the amounts provided in this Section 8 to the SCETC as part of the City's annual budget and appropriations process no later than the 2020 calendar year.
9. Oversight by City. The City and the SCETC acknowledge and agree that with respect to disbursement of the funding received from the City, the following will occur:
 - (i) The books and records of the SCETC regarding the receipt and disbursement of funds under this IGA shall be made available for inspection by the City, upon reasonable request, at a location within the City of Colorado Springs where such books and records are kept.
 - (ii) Not later than 120 days before the end of each calendar year during the term of this IGA in which the SCETC has received payments under this IGA, the SCETC shall make a written report to the City for the preceding calendar year regarding: (A) the funds received under this IGA; (B) the manner and purposes for which such funds have been expended; (C) the recipients of such funds; and (D) the nature and disposition of any requests for educational access by parties other than the SCETC members. Such report shall also include a brief status report on the current calendar year.
 - (iii) Not later than 120 days before the end of each calendar year during the term of this IGA in which the SCETC has received payments, the SCETC shall additionally make a written request to the City for the appropriation of funds for the next calendar year, which request shall include the SCETC's projected expenditures of such funds. In the event that the City believes that there has been a breach of the SCETC's obligations with respect to

the use of the funds received under this IGA Agreement, then the City shall provide written notice and an opportunity to cure such default.

10. The I-Net is a fiber optics system sufficient to transmit voice, data, and video signals and communications as contemplated in or required by the Prior IGA and I-Net Grant Assignment dated November 7, 2000 (the "Assignment Agreement") entered into between the City and Century Colorado Springs Partnership d/b/a Adelpia Cable Communications and the related Construction Agreement (which is referenced in the Assignment Agreement) as well as by the Prior MOU. The SCETC acknowledges that the City owns the I-Net and that no particular fibers or set of fibers constitute the I-Net. The City acknowledges that the SCETC has had and continues to have an irrevocable right to use a portion of the I-Net as was contemplated in the Prior MOU. The City will provide continuous service on the I-Net, within the standards and reliability factors which are the norms within the industry. On the basis of these standards and reliability factors, the SCETC acknowledges that there will be times when service will be interrupted for brief periods of time. During those times, the City will, in good faith, promptly institute corrective action and reestablish service on the I-Net promptly, as is reasonable under the circumstances. The SCETC acknowledges that during emergencies, the resources of the City will be employed to restore traffic and emergency services before restoration of the I-Net will be undertaken, provided however, that as promptly thereafter as reasonably practicable, corrective action will be commenced and continued through completion to reestablish service on the I-Net.

The City will be responsible for locates in the City right-of-way. The SCETC will be responsible for locates on property owned or maintained by its members. The City and the SCETC shall agree upon contact people, timeframes for calling out contractors and a procedure for locating repair sites. Problems in the operation of the I-Net will be reported to the Traffic Engineering Division of the City or to such other City Department as directed by the City. With respect to costs, the City shall continue to be responsible for the cost of repairs, maintenance and replacement of fibers and other equipment (other than SCETC end user equipment) in order for the I-Net to provide continuous use and continuous service.

The City will continue to provide I-Net connections to the SCETC demarcation points (which are located on the external walls of the SCETC member buildings) and with the number of fibers as currently exist. The SCETC acknowledges that service to District 12 is not included in the I-Net at this time, provided however, that the SCETC shall use the funds allocated in accordance with Section 8 of this IGA to provide I-Net connectivity to District 12 and SCETC members at no additional charge to the City (other than as provided in Section 8) provided however if the SCETC utilized its own funds in order to effectuate this connectivity to the I-Net or to upgrade to HD prior to receipt of funds under Section 8 from the City, than the SCETC shall use such funds provided by the City under Section 8 to reimburse the SCETC.

The City shall not sell, pledge, lease, outsource management or otherwise encumber the SCETC's use of the I-Net unless any of the foregoing is made subject to the SCETC's irrevocable right to use of the I-Net which shall continue. However, it is understood and agreed that the City may utilize alternative fibers, which may vary from time to time, in order to provide the I-Net so long as there is no charge to the SCETC and the functionality, continuous use and continuous service of the I-Net are not hindered, impaired or diminished in any manner and so long as any fibers utilized by the City are sufficient to carry and distribute both SD and HD programming and broadcasting by the SCETC and its members. If it becomes necessary to

underground all or any portion of the I-Net, the cost and expense of same shall be borne by the City. Since the City is responsible for repairing, restoring and replacing the I-Net, it shall be the City's decision whether to carry insurance with respect to such repairing, restoring and replacing of the I-Net.

(i) Testing. The City or the SCETC may conduct routine maintenance and testing on the I-Net at its own initiative and expense. The SCETC may test only from its demarcation points, unless the SCETC has received approval from the City to test elsewhere.

(ii) Current Key Contacts.

City Traffic Engineering (719) 385-5908

City Telecommunications (719) 630-9810

SCETC - Kelsey Hunt, President (719) 255-3281 or to the then current President of the SCETC

11. In the event the City sells or outsources all or any part of the I-Net or the management thereof, any such sale or transfer shall be subject to the provisions of this IGA with respect to the SCETC's rights to the I-Net under this IGA. SCETC's rights with respect to the I-Net under this IGA are not limited with respect to the type of use.
12. The City agrees that notwithstanding anything to the contrary in the Comcast Franchise Agreement, the SCETC is an intended third-party beneficiary of the Comcast Franchise Agreement and entitled to the rights, channels and channel usage, facilities, fiber and equipment (and use thereof), the service, and receipt of monetary payments and other benefits as provided in the Comcast Franchise Agreement. Since certain provisions in the Comcast Franchise Agreement have a direct bearing on the rights and obligations of the SCETC, then with respect to those provisions therein which affect the rights or obligations of the SCETC, such provisions may not be amended, supplemented, modified or changed in a manner which affects the SCETC, unless such amendment, supplement, change or modification is consented to by the SCETC. The City agrees to keep SCETC informed of any discussions with Comcast regarding changes to the Comcast Franchise Agreement that will affect the SCETC's rights or obligations.
13. Any and all payments due as provided herein shall be made by the City to the SCETC within thirty (30) days of receipt thereof by the City from Comcast, its successors or assigns, or as otherwise provided for payments from the City to the SCETC in this IGA.
14. If the Comcast Franchise Agreement continues or another entity merges with Comcast, acquires the Comcast cable television system in the City or the Comcast Franchise Agreement or acquires control of Comcast or if Comcast or its successors or assigns elects to operate under another cable franchise or video franchise in the City or if Comcast or its successors or assigns own or operate a cable television system in the City under State or Federal authorization or agreement, this IGA and the I-Net shall continue until such expiration, non-renewal or non-extension of the Comcast Franchise Agreement or such other cable franchise or video franchise and shall also continue during the ownership or operation of the cable television system by Comcast or its successors or assigns in the City until expiration, non-renewal or non-extension of the State or Federal authorization or agreement.

15. Notice. Every notice shall be served upon the City or the SCETC 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:

City of Colorado Springs
City Clerk
30 South Nevada Avenue, Suite 101
Colorado Springs, CO 80903

With a copy to:
City of Colorado Springs
Office of City Attorney
30 South Nevada Avenue, Suite 501
Colorado Springs, CO 80903

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

Kelsey Hunt
Director, Media Services/IT
UCCS
1420 Austin Bluffs Parkway
Colorado Springs, CO 80918

or to the then-current President of the SCETC

With a copy to:

Sean Leveille, Distance Learning Media Specialist
The Colorado School For The Deaf and The Blind
33 N. Institute
Colorado Springs, CO 80903

Any party may change the address for receiving notices by giving written notice of such changed address to the other party in the manner described above.

16. Assignment. Neither this IGA nor any part thereof may be assigned by either the City or the SCETC without the written consent of the other party, which consent shall not be unreasonably withheld.
17. The obligations of SCETC under this IGA, to the extent not funded by the payments received by SCETC under this IGA, shall be subject to annual appropriation by the member entities of the SCETC.

18. The City's obligations under this IGA are expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this IGA, with respect to any financial obligation of the City which may arise under this IGA in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this IGA at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this IGA, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this IGA.

Liability of the City for payments to SCETC under the provisions of this IGA is subject to annual appropriation of such funds in accordance with the provisions of Article VII, Section 7-60 of the City Charter. These funds may be identified as an item in the budget of the City. The City shall provide prompt written notice to SCETC concerning: (a) dates of any hearing before City Council under which the budget pertaining to funding the SCETC under this IGA is scheduled to be considered by City Council, and (b) any formal action or position taken by the City Council, the City administration, or any budget committee to recommend or approve City expenditures which are less than the amount of expenditures required to comply with this IGA. The SCETC shall be entitled to present its position before City Council at a public hearing when City Council considers the budget which includes such funds.

19. Default.

- (i) With regard to any alleged breach of this IGA by the City, the SCETC shall expressly notify the City in writing of the act constituting the default and shall grant the City the opportunity to cure the default as described below, as a prerequisite to the commencement of any legal or equitable action to enforce this IGA or any other action seeking damages for breach of this IGA. The City shall have 30 days after receipt of such notice of default in which to cure such default. In the event that such default is not cured within such 30 day period or such other period as is agreed upon by the parties, the SCETC may commence any action allowed by law or in equity, including without limitation actions for damages and for declaratory and injunctive relief.
- (ii) With regard to any alleged breach of this IGA by the SCETC, the City shall expressly notify the SCETC in writing of the act constituting the default and shall grant the SCETC the opportunity to cure the default as described below, as a prerequisite to the commencement of any legal or equitable action to enforce this IGA Agreement or any other action seeking damages for breach of this IGA. The SCETC shall have 30 days after such notice of default in which to cure such default. If after such 30 day cure period or such other period as is agreed upon by the parties, the City may commence any action

allowed by law or in equity, including without limitation actions for damages and for declaratory and injunctive relief. The City may withhold payments until such time as the default is cured to the reasonable satisfaction of the City.

- (iii) The City agrees that the funds subject to this IGA are to be used for educational access use by the SCETC. In the event that the City fails to appropriate funds subject to this IGA for payment to the SCETC, then City shall set aside an amount equal to the amount provided for in Section 5 for educational purposes and such funds shall not be expended or appropriated for other purposes by the City unless and until the City conducts good faith negotiation with SCETC regarding reconsideration by the City Council of the appropriation of such funds.

- 20. Covenant of Good Faith. The parties agree to act in good faith in implementing and interpreting this IGA. In addition, the parties shall cooperate in good faith to determine and implement the structure of the relationship between the City and the SCETC that best furthers the educational programming purposes of the City and the SCETC and the operation of the I-Net which runs throughout the City.
- 21. Severability. In the event that any provision of this IGA shall be void, voidable, or unenforceable, the remaining portions hereof shall remain in full force and effect as a contract between the parties, and to the extent that any provision is void, voidable or unenforceable, the parties shall negotiate in good faith to add enforceable replacement provisions which most nearly reflect the original intent of the parties.
- 22. Waiver. No waiver of any term or condition of this IGA shall be a continuing waiver thereof. A party waives only those rights specifically waived in writing and signed by a duly authorized person with respect thereto.
- 23. Amendment. This IGA may be amended upon the mutual written agreement of duly authorized persons from the City and the SCETC, approved in the same manner as this IGA.
- 24. Authority. This IGA is non-binding until approved by the governing bodies of each of the respective parties. Each of the undersigned representatives of each of the parties hereto respectively represents and warrants that he/she is duly authorized to execute this Restated and Amended Joint and Cooperative Intergovernmental Agreement and Restated and Amended Memorandum of Understanding on behalf of the City or the SCETC respectively.
- 25. Capitalized Terms. All capitalized terms not herein defined shall have the definitions provided in the Comcast Franchise Agreement.
- 26. Integration. This is a completely integrated agreement and contains the entire agreement between the parties hereto. Except as provided herein, any prior written or oral agreements, including the Prior IGA and the Prior MOU, are hereby completely amended, replaced and superseded and shall be of no effect and shall not be binding upon either party.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the City and SCETC have caused this Restated and Amended Joint and Cooperative Intergovernmental Agreement and Restated and Amended Memorandum of Understanding to be executed as of the day and year first above written.

CITY OF COLORADO SPRINGS

SOUTHERN COLORADO EDUCATIONAL TELEVISION CONSORTIUM

By: _____
John W. Suthers
Mayor

By: _____
Kelsey Hunt
President

Attest:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF COLORADO)
) ss:
COUNTY OF EL PASO)

The foregoing Restated and Amended Joint and Cooperative Intergovernmental Agreement and Restated and Amended Memorandum of Understanding was acknowledged before me this ____ day of _____, 2017 by John W. Suthers, Mayor of the City of Colorado Springs, a Colorado municipal corporation, on behalf of the City of Colorado Springs.

Witness my hand and official seal.

Notary Public
Address: _____

My Commission Expires:

STATE OF COLORADO)
) ss:
COUNTY OF EL PASO)

The foregoing Restated and Amended Joint and Cooperative Intergovernmental Agreement and Restated and Amended Memorandum of Understanding was acknowledged before me this ___ day of ____, 2017 by Kelsey Hunt, President of the Southern Colorado Educational Television Consortium, a Colorado nonprofit corporation, on behalf of the Southern Colorado Educational Television Consortium.

Witness my hand and official seal.

Notary Public
Address: _____

My Commission Expires:
