

Cable Television Franchise Agreement

**City of Fort Collins, Colorado
And
Comcast of California/Colorado, LLC**

January 17, 2006

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CABLE FRANCHISE AGREEMENT

**THE CITY OF FORT COLLINS, COLORADO
AND
COMCAST OF CALIFORNIA/COLORADO, LLC**
January 4, 2006

TABLE OF CONTENTS

SECTION 1. DEFINITIONS AND EXHIBITS
 (A) DEFINITIONS.....
 (B) EXHIBITS.....

SECTION 2. GRANT OF FRANCHISE.....
 2.1 Grant
 2.2 Effective Date and Term of Franchise.....
 2.3 Franchise Nonexclusive.....

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS.....
 3.1 Franchise Fee
 3.2 Payments.....
 3.3 Acceptance of Payment.....
 3.4 Quarterly Franchise Fee Reports
 3.5 Annual Franchise Fee Reports
 3.6 Audits.....
 3.7 Late Payments.....
 3.8 Underpayments.....
 3.9 Alternative Compensation.....
 3.10 Additional Commitments Not Franchise Fee Payments.....
 3.11 Tax Liability.....
 3.12 Payment on Termination.....

SECTION 4. ADMINISTRATION AND REGULATION.....
 4.1 Rates and Charges.....
 4.2 No Rate Discrimination.....
 4.3 Filing of Rates and Charges.....
 4.4 Reserved Authority.....
 4.5 Time Limits Strictly Construed.....
 4.6 Franchise Amendment Procedure.....
 4.7 Late Fees.....
 4.8 Force Majeure.....

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS.....

 5.1 Indemnification.....

 5.2 Insurance.....

 5.3 Deductibles / Certificate of Insurance

 5.4 Letter of Credit

 5.5 Construction Bond.....

SECTION 6. CUSTOMER SERVICE

 6.1 Customer Service Standards

 6.2 Subscriber Privacy

 6.3 Advance Notice to City.....

SECTION 7. REPORTS AND RECORDS

 7.1 Open Records.....

 7.2 Confidentiality

 7.3 Records Required.....

 7.4 Annual Reports

 7.5 Complaint File and Reports

 7.6 False Statements

SECTION 8. PROGRAMMING

 8.1 Broad Programming Categories.....

 8.2 Deletion or Reduction of Broad Programming Categories.....

 8.3 Programming and Customer Satisfaction

 8.4 Parental Control Device.....

 8.5 Continuity of Service Mandatory

 8.6 Services for the Disabled

SECTION 9. ACCESS.....

 9.1 Capital Contribution for Government, Educational, and Public Access

 9.2 Management and Control of Access Channels

 9.3 Availability of Access Channels.....

 9.4 Access Channels On Basic Service Tier.....

 9.5 Relocation of Access Channels.....

 9.6 Technical Quality.....

 9.7 Return Lines and Satellite Downlink.....

 9.8 Information about Access Programming to Subscribers

SECTION 10. INSTITUTIONAL NETWORK

 10.1 Private Network

 10.2 Qualified I-Net Users.....

SECTION 11. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION.....

11.1	Right to Construct.....
11.2	Right-of-Way Meetings.....
11.3	Joint Trenching/Boring Meetings.....
11.4	General Standard.....
11.5	Permits Required for Construction.....
11.6	Emergency Permits.....
11.7	Compliance with Applicable Codes.....
11.8	Mapping.....
11.9	Minimal Interference.....
11.10	Prevent Injury/Safety.....
11.11	Hazardous Substances.....
11.12	Locates.....
11.13	Notice to Private Property Owners.....
11.14	Underground Construction and Use of Poles.....
11.15	Undergrounding of Multiple Dwelling Unit Drops.....
11.16	Burial Standards.....
11.17	Electrical Bonding.....
11.18	Prewiring.....
11.19	Repair and Restoration of Property.....
11.20	Acquisition of Facilities.....
11.21	Discontinuing Use/Abandonment of Cable System Facilities.....
11.22	Movement of Cable System Facilities for City Purposes.....
11.23	Movement of Cable System Facilities for Other Franchise Holders.....
11.24	Temporary Changes for Other Permittees.....
11.25	Reservation of City Use of Right-of-Way.....
11.26	Tree Trimming.....
11.27	Inspection of Construction and Facilities.....
11.28	Stop Work.....
11.29	Work of Contractors and Subcontractors.....

SECTION 12. CABLE SYSTEM DESIGN, FUNCTIONALITY, TECHNICAL STANDARDS AND TESTING.....

12.1	Network Design.....
12.2	Network Functionality.....
12.3	Emergency Alert Capability.....
12.4	Technical Performance.....
12.5	Future System Upgrades.....
12.6	Cable System Performance Testing.....

SECTION 13. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS.....

13.1	Universal Service.....
13.2	Service Availability.....
13.3	Interconnection with Other Cable Systems.....

13.4	Connection of Public Facilities
SECTION 14. FRANCHISE VIOLATIONS	
14.1	Procedure for Remediating Franchise Violations
14.2	Revocation
14.3	Procedures in the Event of Termination or Revocation.....
14.4	Purchase of Cable System.....
14.5	Receivership and Foreclosure
14.6	No Monetary Recourse Against the City
SECTION 15. FRANCHISE RENEWAL AND TRANSFER	
15.1	Renewal.....
15.2	Transfer of Ownership or Control
SECTION 16. SEVERABILITY	
SECTION 17. MISCELLANEOUS PROVISIONS	
17.1	Preferential or Discriminatory Practices Prohibited
17.2	Eminent Domain.....
17.3	Notices
17.4	Descriptive Headings
17.5	Publication Costs to be Borne by Grantee
17.6	Binding Effect.....
17.7	No Joint Venture
17.8	Waiver.....
17.9	Reasonableness of Consent or Approval
17.10	Entire Agreement

EXHIBIT A: Access Broadcast Facilities with Existing Return Lines

EXHIBIT B: Facilities to which Digital Fiber Optic Return Lines will be Constructed

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

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

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of channel capacity on the Cable System as permitted under applicable law including, but not limited to:

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

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

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

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

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

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

1.6 “Basic Service” means the lowest service tier that includes the retransmission of local television broadcast signals and Access Channels, or as such service tier may be defined by federal law.

1.8 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

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

1.10 “Cable Service” means the one-way transmission to Subscribers of Video Programming or Other Programming Service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

1.11 “Cable System” means any facility including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.12 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.13 “City” is the City of Fort Collins, Colorado, a Colorado home rule municipality.

1.14 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.15 “Demarcation Point” means the patch panel, termination block or other termination device provided by the Grantee, located within each I-Net site, which represents the interface between the I-Net and the Qualified I-Net User’s local network or end user electronics. In all cases the Demarcation Point will be clearly marked as such by Grantee, and will provide an identifiable interface for the end user electronics.

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

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

1.18 “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.

1.19 “Expanded Basic Service” means the tier of optional Video Programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.20 “FCC” means the Federal Communications Commission.

1.21 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service or Institutional Network service by means of electric lightwave impulses.

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

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

1.24 “Franchise Fee” means that fee payable to the City as described in subsection 3.1(A).

1.25 “GAAP” means generally accepted accounting principles.

1.26 “Grantee” means Comcast of California/Colorado, LLC, or its lawful successor, transferee or assignee.

1.27 “Gross Revenues” means all revenue derived by the Grantee as determined in accordance with GAAP from the operation of the Grantee’s Cable System to provide Cable Services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any Cable Service; installation, disconnection, reconnection and change-in-service fees; Leased Access Channel fees; Cable System equipment rental fees; all Cable Service lease payments from the Cable System; late fees and administrative fees; fees, payments or other consideration received by the Grantee from programmers for carriage of programming on the Cable System; advertising revenues (net of commissions paid to any entity that is not an Affiliate of Grantee); the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service; revenues from program guides; additional outlet fees; Franchise Fees; revenue from the sale or carriage of other Cable Services; and revenue from home shopping, bank-at-home Channels and other revenue-sharing arrangements. Gross Revenues shall include revenue received by the Grantee or any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include (i) to the extent consistent with GAAP, Bad Debt; provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period

collected; (ii) the Capital Contributions specified in subsections 9.1 and 9.2; or (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise Fee is not such a tax.

The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing applicable law. If there is a change in federal law subsequent to the Effective Date of this Franchise, such change shall not impact this Gross Revenues definition unless the change specifically preempts the affected portion of the definition above.

1.28 “Headend” means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for broadcast signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.29 “Hub” means an intermediary exchange point in the signal distribution portion of the Cable System, located between the Headend and the Nodes.

1.30 “Institutional Network” or “I-Net” means network facilities or capacity designed for noncommercial use by Qualified I-Net Users; provided however, nothing in this definition prevents the I-Net from being used to send communications to or receive communications from Subscribers or the general public, by remote terminals or otherwise including, by way of example and not limitation, through connection between the I-Net and the Subscriber Network.

1.31 “Interconnect” or “Interconnection” means the linking of the Cable System or I-Net with another cable system, communications system or I-Net, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the Cable System and other cable system, communications system or I-Net; or the necessary components to accomplish, complete and adequately maintain pathways that permit the transmission and receiving of electronic or optical signals between locations connected to portions of the Cable System outside the Franchise Area and those portions of the Cable System inside the Franchise Area.

1.32 “Leased Access Channel” means any Channel or portion of a Channel commercially available for Video Programming by Persons other than Grantee, for a fee or charge.

1.33 “Manager” means the City Manager of the City.

1.34 “Node” means an exchange point in the signal distribution system portion of the Cable System, where optical signals are converted to RF signals.

1.35 “Normal Operating Conditions” means those service conditions that are within the control of

the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, labor strikes or slowdowns, civil disturbances, power outages in excess of four (4) hours in length, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance of the Cable System.

1.36 “Other Programming Service” means a Cable Service, other than a Video Programming service, that a cable operator makes available to all subscribers generally.

1.37 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.38 “Residential Subscriber” means any Person who lawfully receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.39 “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, utility and other easements, rights-of-way and similar public property and areas.

1.40 “Standard Installation” means an installation extending no more than 125 feet between the interconnection point on the Subscriber’s premises to the distribution point on the Cable System from which Cable Service can be provided to the Subscriber.

1.41 “State” means the State of Colorado.

1.42 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System.

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

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

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

1.46 “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) **Scope.** The City hereby grants to Grantee a non-exclusive Franchise to operate a Cable System to provide Cable Service in the City, and to use the public Rights-of-Way to install, construct, upgrade, repair, reconstruct, maintain in, on, over, under, upon, across and along any Right-of-Way such poles, wires, cable, conductors, ducts, fiber, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to said Cable System for that purpose, subject to the terms and conditions of this agreement, and applicable law. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) The express provisions of this Franchise constitute a valid and enforceable contract between the parties. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution or other enactment of the City, except in the lawful exercise of the City's police power. The Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, resolution, or other enactment of the City that conflicts with the rights granted by this Franchise, either now or in the future.

(C) **Effect of Acceptance.** By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) acknowledges and warrants by acceptance of the rights and privileges granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time and, to the best of its knowledge, consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and agrees that it will not raise any claim or defense to the contrary.

(D) **Police Powers.** Subject to (B) of this subsection, the rights granted in this Franchise are subject to the City's exercise of its police powers, and the City's right to adopt and enforce ordinances necessary to the safety, health, and welfare of the public. Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. Notwithstanding anything in this Franchise to the contrary, any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

(E) **Additional Conditions.** 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 Grantee provide service other than Cable Service.

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

(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 of general applicability 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 of general applicability 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 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; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize, prohibit, or condition Grantee's provision of telecommunications service. For the purposes of this subsection, telecommunications and telecommunications services shall have the meanings as provided for each term in 47 U.S.C. Section 153 (43) and (46) respectively. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City any such authorization that may lawfully be required in order to provide telecommunications services, or to construct, operate or maintain telecommunications facilities. However, this Franchise shall not be read as a concession by Grantee that it needs authority to provide telecommunications services.

2.2 Effective Date and Term of Franchise

(A) This Franchise and the rights, privileges and authority granted hereunder shall take effect on _____, 2006 (the "Effective Date"), and shall terminate on _____, 2015, unless terminated sooner as hereinafter provided.

(B) The grant of this Franchise shall have no effect on the Grantee's duty under the prior franchise agreement or any ordinance in effect prior to the Effective Date of this Franchise to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise agreement was in effect.

2.3 Franchise Nonexclusive

In the event the City enters into a cable franchise with any other Person or entity other than the Grantee to use the City's streets or Right-of-way for the purpose of constructing or operating a cable system to provide Cable Service to all or any part of the Franchise Area in which the Grantee is providing Cable Service under the terms and conditions of this Franchise then the parties agree that the terms and conditions of the cable franchise, taken as a whole, should be reasonably comparable to those contained herein for comparable situations, in order that one Cable Company not be granted an unfair competitive advantage over another. However, nothing in this provision shall be constructed in such a way as to limit the City's authority to enter into other cable franchises that the City, in its sole discretion, determines meet the cable related needs and interests of the community, considering both the added risk of entry into the market and the benefits of incumbency and the historic investment in the Cable System made by the incumbent. The parties recognize and acknowledge that other cable franchises granted by the City might contain terms and conditions that are different than the terms and conditions the Grantee has negotiated and accepted in this Franchise. This Section shall apply to Open Video Systems to the extent the City has regulatory authority over such systems.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

(A) The Grantee shall pay to the City an amount equal to the maximum amount permitted under federal law, which is presently five (5) percent of the Gross Revenues derived from the operation of its cable system to provide cable services in the City. Provided however, that if federal law permits a higher Franchise Fee, Grantee's Franchise Fee obligations may not be increased unless the same increase is imposed upon other entities holding Cable Franchises in the City. Such increase shall go into effect no less than ninety (90) days after written notice from the City to Grantee.

(B) The Grantor recognizes that Grantee, at its sole discretion, may allocate revenue between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the Franchise Fee but may be subject to other fees and/or taxes) on bundled packages of services. No allocation shall violate this Franchise or have the effect of remitting an unfair or unlawfully disproportionate payment of Franchise Fees to Grantor.

In the event that the Grantor believes that Grantee's allocation methodology violates the preceding section, the Grantor and the Grantee shall meet upon advance notice from the Grantor to discuss and resolve the Grantor's concerns. If the Grantor and the Grantee cannot agree on the matter within a reasonable period of time, the Grantor and the Grantee shall submit the matter to a mutually agreeable third party for mediation. The cost of the mediation shall be shared equally between the Grantor and the Grantee. If the Grantor and the Grantee are unable to mutually agree on a mediator, then either the Grantor or the Grantee can bring the matter to a court of competent jurisdiction, or pursue any other remedies available to them in this Franchise or by law.

3.2 Payments

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

3.3 Acceptance of Payment

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

3.4 Quarterly Franchise Fee Reports

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

3.5 Annual Franchise Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period. Such statement shall be audited by a certified public accountant, who may also be the chief financial officer or controller of Grantee, prior to submission to the City.

3.6 Audits

On a maximum annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise. If the audit shows that Franchise Fee payments have been underpaid by three percent (3%) or more, Grantee shall pay the total cost of the audit, such cost not to exceed \$5,000. The City's right to audit and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

3.7 Late Payments

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due at the prime rate as listed in the Wall Street Journal on the date the payment was due, or at the Colorado statutory rate for interest on civil judgments, Colo. Stat. Rev. Ann. § 5-12-102(2) (2004), as amended, whichever is greater, calculated from the date the payment was originally due until the date the City receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the prime rate as listed in the Wall Street Journal on the date the payment was due, or at the Colorado statutory rate for interest on civil judgments, Colo. Stat. Rev. Ann. § 5-12-102(2) (2004), as amended, whichever is greater, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City. The amount of any undisputed underpayment, plus interest, shall be paid to the City within forty-five (45) days after written notification and demand is received by Grantee, unless within said forty-five days Grantee notifies the City in writing of the reasons why any payment is in dispute. After resolution of any dispute, payment shall be made within forty-five days. If any dispute is not resolved, the parties may pursue any remedy available under this Franchise or by law. This interest on late payment shall not be included in the 3% threshold referenced above in Section 3.6.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Rights-of-Way for Grantee's use of the City's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues, and provided further, that if federal law requires payment of Franchise Fees to be paid to some other local government entity, Grantee shall not be required to pay such alternative compensation to Grantor, in order to insure that in no event shall Grantee's total payments for the use of the City's Rights-of-Way exceed the equivalent of five percent (5%) of Gross Revenues.

3.10 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise, including the PEG capital funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers pursuant to any federal law; provided however, that if Grantee believes such additional commitments are utilized in a manner prohibited by federal law, Grantee reserves all rights to challenge such actions.

3.11 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the

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

3.12 Payment on Termination

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

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Rates and Charges

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

4.2 No Rate Discrimination

Grantee's rates and charges shall be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall maintain a uniform rate structure throughout the Franchise Area 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 within the City, subject to any exceptions permitted by applicable law. Nothing herein shall be construed to prohibit:

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

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

(C) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations; or

(D) The offering of temporary rate discounts for cable service to address customer service and retention issues.

4.3 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than twelve (12) consecutive months (or such other period as may be approved by the City) to purchase Cable Services at such rate or charge.

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

4.4 Reserved Authority

The City reserves all regulatory authority arising from the Cable Act and any other relevant provisions of federal, State, or local law.

4.5 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

4.6 Franchise Amendment Procedure

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

4.7 Late Fees

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

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the

ability of the Grantee to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with applicable law, including FCC law, rule or regulation.

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

4.8 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise in circumstances that do not involve Normal Operating Conditions, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation that is satisfactory to the City; provided however, that to the extent any non-performance is the result of any force majeure condition, Grantee shall not be held in default nor suffer any penalty as a result. If Grantee believes that its compliance with any term of this Franchise has been prevented or delayed by non-Normal Operating Conditions, to the extent Grantee has knowledge of such conditions in advance, Grantee shall, prior to the deadline for compliance, provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, elected 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 attorneys' fees or expenses, arising from any casualty or accident to Person or property, and all other damages in any way arising out of, or by reason of any act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall reasonably consult and cooperate with the City while conducting its defense of the City.

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

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

(1) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and applicable law;

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

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim at its own cost. Grantee shall provide the City notice of any settlement of claims affecting the City.

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

(F) Expenses. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay all expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The City's expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

5.2 Insurance

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

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 10/01 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, and a severability of interest clause shall apply.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the City.

(B) Each policy shall provide that 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, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City. The Grantee is responsible for the payment of all deductibles.

(A) Endorsements.

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

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

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

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

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

(C) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance with copies of endorsements. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance. In the alternative to providing a certificate of insurance to the City

certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and City, its officers, elected officials, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City.

5.4 Letter of Credit

(A) No later than the Effective Date of this Franchise, Grantee shall establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, including the City's Customer Service Standards, a letter of credit in the amount of fifty thousand dollars (\$50,000).

(B) The letter of credit shall be maintained at fifty thousand dollars (\$50,000) throughout the term of this Franchise, provided that at intervals no more often than every three (3) years, City shall have the right to review whether this amount should be increased to reflect increases in the Denver – Boulder Consumer Price Index during the prior three (3) year period.

(C) The letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

- (1) Failure of Grantee to pay the City sums due under the terms of this Franchise;
- (2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;
- (3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and
- (4) Failure to comply with the Customer Service Standards of the City, as the same may be amended from time to time by the City Council.

(D) The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise. Withdrawal of any sums due from the letter of credit in an amount less than the full amount of recovery shall not result in a waiver of the City's right to recover any balance due from a subsequent letter of credit or in any other manner.

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

5.5 Construction Bond

During any upgrade or major construction on the Cable System during the term of this Franchise, Grantee shall provide a construction bond to ensure the performance of its responsibilities under this Franchise related to construction activity, including restoration of the Rights-of-Way and other property, in accordance with the lawful provisions of the City Code as it exists now or as may be amended in the future.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards of the City adopted by City Ordinance or Resolution, as the same may be amended from time to time by the City Council. Grantee reserves the right to challenge any customer service standard that it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

(A) The Grantee's provision of Cable Service shall be subject to the provisions of applicable federal, state and local law regarding limitations on the Grantee's collection and use of personally identifiable information, and the protection of subscriber privacy.

(B) Nothing in this Franchise shall be read to limit the City's right to adopt other consumer or customer protection laws regarding Grantee's collection and use of personally identifiable information and the protection of subscriber privacy consistent with federal law, and to apply those laws to Grantee.

6.3 Advance Notice to City

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

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

The City shall have the right to inspect and copy the books, records, maps, plans, and other documents, including financial documents which are reasonably related to the administration or enforcement of this Franchise, and which are in the control or possession of the Grantee, affiliates, any person that constitutes an operator of the Grantee's Cable System or any contractor or subcontractor of Grantee, as necessary: (1) to enforce the City's rights or assess compliance with the Franchise and applicable law; (2) in the exercise of any power the City may have under this Franchise or applicable law; or (3) as may be necessary in connection with any proceeding the City

may or must conduct under applicable law with respect to the Grantee's cable system. Grantee is responsible for collecting the information requested. The material shall be produced at the Grantee's local office, or if such production would be burdensome, at Grantee's metro Denver office, unless the City agrees to inspection and copying at another location. Material that the City requires the Grantee to produce under this section shall be produced upon reasonable notice, no later than 30 days after the request for production. Requests for extensions of time to respond shall not be unreasonably denied. Grantee and City shall comply with 47 U.S.C. §551 with respect to the provision of personally identifiable information as may be required pursuant to this Section. If any books or records of Grantee are not kept in a local office or Grantee's metro Denver office, and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee, in accordance with Grantee's travel policies applicable to its local general manager.

7.2 Confidentiality

Access to Grantee's records, which are reasonably related to the administration or enforcement of the terms of this Franchise, shall not be denied to the City on the basis that said records contain proprietary information. Subject to applicable law, the City shall keep any information that is marked "proprietary" or "confidential" (and, under applicable law, deemed "proprietary" or "confidential") submitted by Grantee as required under this Agreement ("Information") in confidence. In the event that the City believes requested Information or any part thereof must be disclosed to a third party, government agency or regulatory body seeking to inspect or obtain the information under a Colorado Open Records Act request, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interest. Upon receipt of demand from a third party, government agency or regulatory body for disclosure of Information, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such Information that has been requested pursuant to the Colorado Open Records Act before the proposed release. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above. The City shall not be liable to Grantee for any submission or disclosure of such information to a third party as required by applicable law or to a government agency or regulatory body seeking the Information and claiming jurisdiction in any of these events. Nothing in this Section 7.2 shall limit the right of the Grantee to contest disclosure or submission to a third party as required by law or to a government agency or regulatory body asserting jurisdiction over it or such subject matter before such disclosure shall be effected. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City within thirty (30) days of a written request:

(1) A complete set of digital maps showing the general location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics or other proprietary information related to Grantee's specific design of Cable System contained therein and Subscriber drops. Maps shall be in a format compatible with AutoCAD (dwg formats). As-built maps shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

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

(3) Current Subscriber Records and information;

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

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

(B) Subject to subsection 7.2, all information furnished to the City is public information, and shall be treated as such.

7.4 Annual Reports

Upon written request, but no more often than annually, Grantee shall submit to the City a written report addressing the prior calendar year's activities, in a form reasonably acceptable to the City, which shall include, but not necessarily be limited to:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A summary of activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers; and

(C) The number of homes passed, beginning and ending plant miles, and any technological changes occurring in the Cable System; and

(D) A statement of planned construction, if any, for the next year.

(E) A report showing the number of Cable System outages, identifying separately the approximate time and duration of each outage. In addition, if the City desires information regarding the approximate areas impacted because of concern over the number or duration of outages, it can

require Grantee to provide within thirty (30) days of its written request, supplementary information regarding the approximate areas impacted and the estimated number of Subscribers affected by the outages.

7.5 Complaint File and Reports

Grantee shall keep an accurate file of any and all complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall be made available to City upon reasonable written request. Grantee shall provide the City a quarterly executive summary that shall include the following information:

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

(B) A summary of all customer complaints referred by the City and their disposition and/or status, provided that at such time as summaries of all customer complaints can be made available by an updated automated system, such reporting shall be made in lieu of the complaints referred by the City; and

(C) Average response time for service calls.

7.6 False Statements

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

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

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

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;

- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information;
- (J) Travel/outdoors.

8.2 Deletion or Reduction of Broad Programming Categories

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

8.3 Programming and Customer Satisfaction

During the term of this Agreement, Grantee shall continually offer broad categories of programming sufficient to meet the changing needs and interests of Subscribers in the City, taking into account the costs of meeting those needs and interests, and consistent with federal law.

8.4 Parental Control Device

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

8.5 Continuity of Service Mandatory

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

(B) In the event Grantee fails to operate the Cable System for ninety-six (96) hours in any seven (7) day period, without prior approval of the City, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or until the Franchise is revoked and a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages in excess of the revenues from

the cable system received by the City that are the result of Grantee's failure to perform. Additionally, in this event, the Grantee will cooperate with the City to allow City employees and/or City agents free access to the Grantee's facilities and premises for purposes of continuing cable system operation.

8.6 Services for the Disabled

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

SECTION 9. ACCESS

9.1 Capital Contribution for Government, Educational and Public Access

(A) Within sixty (60) days of the Effective Date of this Franchise, Grantee shall provide a capital contribution of one hundred sixty-four thousand dollars (\$164,000.00) which the City and/or, at the City's discretion, its Designated Access Providers may use for all permissible Government, Educational and Public Access purposes, including but not limited to replacement and upgrading of Access equipment and facilities, or for I-Net purposes as described in Section 10.1(A) below. The City understands that pursuant to federal law, Grantee intends to collect the capital contribution from Residential Subscribers as a separate line item on Subscriber bills in the amount of \$.50 per month per Residential Subscriber, in addition to the price for Cable Service. Following Grantee's provision of the grant, Grantee shall on a quarterly basis notify the City of the amount collected from Subscribers during the preceding quarter, and shall notify the City when the capital contribution has been recovered. Grantee shall have no further programming production or studio obligations to the City.

(B) When the contribution specified in subsection (A) is fully recovered by Grantee, the Grantee shall provide to the City up to \$.50 per month per Residential Subscriber for Access and/or I-Net capital (the "Replacement Capital Contribution"). The City understands that pursuant to federal law, Grantee intends to collect the Replacement Capital Contribution from Residential Subscribers as a separate line item on Subscriber bills in addition to the price for Cable Service. Grantee shall not be responsible for collecting or paying the Replacement Capital Contribution with respect to gratis accounts.

(C) Each Replacement Capital Contribution payment shall be due and payable no later than forty-five (45) days following the end of the quarter from when the Replacement Capital Contribution takes effect. The City shall have discretion to allocate the Replacement Capital Contribution in accordance with applicable law. The City may adjust the amount of the Replacement Capital Contribution on an annual basis (up to the maximum amount specified in this subsection), provided that Grantee is given ninety (90) days advance written notice.

9.2 Management and Control of Access Channels

The City shall have sole and exclusive responsibility for identifying the Designated Access Providers and allocating the Access resources under this Section 9. The City may authorize Designated Access Providers to control and manage the use of any and all City controlled Access facilities under this Franchise. To the extent of such designation by the City, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access facilities. The City or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise. Grantee shall cooperate with the City and Designated Access Providers in the use of the Access Channels provided pursuant to this Agreement. Nothing herein shall prohibit the City from authorizing itself to be a Designated Access Provider. Nothing herein shall prohibit the City from assigning several Designated Access Providers to share a single Access Channel. Access Channels may not be used for the cablecast of program content whose purpose is for profit in nature.

All assigned Access Channels can be used to transmit signals in any format that is technically compatible with the Cable System, including, by way of example and not limitation, video, audio only, secondary audio and/or text messages. Such uses must be in furtherance of Access purposes.

9.3 Availability of Access Channels

(A) Grantee must carry all Access Channels and deliver them to Subscribers so that such Channels are receivable by Subscribers, without the need for any equipment other than that required to receive the tier of service upon which the Access Channels are placed.

(B) Grantee shall be required to deliver Access channels to Subscribers in an analog format unless and until all other channels on the Cable System are delivered in a digital format. At such time that all other channels on the Cable System are delivered in digital format, the Grantee shall be responsible for all costs associated with delivering and/or converting Access channels to digital format, except for those equipment costs ordinarily borne by Subscribers. Any digital channel made available for Access must be capable of delivering a signal of a type and quality comparable to that provided for commercial channels.

(C) Existing Access Channels. As of the Effective Date, Grantee shall continue to make available the five (5) Downstream Access Channels on the Cable System – one each for the Poudre School District, Colorado State University, City of Fort Collins Government Channel, Public Access and City of Fort Collins internal channel. The provisions of subsections (D) and (E) below regarding Additional Access Channels and Underutilized Access Channels are not applicable to the City's internal channel.

(D) Additional Access Channels. At such time when a Government or Educational Access Channel is occupied by non-character-generated programming eighty (80%) percent of the time during "regular viewing hours" for any twelve (12) consecutive week period, the City may request the use of one (1) additional Downstream Access Channel for Access purposes, by giving the Grantee one hundred twenty (120) days written notice. For purposes of this subsection, "regular viewing hours" shall be the hours between 3 p.m. and 11 p.m., Monday through Friday, and between

noon and midnight on weekends. At no time shall the number of Downstream Access Channels exceed six (6) total. In order to qualify for an additional Access Channel, at least fifty percent (50%) of the programming on the existing Access Channel must be locally produced. In addition to the foregoing criteria, Grantee shall not be obligated to provide an additional Access Channel until after the fifth anniversary of this Agreement.

(1) A program may be repeated up to three (3) times after its first run during regular viewing hours. A program shall also include bulletin board material if the material consists of multiple and different text (or video and text) screens transmitted to different Subscribers simultaneously and where the content of the bulletin board can be selected by a viewer, even if the resulting message is then available to all viewers of the channel.

(2) If, after provision of additional channel(s) pursuant to the aforementioned criteria, the demand for such programming is reduced to the point where over a twelve (12) week period all such programming can be scheduled on one (1) of the Initial Access Channels during regular viewing hours, the additional channel shall be returned to Grantee upon one hundred twenty (120) days notice of its intent to reclaim the channel.

(3) The fact that a channel may be reclaimed as a result of decreased demand as provided herein, does not preclude the additional channel from being made available subsequently should demand increase in accordance with this subsection (D).

(E) Underutilized Access Channels. Grantee and the City agree that it is their mutual goal to fully and efficiently use the Channel capacity of the Cable System, which may include allowing the Grantee to use underutilized time on Access Channels. At any time after one year of the Effective Date of this Agreement, if Grantee believes that any Access Channel has underutilized time, Grantee may file a request with the City to use that time. In response to the request, the City will consider a combination of factors, including but not limited to, the community's needs and interests, and the source, quantity, type and schedule of the programming carried on the Access Channel. The City will also consider, taking into account the mission of the Access programming, whether it is feasible for the Designated Access Providers to cluster Access programming into blocks of time such that the Channel space can be compatibly shared between the Designated Access Provider and the Grantee and/or if several Designated Access Providers can combine their programming onto a single Access Channel; provided however, that neither the City nor any Designated Access Provider shall ever be required to combine Government or Educational Access programming on the same channel as Public Access. The City shall render its decision regarding the matter within ninety (90) days of receiving the request. Should the City find that the Access Channel or portion of the Access Channel may be used by the Grantee, then Grantee may begin using such time ninety (90) days after receipt of the decision. The Grantee's request shall not be unreasonably denied. Grantee shall provide financial assistance and promotion of any required channel changes or consolidation as required for channel relocation pursuant to subsection 9.5. Any permission granted pursuant to this subsection for use of an Access Channel or a portion thereof shall be

considered temporary.

At such time as a Designated Access Provider believes that it has the resources and ability to utilize the Access Channel time currently used by the Grantee pursuant to this subsection, a Designated Access Provider may request that the City return such Channel or portion of the Channel for Access purposes. In response to the request, the City will consider a combination of factors, including but not limited to, the community's needs and interests in the additional Access programming as measured through a survey methodology that is mutually acceptable between the City and Grantee, and the source, quantity, type and schedule of the programming proposed to be carried on the Access Channel as well as the applicant's ability and resources to acquire or produce the proposed Access programming. The City will also consider, taking into account the mission of the Access programming, whether it is feasible for the Designated Access Providers to cluster Access programming into blocks of time such that the Channel space can be compatibly shared between the Designated Access Provider and the Grantee and/or if several Designated Access Providers can combine their programming onto a single Access Channel. The City shall render its decision regarding the matter within ninety (90) days of receiving the request. Should the City find that the evidence exists to support the return of the Access Channel or portion of the Access Channel to the Designated Access Provider, then Grantee shall surrender the requested time on the Access Channel within ninety (90) days of receiving the decision. Grantee may appeal the decision of the City to the City Council. The Designated Access Provider's request shall not be unreasonably denied.

9.4 Access Channels On Basic Service Tier

All Access Channels provided to Subscribers under this Franchise shall be included by Grantee, without limitation, as a part of the Basic Service Tier.

9.5 Relocation of Access Channels

Grantee 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 any Access Channel designation is changed, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible. In addition, in the event of a change in an Access Channel's designation, Grantee shall cooperate in the following manner with the City in order to notify Subscribers of this change. Grantee, at Grantee's expense, will place the City's notices of the Channel change on and/or with its regular monthly billings, upon the City's request. In addition, Grantee shall provide Grantor with a total not to exceed one hundred (100) thirty second (:30) promotional spots ("Spots") on the System serving the Franchise Area during a thirty (30) day period prior to the date of the change in the location of the Access Channels. The number of Spots to be provided under this Section shall be prorated with respect to any partial period less than thirty (30) days. Grantor or its designee shall have sole responsibility to produce and deliver the Spots to Grantee on a timely basis and in a cablecast-ready state. Such Spots shall promote the Access Channels and the Channel relocations only for the sole purpose of notifying Subscribers of the change in Channel designations, and shall not include any mentions

of third party sponsors or individual users of the Access Channel. Placement of the Spots shall be made by the Grantee on a run-of schedule basis. All Spots are subject to Grantee's approval; such approval not to be unreasonably withheld or delayed. Any new Channel designations for the Access Channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards.

9.6 Technical Quality

(A) The Grantee shall maintain all Access Channels, Interconnects and return lines at the same or better level of technical quality and reliability as for its commercial channels, services and Interconnects and that required by this Franchise and all other applicable laws, rules and regulations for other Channels, services and Interconnects. The Grantee shall provide routine maintenance and shall repair and replace all transmission equipment as necessary to carry a quality signal from the Access facilities provided under this Franchise to Subscribers.

(B) If Grantee makes changes to its Cable System that necessitate modifications to Access signal transmission facilities and equipment (including but not limited to the upstream paths), Grantee shall provide reasonable advance notice of such changes to the City and its Designated Access Provider(s) and shall provide, at Grantee's expense, any additional or modified facilities or equipment necessary to implement such modifications within a reasonable period of time prior to the date that the system changes are to be made, so that Access signal transmission facilities and equipment may be used and operated as intended and without interruption, including, among other things, so that transmissions of live and taped communications can be cablecast efficiently to Subscribers. By way of example, and not limitation, should the Grantee cease delivery of all signals in an analog format to Subscribers, it will provide the signal transmission and/or conversion equipment necessary so that Access signals can be transmitted in a digital format.

9.7 Return Lines and Satellite Downlink

(A) Grantee shall maintain the return lines from all existing Access broadcast facilities, as set forth in Exhibit A, to the Headend, in order to enable the distribution of Access programming to Subscribers on the Access Channels. Grantee shall continuously maintain these return lines throughout the term of the Franchise, unless any of these locations are no longer used in the future to originate Access programming.

(B) If an outlet of Basic Service is required to be provided by the terms of subsection 13.4, then Grantee shall, at its expense construct and maintain new return lines with capacity to carry video programming to the Headend from those high school locations to be constructed within the Franchise Area identified on Exhibit B. The City shall also send to Grantee in writing any request to provide a return line with capacity to carry video programming to the Headend, and equipment necessary to activate such programming, from any new studio/facility of the City's Designated Access Provider for Public Access. Grantee shall submit an estimate of costs to construct the new return line to the City within thirty (30) days of receiving the written request. Grantee agrees to contribute capital support for the construction of this Public Access return line, provided that the

maximum cost incurred by Grantee for the Public Access return line and equipment shall not exceed five thousand dollars (\$5,000.00), and provided further that the City match dollar for dollar Grantee's contribution up to Grantee's maximum amount. Grantee reserves its right to recover this contribution for the Public Access return line from Subscribers in a manner consistent with applicable law. With respect to any production facilities of other new or relocated Designated Access Providers delivering Access programming to Subscribers as requested in writing by the City, Grantee shall construct and maintain such new return lines, provided however, that Grantee's actual costs shall be paid by the City or its Designated Access Provider(s).

(C) Grantee shall, at its expense, cooperate with the City to facilitate the downlink of non-commercial programming for City use on its Government Access Channels provided such downlinking of programming is technologically or economically feasible.

9.8 Information about Access Programming to Subscribers

Upon request by the City, Grantee shall include information about Access programming in the installation packet provided to Subscribers. The City shall supply the materials, for insertion in the packet, in a format consistent with and subject to the limitations of Grantee's requirements.

SECTION 10. INSTITUTIONAL NETWORK

10.1 Private Network

(A) A portion of the private communications network used by the City for noncommercial, government purposes is an I-Net, defined under 47 U.S.C. § 531 (f) as a communications network which is constructed or operated by the cable operator, and which is generally available only to subscribers who are not residential subscribers. The City may, in its sole discretion, use all or part of the Capital Contribution and/or Replacement Capital Contribution described in Section 9.1 for capital purposes related to the I-Net as defined in this Section 10.1(A).

(B) The City will not use or allow others to use the I-Net for commercial purposes, nor lease or otherwise provide any capacity on the network to any entity other than Qualified I-Net Users, or use the I-Net to provide commercial telecommunication services to residential or commercial properties. Use of the I-Net is not "commercial" solely because such use generates revenues to reimburse the City, or other users designated by the City, for the provision of services. For the purposes of example, but not limitation, an activity which would generate revenues and which would be permitted under this section would include the transmission of educational programming for a fee or the sale of GIS data maintained by the City. Nothing prevents the City from charging users for such non-commercial services in order to recover the cost of equipment or facilities incurred by the City in connection with the I-Net. In addition, the Grantee and the City shall at all times provide such management of the I-Net as applicable to ensure the necessary protection of proprietary I-Net signals.

10.2 Qualified I-Net Users

The I-Net is utilized by the City and any Qualified I-Net Users. Qualified I-Net Users are any of the following which are passed by the Cable System and located in the Franchise Area or adjacent areas as more specifically defined in accordance with the following: (i) the City and its agencies, other governments and their agencies, public libraries, and all State-accredited K-12 public schools; (ii) Front Range Community College and Colorado State University; and (iii) other public and/or quasi-public entities that the City determines in the future may use the I-Net.

SECTION 11. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

11.1 Right to Construct

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

11.2 Right-of-Way Meetings

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

11.3 Joint Trenching/Boring Meetings

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

11.4 General Standard

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

11.5 Permits Required for Construction

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

received by Grantee.

11.6 Emergency Permits

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

11.7 Compliance with Applicable Codes

(A) City Construction Codes. Grantee shall comply with all applicable City codes, including, without limitation, the Larimer County Urban Area Street Standards, the International Building Code and other adopted building codes, the Uniform Fire Code, the Uniform Mechanical Code, the National Electrical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations. If conflicts are discovered between the provisions of the Franchise Agreement and the codes cited above, the more restrictive provisions shall take precedence, unless otherwise approved by the City Engineer.

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

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

11.8 Mapping

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

11.9 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities

that may have been laid in the Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

11.10 Prevent Injury/Safety

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

11.11 Hazardous Substances

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

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

11.12 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-101, *et seq.*, as such may be amended from time to time.

Within two business days (not including the day of notice) after any City bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

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

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

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

11.13 Notice to Private Property Owners

Grantee shall give reasonable notice to private property owners of work on private property and/or work in rights of way adjacent to such private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council.

11.14 Underground Construction and Use of Poles

(A) When required by applicable ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Grantee's Cable System shall be placed underground at no expense to the City unless otherwise required by applicable law, including, C.R.S. 29-8-101. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

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

(C) The Grantee shall utilize existing poles and conduit wherever possible, pursuant to applicable law.

(D) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on equipment of the City or any other Person. City must provide copies of agreements for the use of poles, conduits, or other facilities upon reasonable written request.

(E) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the Grantee that involves trenching or boring, provided that the City has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the City shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The City shall be responsible for maintaining its respective cable, conduit and Fiber

Optic cable buried in the Grantee's trenches and bores under this paragraph.

11.15 Undergrounding of Multiple Dwelling Unit Drops

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

11.16 Burial Standards

(A) Depths. Unless otherwise required by law, Grantee shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities in the same portion of the Right-of-Way. Grantee may appeal to the City Engineer for exceptions to the following burial depths due to circumstances that may include, but need not be limited to, difficult access or conflicts with other uses of the right-of-way or utility easement. The burial depth standards in this section apply to new or replaced cable drops buried after the effective date of this Franchise.

(1) New Construction.

(a) Underground cable drops shall be buried at a minimum depth of twenty four (24) inches when in rights of way and utility easements.

(b) Underground cable drops shall be buried at a minimum depth of twelve (12) inches when outside rights-of-way and utility easements. It is anticipated this will only occur in a Subscriber's property.

(2) Existing Construction.

(a) Back yards and Side yards. Underground cable drops shall be buried at a minimum depth of twelve (12) inches when in rights-of-way and utility easements except as otherwise required herein. Underground cable drops shall be buried at a minimum depth of twenty-four (24) inches when in rights-of-way and utility easements for a distance of more than twenty (20) feet.

(b) Front yards. Underground cable drops shall be buried at a minimum depth of twenty-four (24) inches when in rights-of-way and utility easements.

(c) Streets and Alleys. Underground cable drops shall be buried at a minimum depth of twenty-four (24) inches when in rights-of-way and utility easements.

(3) Other burial standards.

(a) Feeder lines shall be buried at a minimum depth of twenty four (24) inches.

(b) Trunk lines shall be buried at a minimum depth of twenty-four (24) inches.

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

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

11.17 Electrical Bonding

Grantee shall ensure that all cable drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by Grantee as necessary.

11.18 Prewiring

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

11.19 Repair and Restoration of Property

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

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property and easements in accordance with the Larimer County Urban Area Street Standards, or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with City ordinances, rules and regulations that apply to all users of the Right-of-Way. If restoration

is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior written notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the actual cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

(D) Private Property. Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with applicable law.

11.20 Acquisition of Facilities

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

11.21 Discontinuing Use/Abandonment of Cable System Facilities

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

11.22 Movement of Cable System Facilities For City Purposes

The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way

vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense consistent with applicable law. Except during an emergency, the City shall provide reasonable written notice to Grantee, not to be less than fifteen (15) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City that requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If the City receives funds for such relocation from any public or private source, Grantee shall be entitled to its pro rata share of such funds, unless such funds are only received for the relocation of another specific entity's facilities. If funds for such relocation are generally available from any other source and not paid to or through the City, Grantee shall be entitled to its pro rata share of such funds pursuant to applicable law. For purposes of this Section, "emergency" shall be considered any project necessary to protect public health or safety.

If the Grantee fails to complete this work within the time prescribed and to the City's reasonable satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. To the extent that the City can do so without incurring damages, it shall give written notice and a reasonable opportunity to cure, prior to commencing work on Grantee's behalf. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System, unless the City acted in a negligent manner. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City. Nothing herein shall be construed as to waive any rights Grantee may have for reimbursement of costs related to underground construction.

11.23 Movement of Cable System Facilities for Other Franchise Holders

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

11.24 Temporary Changes for Other Permittees

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

11.25 Reservation of City Use of Right-of-Way

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

11.26 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Rights-of-Way which interferes with Grantee's Cable System, subject to the City's Trimming and Removal Ordinance.

11.27 Inspection of Construction and Facilities

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

11.28 Stop Work

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

(B) The stop work order shall:

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

11.29 Work of Contractors and Subcontractors

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

SECTION 12. CABLE SYSTEM DESIGN, FUNCTIONALITY, TECHNICAL STANDARDS AND TESTING

12.1 Network Design

(A) Grantee's Cable System shall be designed so as to include the following requirements:

(1) The Cable System will use a fiber to the neighborhood node architecture or a technology and architecture providing equivalent functionality, capacity and reliability.

(2) Sufficient fiber to the node shall be constructed to allow segmentation of the node with no additional construction in order to reduce and optimize the number of customers required to share the return bandwidth allocated for two-way services, such that no more than 125 homes are using the return bandwidth allocated for two-way services at any particular time.

(3) The downstream Cable System shall be designed from 50 to 750 MHz. All passive components replaced or added after the effective date of this Franchise will be 1 GHz capable equipment.

(4) The Cable System shall be designed to provide for Two-Way activated capacity capable of supporting interactive services.

(5) The headend and any hubsite shall have continuous backup power supplies. Each node and optical transfer node shall have minimum four-hour backup power supplies. Such equipment shall be constructed and maintained so as to cut in automatically upon failure of the commercial utility power, to revert automatically to a standby mode when alternating current power returns, and to comply with all utility and other safety regulations to prevent the alternate power supply from powering a "dead" utility line in order to prevent

injury to any person. All backup power supplies shall be monitored, consistent with Grantee's internal practices and applicable law.

The foregoing requirements shall be completed in a manner that is in accordance with all applicable laws and F.C.C. technical standards. Grantee may substitute another transmission material and/or modify its design provided that the same technical benefits, reliability, functionality and picture quality are maintained.

12.2 Network Functionality

(A) The Cable System shall deliver a minimum of 110 channels of analog and/or digital programming, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Grantee shall retransmit all closed captioning programming received by the Cable System so long as the closed caption signal is provided consistent with FCC standards. All local signals received in stereo or with secondary audio tracks (broadcast and Access) shall be retransmitted in those same formats. In the case of AM/FM radio transmission, the above specifications, where applicable, shall apply.

(C) The Cable System shall have reliability consistent with applicable law and FCC technical standards.

(D) In order to address subscriber demand for interactive services, the Grantee shall provide such Two Way capacity as is required to ensure reliability and quality delivery of the particular service.

(E) The technical performance of the Cable System shall meet or exceed FCC technical quality standards regardless of the particular manner in which the signal is transmitted by the Grantee. Grantee shall comply with its internal digital video standards unless the FCC adopts digital video standards. If the digital video delivery on the Cable System does not comply with FCC digital video standards according to FCC proof-of-performance tests, after notice and opportunity to correct, the City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

(F) The Cable System and equipment is and will continue to have Two-Way active capability as required above in Section 12.1(A).

(G) Equipment shall be installed at the headend to allow the Grantee to cablecast signals in substantially the form received, without material alteration or deterioration (for example, the headend should include equipment that will transmit color video signals received at the headend in color). Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(H) Grantee shall comply with all applicable laws concerning system compatibility with Subscribers' consumer electronics equipment. Grantee shall provide the facilities and equipment necessary to make its services (including its customer services) accessible to persons with disabilities in accordance with applicable State and Federal Law. For example, Grantee shall ensure the availability of TTY or equivalent means to permit communication between the hearing-impaired community and Cable System representatives.

(I) Grantee shall take prompt corrective action if it finds that any facilities or equipment on the Cable System do not meet FCC technical standards or do not comply with the requirements of this Section 12.

12.3 Emergency Alert Capability

(A) Grantee shall provide an operating Emergency Alert System ("EAS") in compliance with FCC standards throughout the term of this Franchise. The City may use the EAS, under procedures established between the City and the Grantee which are consistent with Grantee's State and federal EAS requirements, to transmit an emergency alert signal, including the ability to override the audio and video (either full screen, or crawlers) on all Channels throughout the City from the City's Emergency Operations Center or other location as may be designated by the City. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing at least twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

(B) The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment provided pursuant to this subsection.

12.4 Technical Performance

The technical performance of the Cable System shall meet or exceed all FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

12.5 Future System Upgrades

The Grantee shall provide additional or new facilities and equipment, and otherwise upgrade or rebuild its cable system throughout the Franchise term as required to remain compliant with FCC standards.

12.6 Cable System Performance Testing

The Grantee shall perform the following tests to demonstrate compliance with the requirements of the Franchise:

(A) The Grantee shall employ accepted industry procedures to assure the selection of quality system components. No component shall be used if it fails to meet manufacturer's specifications.

(B) If during the term of this Franchise, the Grantee upgrades its Cable System, the Grantee shall perform quality tests on the existing system components that will remain after construction, including trunk, distribution, and drop cable, and any passive devices, such as taps and directional couplers, to ensure that each is capable of meeting required FCC technical standards. The Grantee shall perform acceptance tests on the Cable System at the conclusion of any upgrade.

(1) To demonstrate compliance with 47 C.F.R. 76 subpart K, the Grantee shall undertake Proof of Performance tests and upon written request from the City, shall submit the test results to the City. Upon written request, the City will be notified at least 10 days beforehand and be permitted to witness the tests.

(2) The Grantee shall demonstrate that the Cable System has been upgraded in a manner consistent with this Franchise and can comply with the capacity and functionality requirements herein. The Grantee shall meet and confer with the City to determine the tests (if any) that the Grantee shall undertake.

(3) If the Cable System is found not be to compliant with the capacity and functionality requirements herein, the Grantee shall have the obligation to meet and confer with the City and to take corrective action, as deemed necessary by the City.

(C) Continuing Tests. The Grantee will provide results of any additional System tests to the City upon written request.

(D) System Inspections. Based upon customer complaints or for any other reason consistent with Franchise obligations, in its reasonable discretion, the City may inspect the Grantee's Cable System, subscriber installations, and the Grantee's equipment used in the maintenance of that Cable System to determine compliance with the Franchise Agreement, and applicable federal, state and local laws. The City shall provide five (5) business days written notice to the Grantee of such inspection, which need not include the specific locations to be inspected. The Grantee shall be notified in writing of any violations found during the course of inspections. If, based on subscriber complaints or its own investigation, the City reasonably believes that the Cable System may not be operating in compliance with the requirements of the Franchise, it may provide the Grantee written details and require the Grantee to perform tests and to prepare a report to the City on the results of those tests, including a report identifying any problem found and steps taken to correct the problem. Subject to Grantee's right to dispute such alleged violations, the Grantee must bring violations of this Franchise or applicable law into compliance or must take all reasonable and practicable steps toward compliance within thirty (30) days of the date it receives notice. Notwithstanding the foregoing, in the case of violations that result in public health or safety problems the Grantee shall act immediately to remedy such violations. Inspection does not relieve the Grantee of its obligation

to build in compliance with all provisions of the Franchise. This provision is subject to any federal law limitations on the City's authority.

SECTION 13. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

13.1 Universal Service

Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area. Subject to subsection 13.2, all Dwelling Units, Multiple Dwelling Units and commercial establishments in the Franchise Area shall have the same availability of Cable Services from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit. Notwithstanding the foregoing, Grantee may introduce new or expanded Cable Services on a geographically phased basis, where such services require an Upgrade of the Cable System. Grantee may also charge for line extensions and non-Standard installations pursuant to subsection 13.2.

13.2 Service Availability

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

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

(2) At a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-Standard Installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City. Where a drop exceeds one hundred twenty-five (125) feet in length, the Grantee may charge the subscriber for the difference between the Grantee's actual costs associated with installing a one hundred twenty-five (125) foot drop and the Grantee's actual cost of installing the longer drop;

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

(4) Undergrounding of Drops. In any area where the Grantee would be entitled to install a drop above-ground, if requested by the subscriber the Grantee will provide the subscriber the option to have the drop installed underground, but may charge the subscriber the difference between the actual cost of the above-ground installation and the actual cost of the underground installation.

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

(C) Customer Charges for Extensions of Service. No customer shall be refused service arbitrarily. However, for unusual circumstances, such as a non-Standard drop, a customer's request to locate the cable drop underground, or a density of less than twenty-five (25) residences per 5280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals twenty-five (25). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

(D) Annexations. In the event that the City annexes territory that is not being provided Cable Service by the Grantee or an Affiliate of Grantee, Grantee agrees that it will extend its Cable System into the newly annexed territory under the terms of this subsection 13.2. If Grantee finds it convenient for any of the annexed territory to be served by an Affiliate versus the Grantee, the rights, benefits and obligations of this Franchise shall apply to such Affiliate for the annexed area, without the need for transfer approval of the City. By way of example, an Affiliate would be permitted to serve an annexed area provided that it offered the same Cable Services at the same prices, as offered by Grantee throughout the City.

13.3 Interconnection With Other Cable Systems

(A) Interconnection with Grantee Systems. The Grantee shall take all necessary technical and construction steps to ensure that its Cable System and any contiguous Grantee or Affiliate Cable Systems within the City are interconnected for PEG Access and I-Net purposes throughout the term of this Franchise, provided that the same Headend that serves the Franchise Area serves such systems. Such interconnection shall be completed within twenty-four (24) months of the Effective Date.

(B) Interconnection with Other Systems. The Grantee shall take all necessary technical and construction steps to ensure that its Cable System is capable of being interconnected with any other contiguous cable system or Open Video System not owned or operated by Grantee or an

Affiliate of Grantee if such interconnection is requested by the City. Interconnection with other cable systems or Open Video Systems may be done by direct cable connection, microwave link, satellite or other appropriate methods. The City shall not direct interconnection except under circumstances where it can be accomplished without undue burden or excessive costs to the Subscribers. Grantee shall not be required to interconnect with the other cable system or Open Video System unless the operator of that system is willing to do so on fair and reasonable terms and is willing to pay its own cost of installation, operation, and maintenance of any cable plant, equipment, and facilities located within its own territory which are required for the interconnection.

(C) Grantee shall only be required to interconnect its Cable System with an overbuilder in the City in the event that the overbuilder proves to the City that it would be economically burdensome to its Subscribers to construct and maintain return lines directly from the origination point(s) of the Access Channel(s) versus interconnecting with Grantee. In the event Grantee receives a directive from the City to interconnect with an overbuilder, Grantee shall immediately initiate negotiations with the overbuilder and shall report to the City the results of such negotiations no later than sixty (60) days after such initiation. The overbuilder shall be responsible for all of Grantee's costs in constructing and maintaining the interconnect. If the interconnections interfere in any way with the signal quality and normal operations of Grantee's Subscriber Network, the interconnection shall not be required. Additionally, Grantee shall only be required to interconnect with an overbuilder if the overbuilder is providing similar support for Access as required of Grantee pursuant to this Franchise.

(D) Cooperation. The City understands that interconnection requires cooperation from other Cable System operators. The City shall make every reasonable effort to assist Grantee in achieving the cooperation necessary to realize interconnection.

13.4 Connection of Public Facilities

Grantee shall, at no cost to the City, continue to provide one outlet of Basic Service to all City owned or leased and occupied buildings, schools and public libraries where such service is provided as of the Effective Date of this Franchise. As new City buildings are added to its operations, Grantee shall continue to provide access to an internal Access Channel, secured only for the City's use. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. In addition, Grantee shall provide, at no cost to the City or other entity, one outlet of Basic Service to additional owned or leased and occupied City buildings, schools and libraries upon request if it is a Standard Installation or if the City or other entity agrees to pay the incremental cost of such drop line in excess of the Standard Installation, including the cost of such excess labor and materials. The Cable Service provided shall not be used for commercial purposes. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, recreation center work out facilities, other public viewing areas, etc). Outlets of Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used

for lawful purposes.

SECTION 14. FRANCHISE VIOLATIONS

14.1 Procedure for Remedying Franchise Violations

Except for cases involving an immediate danger to public health, safety, or welfare, before pursuing any remedies contemplated by this Franchise, the City shall follow the procedures set forth in this Section 14.

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

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

(2) cure the default; or

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

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

(C) If, after the meeting, the City determines that a default exists, the City, acting through the City Manager or his designee, shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame, as the City shall determine. The City's decision shall be provided to the Grantee in writing, setting forth all of the reasons supporting the City's actions. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Withdraw an amount from the letter of credit as monetary damages in accordance with the procedures set forth herein;

(2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 14.2; or

(3) Pursue any other legal or equitable remedy available under this Franchise or any applicable law.

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

14.2 Revocation

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

(1) If Grantee fails to perform any material obligation under this Franchise;

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

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

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

(5) If Grantee makes a material misrepresentation of fact in the negotiation of this Franchise.

(B) Following the procedures set forth in subsection 14.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least sixty (60) days prior written notice of such proceeding.

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

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

(2) Within ninety days after the hearing, the City Council or its designee shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council or its designee determines are reasonable under the circumstances. If the City or its designee determines that the Franchise is to be revoked, the City or its designee shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. A final decision to revoke must be made by resolution of City Council, in accordance with City Code. Grantee shall be bound by the City's decision to revoke the Franchise unless Grantee appeals the decision to a court of competent jurisdiction within thirty (30) days of the date of the decision.

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

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

14.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal and is not extended or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

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

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 14.4, below.

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

compensation of any sort.

(C) If Grantee fails to complete any removal required by subsection 14.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

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

14.4 Purchase of Cable System

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

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

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

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

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself.

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

14.5 Receivership and Foreclosure

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

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

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

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

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

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

14.6 No Monetary Recourse Against the City

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

SECTION 15. FRANCHISE RENEWAL AND TRANSFER

15.1 Renewal

Any proceedings undertaken by the City that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by any subsequent provision of applicable law.

15.2 Transfer of Ownership or Control

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

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

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

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

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

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable System or the provision of Cable Services;

(4) Is financially solvent, by submitting financial data including financial data consistent with that required by FCC regulations; and

(5) Has the financial, legal and technical capability to maintain and operate the Cable System and comply with this Franchise for the remaining term hereof.

(E) The City shall act within one hundred twenty (120) days of the request, provided it has received all legally required information. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

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

(G) In reviewing a request for sale or transfer, the City may inquire into the legal,

technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be consistent with applicable federal law and reasonably related to the qualifications of the prospective controlling party or transferee to comply with this Franchise, and to the resolution of any outstanding and unresolved issues of noncompliance with this Franchise by Grantee.

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

SECTION 16. SEVERABILITY

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

SECTION 17. MISCELLANEOUS PROVISIONS

17.1 Preferential or Discriminatory Practices Prohibited

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

17.2 Eminent Domain

Nothing in this Franchise shall restrict or otherwise impact the City's ability to exercise the power of eminent domain with respect to the Cable System, as such may be permitted by law.

17.3 Notices

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

Grantee's address shall be:
Comcast of California/Colorado LLC
8000 East Iliff Avenue
Denver, CO 80231
Attention: Director of Government Affairs

With a copy to:
Comcast
434 Kimbark
Longmont, CO 80501
Attention: General Manager/Government Affairs

The City's address shall be:

Franchise Administrator
P. O. Box 580
Fort Collins, Colorado 80522

With a copy to:

City Attorney
P.O. Box 580
Fort Collins, Colorado 80522

17.4 Descriptive Headings

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

17.5 Publication Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs incurred in publishing this Franchise and any notices or ordinances in connection with its adoption if such publication is required by a generally applicable City ordinance.

17.6 Binding Effect

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

assigns.

17.7 No Joint Venture

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

17.8 Waiver

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

17.9 Reasonableness of Consent or Approval

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

17.10 Entire Agreement

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

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Fort Collins, Colorado this ___ day of _____, 2006.

ATTEST:

CITY OF FORT COLLINS, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

EXHIBIT A:

Access Broadcast Facilities with Existing Return Lines

SITE	ADDRESS
Cable 27 – City	300 LaPorte Avenue
Cable 25 – CSU	CSU Campus TV
Cable 10 – PSD	2413 LaPorte Avenue

EXHIBIT B

**Facilities To Which Return Lines and/or Cable TV service
Will Be Constructed**

SITE	TYPE OF CONNECTION	ADDRESS
Any additional Poudre School District High Schools constructed within the City limits during the term of the franchise (when constructed)	Cable TV and return feed as constructed in other PSD high schools	TBD
Public Access Studio/Facility	Return feed and equipment for live programming capability	TBD