

**CITY OF GRAND JUNCTION, COLORADO**

**ORDINANCE NO. 4919**

**AN ORDINANCE GRANTING A RENEWAL OF THE FRANCHISE BY THE CITY OF GRAND JUNCTION TO SPECTRUM PACIFIC WEST, LLC, LOCALLY KNOWN AS CHARTER COMMUNICATIONS**

**RECITALS:**

The City Charter, Article XIV, § 105, Franchise Granted Upon Vote, provides “No franchise relating to any street, alley or public place of the said city shall be granted except upon the vote of the registered electors...”

In the April 2019 election, the City Charter was amended to allow an amendment, renewal, extension or enlargement of any franchise without a vote by the registered electors. Staff recommended the amendment because of the doctrine of federal preemption found in the Supremacy Clause of the United States Constitution. The City’s Charter directly conflicted with federal law by requiring a vote of the electorate for renewal of cable franchise. Federal law provides that “...any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded.”

The City Charter, Article XIV, Article XIV, § 119, Amendment, Renewal, Extension or Enlargement of Franchise, now states:

No amendment, renewal, extension or enlargement of any franchise, or grant of rights or powers previously or heretofore granted to any corporation, persons, or association of persons, shall be made except in the manner and subject to all conditions provided in this article for the making of original grants and franchises, except that renewal of any cable television franchise shall not be subject to a vote of the registered electors, but shall be made in accordance with applicable federal law.

On April 5, 2005, Bresnan Communications, LLC (“Bresnan”) was granted a franchise for the operation and maintenance of a cable television system in the City (People’s Ordinance No. 36). Charter Communications, Inc. (“Charter”), the parent company of Bresnan, merged Bresnan with Charter, Spectrum Pacific West, LLC (“Spectrum”). On December 5, 2018, Resolution No. 84-18 was approved, consenting to the assignment of the cable television franchise agreement to Spectrum.

The proposed ordinance renews the franchise agreement with Spectrum.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:**

An Ordinance granting a renewal of the franchise agreement by the City of Grand Junction to

Spectrum Pacific West, LLC, locally known as "Charter Communications", its successors and assigns, for the right to furnish, sell and distribute cable television services to the City and to all persons, businesses and industry within the City and the right to acquire, construct, install, locate, maintain, operate and extend into, within and through said City all facilities reasonably necessary to furnish cable television services and the right to make reasonable use of all streets and other public places and easements as may be necessary; and fixing the terms and conditions thereof.

**CABLE FRANCHISE  
SPECTRUM PACIFIC WEST, LLC  
LOCALLY KNOWN AS "CHARTER COMMUNICATIONS"**

**ARTICLE I. DEFINITION OF TERMS**

- 1.1 For the purposes of this franchise, the following terms, phrases, words and their derivations shall have the meanings given here. 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. The word "shall" is always mandatory and never merely directive; the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.
- 1.2 *Affiliate*, when used in connection with the Grantee, shall have the meaning set forth in Section 602 of the Cable Act (47 U.S.C. §522).
- 1.3 *Bad debt* means amounts billed to a subscriber and owed by the subscriber for cable service and accrued as revenues on the books of Grantee, but which are not collected after reasonable efforts have been made by the Grantee to collect them.
- 1.4 *Basic cable service* shall have the meaning set forth in Section 602 of the Cable Act (47 U.S.C. §522)
- 1.5 *Broadcast channel* means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 U.S.C. §534 and §535.
- 1.6 *Broadcast signal* means a television or radio signal transmitted over the air to a wide geographic audience, and received by a cable system by antenna, microwave, satellite dishes or any other means.
- 1.7 *Cable Act* means the Cable Communications Policy Act of 1984, as amended (47 U.S.C. §§521, et seq.)
- 1.8 *Cable operator, cable service, cable system, and channel*, shall have the meaning set forth in Section 602 of the Cable Act (47 U.S.C. §522).
- 1.9 *City* means the City of Grand Junction, Colorado, a body politic and corporate under the laws of the State of Colorado, and all of the area within its boundaries, as such boundaries may change from time to time, and any of its legally established enterprises.
- 1.10 *City Council* means the Grand Junction City Council, the governing body of the City of Grand Junction, or its successor.

- 1.11 *Demarcation point* means the patch panel, termination block or other termination device provided by the Grantee, if any, located within each end user-electronics. In all cases the demarcation point will be clearly marked as such by Grantee which provides an identifiable interface for end user electronics.
- 1.12 *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.
- 1.13 *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.
- 1.14 *Equipment* shall mean any poles, wires, cable antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the maintenance and operation of physical facilities located in the Right of Way, including the Cable System
- 1.15 *Expanded basic service* means the tier of optional video programming services one level above basic service, which does not include premium services.
- 1.16 *FCC* means the Federal Communications Commission and any successor entity thereto.
- 1.17 *Fiber optic* means the 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 light wave impulses.
- 1.18 *Franchise* shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Franchise Area.
- 1.19 *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
- 1.20 *Franchise fee* shall have the meaning set forth in Section 602 of the Cable Act (47 U.S.C. §522).
- 1.21 *GAAP* means generally accepted accounting principles.
- 1.22 *Generally applicable*, when referring to ordinances, laws, or regulations, means legal obligations that are applied generally and in a nondiscriminatory manner and not limited to Grantee.
- 1.23 *Grantee* means Spectrum Pacific West, LLC, locally known and doing business as Charter Communications.
- 1.24 *Gross Revenue* means and includes any and all revenue received by the Grantee, as determined in accordance with generally accepted accounting principles, from the operation of the Cable System to provide Cable Services in the Franchise Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal regulatory fees, or any sales or utility taxes, the Franchise fee is not such a tax; (2) unrecovered bad debt; (3)

credits, refunds and deposits paid to Subscribers; (4) any exclusions reasonably available under applicable State law and (4) any EG funding (as defined in Section 8 hereof.)

- 1.25 *Headend* means any facility for signal reception and dissemination on a cable system, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, and processors for broadcast signals.
- 1.26 *Nonstandard installation* shall mean an aerial drop of more than 125 feet of distance from distribution cable to connection of service or any underground installation to a potential subscriber.
- 1.27 *EG access channel(s)* means any channel(s), or portion thereof, designated for EG access purposes or otherwise made available to facilitate or transmit EG access programming or services.
- 1.28 *Educational, and governmental access or EG access* means the availability of channel capacity on the cable system for noncommercial use by various agencies, institutions, organizations, in the community, including the City and its designees, including, but not limited to:
  - (a) *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, including, for example, primary and secondary schools, colleges and universities.
  - (b) *Government access* means access where a governmental institution or its designee(s) is/are the primary users having editorial control over programming and services.
- 1.33 *Person* means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.
- 1.34 *Premium service* means programming choices (such as movie channels, pay-per-view programs, or video on demand) offered to subscribers on a per-channel, per-program or per-event basis.
- 1.35 *Right-of-way* means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the franchise area: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.
- 1.36 *Standard installation* shall mean any cable service aerial installation that measures no more than 125 feet from the point of connection to the Grantee's existing cable system.
- 1.37 *State* means the State of Colorado.
- 1.38 *Subscriber* shall mean any Person lawfully receiving Cable Service from the Grantee.
- 1.40 *Telecommunications* means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).
- 1.41 *Telecommunications service* means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).
- 1.42 *Tier* means a group of channels for which a single periodic subscription fee is charged.
- 1.44 *Upgrade* means an improvement in channel capacity or other technical aspect of the cable system capacity, which may be accomplished with or without a rebuild of the system.

## ARTICLE II: GRANT OF FRANCHISE

**2.1 Grant.** The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, extend, operate and maintain in, upon, along, across, above, over and under the Right of Way, now in existence and as may be created or established during its terms, all Equipment, including the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

**2.2 Franchise Requirement.** Grantee promises and guarantees, as a condition of exercising the privileges granted by this franchise, that any person who is a cable operator of this cable system in the Franchise Area, or directly involved in the management or operation of the cable system in the Franchise Area, will also comply with the terms and conditions of this Franchise.

**2.3 Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an initial term **of ten (10) years**, commencing on the Effective Date of this Franchise as set forth in Section 15.13. This Franchise will be automatically extended for an additional term of five (5) years, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the Federal Cable Act renewal procedures.

**2.4 Compliance with applicable laws.** Nothing in this agreement shall be deemed to waive the lawful requirements of any Generally Applicable City ordinance existing as of the Effective Date. This Agreement, is subject to applicable federal law, including the Cable Act.

**2.5 Police powers.** The Grantee agrees to comply with the terms of any lawfully adopted Generally Applicable local ordinance necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the mutual promises in this contract

**2.6 Nonexclusivity.** This franchise shall be nonexclusive and subject to all prior rights, interests, easements or licenses granted by the City to any person to use any property, Right-of-Way, right, or interest, hereunder. The City may at any time grant other franchises, including but not limited to cable franchises, or other authorization to use the Right-of-Way for any purpose not incompatible with Grantee's rights under this Agreement as the City deems appropriate.

**2.7 Renewal.** Renewal shall be governed by provisions and procedures set forth in Section 626 of the Cable Act (47 U.S.C. §546), as amended. Notwithstanding the foregoing, renewal may not occur sooner than one calendar year prior to the expiration of the Term, as required by the Charter of the City of Grand Junction, Article XIV, Section 117.

## ARTICLE III: SERVICE OBLIGATIONS, EXTENSION AND AVAILABILITY

**3.1 Service Area.** The Grantee shall make Cable Service distributed over the Cable System available to every single family residence within the Franchise Area where there is a minimum density of at least thirty-five (35) single family residences per linear strand mile of aerial cable as measured from Grantee's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request

for service (the "Service Area"). The Cable Service will be provided at Grantee's published rate for standard installations if such residence is a Standard Installation. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Franchise Area where another operator is providing Cable Service or into any annexed area which is not contiguous to the Service Area. Grantee shall not be obligated to provide service to any area where it is financially or technically infeasible to do so. Upon written request from the Grantor, at a time mutually agreed to, and not more than once annually, Grantee will meet with the Grantor to review the Service Area

**3.2 Subscriber Charges for Extensions of the Cable System.** No Subscriber shall arbitrarily be refused service; however, if an area does not meet the density requirements of Section 3.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/ Non-Standard Installation charges to extend the Cable System from the tap to the residence.

**3.3 No discrimination.** Grantee shall not deny cable service, access to cable services, or otherwise discriminate against subscribers, access channel or EG channel users, or property owners in the Franchise Area on the basis of race, color, religion, national origin, age, sex or sexual orientation. Grantee shall comply at all times with applicable law relating to nondiscrimination

**3.4 New Development Underground.** For new construction or development and when utilities are to be placed underground, the Grantor agrees to require as a condition of approval of the construction or development, the developer or property owner shall give Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within fifteen (15) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, or date mutually agreed to by the parties, then should the trenches be closed after the fifteen-day period, or date mutually agreed to by the parties the cost of new trenching is to be borne by Grantee.

**3.5 Service to multiple dwelling units.** Subject to the terms of any contract governing service to any multiple dwelling unit, 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 cable services beyond the Demarcation Point at a multiple dwelling unit.

**3.6 Annexation.** The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and Section 6.1. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, begin collecting the franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Franchise Area in an Excel format. If the annexation notice does not include the

addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 15.8 with a copy to the Director of Government Affairs. Grantee shall not be liable for franchise fees collected from an annexed area(s) unless and until Grantee has received notification in accordance with this section.

## **ARTICLE IV: CUSTOMER SERVICE AND RATES**

### **4.1 Customer Service Standards.**

Grantee shall comply with Customer Service Standards promulgated by the FCC.

4.1.1 Continuity of service. It shall be the right of all subscribers to continue receiving cable service insofar as their financial and other obligations to the Grantee are honored, and provided that Grantee may discontinue or refuse to provide Cable Service to any person that engages in credibly alleged criminal behavior toward the Grantee's employees or representatives, and subject to the Grantee's rights under this Agreement. Grantee shall use reasonable efforts to ensure that all subscribers receive continuous, uninterrupted cable service insofar as their financial and other obligations to Grantee are honored. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the cable system for maintenance or testing. Subject to the force majeure provision of this Agreement, failure of Grantee to operate the cable system for four consecutive days without prior approval of the City or its designee, or without just cause may be considered a material violation of this Agreement.

4.1.2 Parental control device. Upon request by any subscriber, Grantee shall provide by sale or lease a parental control or lockout device, traps or filters to enable a subscriber to prohibit viewing of a particular cable service during periods selected by the subscriber. 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.

**4.2 Rate regulation.** The City shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC or other applicable law. All of Grantee's rates and charges related to or regarding cable services shall comply with the City's lawful rate regulations. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

**4.3 Subscriber contracts.** Grantee shall provide to the City a sample of the subscriber contract(s) and/or service agreement(s) then in use upon the City's request. Grantee shall not enter into a contract with any subscriber that materially conflicts or otherwise fails to comply with the terms of this Agreement or federal or state law.

**4.4 Subscriber privacy.** Grantee shall fully comply with any federal, law regarding the privacy rights of subscribers.

**4.5 Performance evaluations.** The City may hold performance evaluation sessions no more often than once every three years to discuss Grantee's performance under this Agreement and under applicable law. Performance evaluation sessions shall be conducted by the City. Special evaluation sessions may be held at any time by the City during the term of this franchise upon reasonable prior written notice to Grantee, which notice shall include the City's basis for calling the special evaluation sessions. All evaluation sessions shall be open to the public and announced at least two weeks in advance in a newspaper of general circulation in the City. During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation. Nothing in this subsection shall be construed as requiring a renegotiation or amendment of this Agreement.

## ARTICLE V: FRANCHISE FEE

**5.1 Franchise fee established.** As compensation for the benefits and privileges granted under this franchise and in consideration of permission to use the City's rights-of-way, Grantee shall pay a franchise fee to the City throughout the Term of franchise. Accrual of the franchise fees shall commence as of the Effective Date of this Agreement.

**5.2 Amount of fee.** Grantee shall pay to the Grantor an annual franchise fee in an amount equal five percent (5%) of the annual Gross Revenue. Franchise Fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law. The franchise fee and the method of calculation shall be computed in accordance with GAAP. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a franchise fee under this Article shall be amended to reflect the same percentage and revenue base upon which the franchise fee in the other cable franchise fee is computed,

**5.3 Franchise Fees – bundled services.** If Cable Services subject to the franchise fee required under this Section are provided to Subscribers in conjunction with non-Cable Services for a single aggregate price, the franchise fee shall be applied to the portion of the aggregate price attributed to Cable Services. It shall be the obligation of Grantee to maintain its books and attribute the revenues to Cable Services consistent with GAAP and Grantee shall not make such attribution to avoid Franchise Fees.

**5.4 Payment of fee.** The 12-month period applicable for computation of the franchise fee shall be a calendar year. The franchise fees shall be due and payable quarterly within 45 days of the close of the calendar quarter and transmitted by electronic funds transfer to a bank designated by the City. The payment period and the accrual of the franchise fees that are to be paid to the City pursuant to this Agreement shall commence on the Effective Date of the Agreement.

**5.5. Late payment.** If any franchise fee payment or recomputed payment is not made on or before the dates specified herein, the Grantee shall pay an interest charge, computed from the last day in the fiscal year in which such payment was due, at the annual rate equal to the lowest of (A) the maximum rate permitted under state applicable law, (B) eight percent (8%) or (C) that established by the State Bank Commissioner pursuant to C.R.S. 39-21-110.5 in effect as of the due date (which is the prime rate of interest reported by the Wall Street Journal on July 1<sup>st</sup> of the previous calendar year, plus three percent (3%) rounded to the nearest full percent).

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

**5.7 Franchise fee statements.** Grantee shall, upon request, furnish to the City a statement stating the total amount of gross revenues for the quarter and all payments, deductions and computations for the period. Such statement shall be signed by an authorized representative of the company, stating that it accurately reflects the gross revenues of the Grantee.

### **5.8 Review or audit.**

5.8.1 Review. All amounts paid by the Grantee to the City under this Agreement and all relevant data and records reasonably related to the administration or enforcement of this Agreement shall be subject to review and if justified re-computation by the City upon thirty (30) days written notice to Grantee.



5.8.2 Audit. Upon 30 days' prior written notice, the City, including the City's Auditor or his/her authorized representative, shall have the right, no more often than once annually, to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this franchise, in accordance with GAAP.

5.8.4 Underpayment – cost of audit. If an audit, or a review if such review is conducted no more than once per year, shows that franchise fees or access capital fees have been underpaid by five percent or more, then the Grantee will reimburse the cost of such review up to a maximum of five thousand dollars (\$5,000). If there is a dispute regarding a claimed underpayment, that if accurate, would result in an underpayment of franchise fees or access capital fees of five percent (5%) or more, and if the dispute is ultimately resolved in favor of the City, then at the time of such resolution, subject to applicable law, the Grantee will reimburse the costs of such review up to a maximum of five thousand dollars (\$5,000).

**5.9 Limitations.** The City's right to audit and the Grantee's obligation to retain records related to a franchise fee audit shall expire three years after each franchise fee payment has been made to the City. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

## ARTICLE VI: SERVICE, CONSTRUCTION AND TECHNICAL STANDARDS

### Construction and Technical Standards

**6.1 Compliance with Codes.** All Grantee's construction practices and installation of equipment shall be done in accordance with all applicable City Codes.

**6.2 Construction and Operation Standards and Requirements.** All of the Grantee's equipment shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations, as may be amended from time to time.

**6.3 Safety.** The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage. Grantee shall promptly notify the property owner, including but not limited to the Grantor, if any of the Grantee's activities therein cause damage on private or public property. Notification in writing shall in any event occur within 24 hours of the occurrence of the damage. The Grantee shall at its sole expense promptly restore the property or Right of Way to the condition it existed prior to the damage and such repair shall be warranted for one year from the date of completion of the repair.

**6.4 Emergency Use.** Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS").

## ARTICLE VII: CONDITIONS ON USE AND OCCUPANCY OF AND WORK IN THE RIGHTS-OF-WAY

**7.1 General Conditions.** Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee is able to access existing poles, conduits, or other facilities on reasonable terms and conditions. Grantee must follow City-established requirements for placement of cable system facilities in Rights-of-Way, including the specific location of facilities in the

Rights-of-Way and burial depth standards, and must in any event install cable system facilities in a manner that minimizes interference with the use of the rights-of-way by others, including others that may be installing communications facilities.

**7.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those areas where existing telephone and electric services are both underground or in the event of new construction will or are required to be underground, at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as all existing aerial facilities are placed or required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. Except in the instance of necessary emergency repair, Grantee shall, no fewer than 60 days before trenching in the right-of-way, notify the City of such work and of the estimated start date

7.2.1. Nothing in this franchise shall prevent the City or public utility providers from (a) constructing or installing in the Right-of-Way sewer, water, gas, electric, telecommunications or fiber optic lines; (b) grading, paving, repairing or altering any right-of-way; or (c) constructing or establishing any other public work or improvement; provided, however, that the City or public utility provider shall be responsible to Grantee for any obstruction of or damage to Grantee's cable system caused thereby.

7.2.2 Within limits reasonably related to the City's role in protecting public health, safety and welfare, in a generally applicable and non-discriminatory manner the City may require that cable system facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular right-of-way; may deny access if Grantee is not willing to comply with City's such lawful requirements; and may require Grantee at its cost to remove any facility that is not installed in compliance with the requirements lawfully established by the City, and may require Grantee to cooperate with others to minimize adverse impacts on the rights-of-way.

**7.3 Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any street, alley, right of way or easement within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Franchise Area. The Grantor shall reasonably cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such street, alley, right of way or easement.

**7.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners, including but not limited to the Grantor, and at all times shall be kept and maintained in a safe and adequate condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the safe and usual travel on such public way.

**7.5 Restoration of Public Ways.** Grantee shall, at its own expense, restore any and all damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a comparable condition to the condition of the street, alley or Right of Way or easement immediately prior to such damage or disturbance.

**7.6 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities. Trimming activities shall at all times

be done with care and commonly accepted methods for protection of the trees and public safety during and after the trimming.

**7.7 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when required by the Grantor for its use and benefit. Grantee shall be responsible for any and all costs associated with these obligations.

**7.8 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

**7.9 Emergency Use.** Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS").

#### **ARTICLE VIII: ACCESS CHANNEL(S) (EG)**

**8.1 EG channels.** As of the Effective Date, the Grantee shall continue to provide capacity on its Cable System for an access channel or channels for use by the City for, educational and/or governmental programming (which may be referred to herein as EG programming or the EG channel(s)). The City may, in its discretion, permit the EG channel(s) to be shared by multiple designated access providers. Grantee shall provide the EG channel(s) to subscribers, without limitation, as a part of the basic service. The Grantee shall maintain the access channel(s) at the same or better level of technical quality and reliability as for other channels, which shall at all times meet at least the minimum standards required by applicable law.

**8.2 Additional EG Channel.** Upon 180 days notice from the Grantor, the Grantee shall provide one (1) additional EG channel, for a maximum of two (2) channels if the EG channel provided pursuant to subsection 8.1 is occupied fifty percent (50%) of the hours between 11 a.m. and 11 p.m. for any consecutive twelve (12) week period. For the purpose of the above percentage calculation: (a) a program may not be repeated more than three (3) times in any consecutive twelve (12) week period; and (b) Time allocated to character generator or similar programming shall be excluded; and (c) programming is not duplicated on any of the other EG channels.

**8.3 Return of Channels.** The Grantee may seek the return of one or both EG Access Channels if the EG Access Channels are not programmed for at least forty-eight (48) hours per week measured on a quarterly basis thereafter. Grantor shall keep records of the amount of locally produced EG video programming carried on the EG Access Channel. Upon request by Grantee, not to exceed two (2) requests per calendar year, the Grantor shall provide a report of the amount of locally produced EG video programming carried on the EG Access Channel.

**8.4 Relocation of the EG channels.** Grantee shall provide the City with a minimum of thirty (30) days written notice, prior to change(s) to the access channel(s) designation, unless the change is required by Federal law, in which case Grantee shall provide the City the maximum notice possible. Any access channel designation change(s) shall be in full compliance with FCC signal quality and proof-of-performance.

**8.5 Return line.** The Grantee shall, subject to applicable law, maintain the cable system return line in existence as of the Effective Date from the location listed below to the cable system headend, so long as access programming is or may originate from such location.

8.5.1 In the event the City determines during the term of this Agreement that the return line needs to be relocated, or that an additional return line is required from a location other than 250 N 5th St, Grand Junction, CO (each, a "new return line"), the City may elect to have the Grantee construct and maintain such new return line between the relocated or new access location and the cable system headend. If such new return line is to be provided by the Grantee, the Grantee shall select the materials and technology to be used for the new return line, provided that the new return line shall be able to send video programming signals from the access location to the cable system headend in the same format in which such signals are uploaded to the new return line and that new return line is in compliance with all applicable FCC regulations. Weather permitting, the Grantee shall complete the new return line requested pursuant to this subsection within one hundred twenty (120) days of receiving a written request for same from the City or as otherwise agreed upon by the parties. All costs associated with the construction, maintenance and transport of any new return line, including applicable equipment, shall be the responsibility of the City; however, the City may use any unused, remaining portion of the access capital grant to offset any related capital costs.

8.5.2 In the event the City determines during the term of this Agreement that the return lines need to be upgraded to support digital transmissions (each, an "upgraded return line") the City shall provide written notice of the same to the Grantee. The Grantee shall select the materials and technology to be used for the upgraded return line, provided that the upgraded return line shall be able to send video programming signals from the access location(s) to the cable system headend in the same format in which such signals are uploaded to the upgraded return line and that upgraded return line is in compliance with all applicable FCC regulations. Weather permitting, the Grantee shall complete the upgraded return line(s) requested pursuant to this subsection within one hundred twenty (120) days of receiving a written request for same from the City or as otherwise agreed upon by the parties. All costs associated with the construction, maintenance and transport of any upgraded return line, including applicable equipment, shall be the responsibility of the Grantor.

**8.6 EG Access Capital Grant.** At any time until the fifth anniversary of this Agreement, the City may require the Grantee to provide a capital grant to be used by the City to purchase access production equipment and/or as in-kind capital funds to offset the capital costs of the HD upgrade, a new return line or upgraded return line, with the aggregate cost of such capital not being greater than five thousand dollars (\$5,000) (the "Access Capital Grant"). At the written direction of the City, the Grantee may use, as the City determines in its sole discretion, some or all of the Access Capital Grant for offsets to the capital costs of the HD upgrade, a new return line(s) or upgraded return line(s). Grantee. With the exception of a new or upgrade return line(s), the City shall be responsible for installing, operating, maintaining and replacing the capital equipment purchased with the Access Capital Grant. The Grantee shall construct and own the return lines and/or upgraded return lines, and maintain and operate all return lines for the use and benefit of the City in accordance with this Agreement.

## 9.0 ARTICLE IX: RECORDS, REPORTS AND MAPS

**9.1 Records required.** The Grantee shall at all times maintain and make available for review by the City at no cost:

9.1.1 A record of all written complaints received regarding interruptions or degradation of cable service, which record shall be maintained for one year.

9.1.2 A full and complete set of plans, records and strand maps showing the location of all cable system facilities and equipment, which shall be certified as accurate at the time they are prepared.

9.1.3 Financial and accounting records necessary to demonstrate compliance with the Franchise Fee obligations of this Agreement, including, without limitation, all records necessary to review and calculate gross revenue, franchise fees, under this Agreement.

9.1.4 A log of all service interruptions.

9.1.5 Pleadings, applications, notifications, communications and other documents submitted by Grantee or its parent corporation(s) or affiliates to any Federal, State or local court, regulatory agency or other government body, including the Grantor, if such relate to the operation of Grantee's cable system within the City.

**9.2 Inspection of records.** The Grantee shall permit any duly authorized representative of the City, upon receipt of advance written notice, to examine any of the records maintained by the Grantee, which are reasonably related to the administration or enforcement of or Grantee's compliance with the material provisions of this Agreement.

9.2.1 The City's inspection notice shall reference the provision(s) of the Agreement that relate to the records to be reviewed.

9.2.2 The City may request copies of any such records required, which Grantee shall provide for review to the City at the address given in the notice provisions of this Agreement, except as set forth herein and in Section 9.2.4 below, within 30 days of the receipt of such request. Grantee

9.2.3 If the requested records contain trade secrets or confidential or proprietary business information, then Grantee may request in writing within 10 days of receipt of City's written request, that the City inspect the records at Grantee's local offices. Grantee may require that such inspection be during normal business hours. Such inspection by the City shall not be unreasonably disruptive to the Grantee's conduct of business.

9.2.4 Whether by delivering copies or by providing records for inspection at Grantee's offices, Grantee shall organize the records for easy access by the City.

9.2.5 If records cannot be made available by copy or by inspection at a local office, then the Grantee shall pay to have the records delivered to the City for inspection.

9.2.6 The Grantee shall be required to maintain books and records for compliance purposes for one (1) years, except for records relating to the calculation of Gross Revenues and the payment of Franchise Fees, which shall be maintained for three (3) years.

**9.3 Confidentiality.** Subject to this section, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual subscribers and data, specifications and information clearly reasonably identified by the Grantee to the City as confidential or proprietary.

9.3.1 The Grantee shall not be required to provide subscriber information in violation of Section 631 of the Cable Act (47 U.S.C. § 551).

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

9.3.3 If the City believes it must release any such confidential books and records in the course of enforcing this franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any person for disclosure of any information designated by Grantee as confidential, the City shall advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time.

9.3.4 If the Grantee requests that the City continue to oppose such release, then until otherwise ordered by a court or agency of competent jurisdiction, the City shall, to the extent permitted by law, deny access. Grantee shall reimburse the City for all reasonable costs and attorneys' fees incurred in any legal proceedings pursued under this article concerning the confidentiality of Grantee's records.

9.3.5 If the Grantee does not request that the City oppose such release, then the City shall make an independent judgment with respect to such release, and the Grantee shall not be liable for costs related to the same.

9.3.6 Grantee shall not claim confidential, privileged or proprietary rights to documents required to be maintained unless such documents have been filed confidentially with the applicable court of competent jurisdiction, or a federal or State agency.

**9.4 Reports required.** Grantee shall provide the following documents and reports to the City within ten (10) days of the City's written request and not more than once annually:

- 9.4.1 A complete schedule of fees, rates and charges for all subscriber service(s)
- 9.4.2 A current list of cable services and channel line-ups.
- 9.4.3 Grantee's current subscriber agreement(s) and subscriber agreements used within the past year.
- 9.4.4 Grantee's policy regarding the processing subscriber complaints, delinquent subscriber, disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its.
- 9.4.5 Revenue allocation for bundled services
- 9.4.6 Performance monitoring test results to the extent required by applicable law.
- 9.4.7 Programming categories available with Grantee's cable services
- 9.4.8 System expansion or upgrade plans
- 9.4.9 Summary of the previous year's activities in the development of the cable system

9.4.10 Names, addresses and contact information of parent corporations and affiliates with responsibilities for operation or maintenance of the cable system

**9.5 Failure to report.** The failure or neglect of Grantee to file any of the reports or filings required under this Agreement (not including clerical errors or errors made in good faith) may, at the City's option, be deemed a material breach of this franchise.

**9.6 False statements.** Any false or misleading statement or representation in any report required by this Agreement (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.

## ARTICLE X: INDEMNIFICATION

### 10.1 Indemnification.

- A. If the Grantor is named as a defendant in a complaint, demand, claim or action ("Action") that alleges that the Grantee's actions or omissions or the Cable System was a cause of injury identified in the Action, the Grantor shall tender the defense thereof to the Grantee within ten (10) business days of receipt of such Action by giving the Grantee written notice of its obligation to defend the Grantor. The Grantee shall have the right to defend, settle or compromise such Actions and the Grantor shall cooperate fully with the Grantee in such defense. Notwithstanding the foregoing, if the Grantee believes in good faith that a tendered Action has little or no merit with respect to the Grantee's liability, the Grantee may refuse the defense of such Action, in which case the Grantor will in good faith defend the Action and the Grantee shall cooperate fully with the Grantor in such defense and may participate in such defense at the Grantee's option; provided that if the Grantee is determined to be liable in such Action, the Grantee shall be responsible for indemnifying the Grantor as set forth in subsection 10.1B. If the Grantor believes that any such Action should be settled or compromised in any manner that will result in liability or other obligation for or restraint on the Grantee under this Agreement or otherwise, such settlement or compromise shall only be done with the prior written consent of the Grantee.
- B. The Grantee shall indemnify and hold the Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities or judgments for injury to any Person or property to the extent caused by the negligent construction, repair, extension, maintenance, operation or removal of the Grantee's wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or its designees for the Grantor's use of the Cable System, including any EG Channel.

**10.2 Non-avoidance.** The fact that Grantee carries out any activities under this Franchise through an independent contractor shall not constitute an avoidance of or defense to Grantee's duties of defense and indemnification under this agreement.

## ARTICLE XI: INSURANCE

### 11.1 Insurance.

The Grantee shall maintain continuous, uninterrupted insurance coverage throughout the Term, through insurers with a Best's rating of no less than A-, in at least the following amounts:

Type of Insurance	Coverage Minimums
Workers' Compensation	Statutory limits
Commercial General Liability	\$1,000,000 per occurrence, combined single limit; \$2,000,000 general aggregate
Auto liability including coverage on all owned and non-owned hired vehicles	\$1,000,000 per occurrence combined single limit
Umbrella liability	\$1,000,000 per occurrence combined single limit

Any deductible shall not in any way limit Grantee's liability to the City or its obligations to the City hereunder.

**11.2 City Additional Insured.** The City shall be added as an additional insured to the above coverages for cable system operation and for work or projects in the City. The City, its officers, officials, boards, commissions, and employees shall be covered as, and have the rights of, additional insureds, and such coverage shall be primary, with respect to liability arising out of activities performed by Grantee or for which Grantee has assumed responsibility hereunder.

**11.3 Certificates of insurance.** Every certificate of insurance shall contain a provision that the policy cannot be canceled or materially changed without 30 days' written notice to the City, and shall include a reciprocal express waiver of subrogation and rights of recovery against the City, its officers, officials, boards, commissions and employees. If the insurance is canceled or materially altered such that it is out of compliance with the requirements of this section, Grantee shall provide replacement coverage immediately. Grantee shall provide evidence of such coverages to the City, in the form of current certificates and endorsement(s) signed by a person authorized by that insurer to bind coverage on its behalf.

## ARTICLE XII. BONDS

### 12.1 Construction Bond.

12.1.1 No later than 30 days before commencement of an upgrade of the cable system or other similar, substantial work by Grantee in the right-of-way, Grantee shall provide and maintain in effect a construction bond in an amount no less than \$25,000 to secure completion of any and all work. Upon inspection by the City demonstrating the Grantee's successful completion of the work, the City will release or return the bond within 10 business days of receipt of written request from Grantee.

12.1.2 The construction bond may be drawn on by the City for damage to the right-of-way relating to the Grantee's construction, and/or for restoration of the public right-of-way to its condition prior to commencement of work by Grantee. City will give notice of the intent to draw on the bond and a 30-day opportunity to cure before drawing on the bond, and will give notice when it draws on the bond.

12.1.3 Grantee shall restore the bond to its original full amount within 30 days after the City give notice that it has drawn on the bond.



12.1.4 Grantee may appeal to the City Council for reimbursement in the event it believes the City has improperly drawn on the construction bond. Any amounts the City erroneously or wrongfully withdraws from the bond shall be returned to Grantee with interest from the date of withdrawal at the prime rate of interest.

12.1.5 Maintenance of a bond or bonds hereunder by the Grantee shall not in any way limit the liability of the Grantee for any failure to fully perform its obligations under this Agreement.

#### **ARTICLE XIII: TRANSFER OF FRANCHISE**

**13.1 Franchise transfer or change of control.** The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

#### **ARTICLE XIV: ENFORCEMENT AND REVOCATION**

**14.1 Notice of violation.** If the City believes that the Grantee has not complied with the material terms of this Agreement, the City shall first informally discuss the matter with the Grantee. If these discussions do not lead to resolution of the problem, the City shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "violation notice"). For the purposes of this Section 14, a material violation means a substantive and repeated violation of a franchise term that directly harms, or is reasonably claimed to cause harm, the City or Subscribers.

**14.2 Grantee's right to cure or respond.** The Grantee shall have thirty (30) days from receipt of the violation notice to (A) respond to the City, contesting the assertion of noncompliance, (B) to cure such default, or (C) if, by nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

14.2.1 Meeting. If the Grantee fails to respond to the violation notice, contests the assertion of noncompliance, or fails to remedy the default within the cure period, the City may set a meeting to investigate the alleged default, notify Grantee of the meeting in writing and hold such meeting within 30 days of the notice. At the meeting, Grantee shall be provided an opportunity to be heard, to present information or evidence in its defense, to outline steps to remedy the situation, or to propose other action. The Parties agree that such meeting is not an administrating proceeding or hearing, but an informal opportunity for the Parties to resolve or clarify the matter.

14.2.2 Also the City may, in addition to or in lieu of such meeting, pursue any remedies available to it under applicable law, except for revocation as set forth in Section 14.5 below, and including but not limited to commencing an action at law for monetary damages, or, where applicable withdrawing from a bond posted by Grantee pursuant to this Agreement, recommending the revocation of the franchise, or pursuing other legal or equitable remedy (provided, that the City shall not conduct an administrative proceeding or hearing).

14.2.3 The determination as to whether a material violation of the franchise has occurred shall be within the discretion of the City; provided, however, that any such final determination, or other action by the City under this Agreement with respect to an alleged material violation by Grantee is subject to challenge or appeal in a court of competent jurisdiction under applicable law by the Grantee.

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

**14.4 Payment on termination.** If this franchise terminates for any reason, the Grantee shall file with the City within 90 calendar days of the date of the termination, a revenue statement in accordance with this Agreement, showing the gross revenues received by the Grantee since the end of the previous fiscal year. At the time Grantee submits its revenue statement to the City, Grantee shall also submit a statement of the amounts owed and payment therefor. Acceptance of payment by City shall not operate as a waiver of any disputed amounts claimed owed.

**14.5 Revocation.** The City may revoke this franchise and rescind all rights and privileges associated with this franchise in the following circumstances, each of which represents a material breach of this franchise"

- (a) If Grantee fails to perform any material obligation under this franchise;
- (b) If Grantee willfully fails for more than 48 consecutive hours to provide continuous and uninterrupted cable service;
- (c) If Grantee practices any fraud or deceit upon the City or subscribers;
- (d) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or
- (e) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this franchise.

14.5.1 Following the procedures set forth in this Section 14.5, 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. The notice shall set forth the exact nature of the noncompliance.

14.5.2 Any proceeding held under this Section 14.5 shall be conducted by the City Council or its designee and open to the public. Grantee shall be afforded at least 60 days' prior written notice of such proceeding.

14.5.3 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 of such record or transcript 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 an opportunity to state its position on the matter.

14.5.4 Within 90 days after the hearing, the City Council shall determine whether to revoke the franchise and declare that the franchise is revoked; 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 determines that the franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. 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 60 days of the date of the decision.

14.5.5 Grantee shall be entitled to such relief as the court may deem appropriate.

14.5.6 Procedures in the event of termination or revocation. If this franchise expires without renewal and is not extended, or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow grantee to maintain and operate its cable system on a month-to-month basis or short-term extension of this franchise for not less than six 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. Grantee's continued operation of the cable system during the six-month period or such other period as the parties may agree shall not be deemed to be a waiver nor an extinguishment of any rights of either Grantee or City; or

(b) Purchase Grantee's cable system in accordance with the procedures set forth in the Cable Act.

14.5.7 In the event that a sale has not been completed in accordance this section, 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 shall remain in full force and effect during the period of removal.

14.5.8 If grantee fails to complete any removal required by the City to the City's reasonable satisfaction, after written notice to grantee, the City may cause the work to be done and grantee shall reimburse the City for the reasonable costs incurred within 30 days after receipt of an itemized list of the costs.

14.5.9 The City may seek legal and equitable relief to enforce the provisions of this franchise.

**14.6 Purchase of cable system.** 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 47 U.S.C. § 547.

**14.7 No monetary recourse against the City.**

Grantee's monetary recourse against the City shall be prescribed by the provisions of applicable federal 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 law.

**14.8 Minor Violations.** It is not the City's intention to subject the Grantee to penalties, fines, forfeitures or revocation of this Agreement for violations of this Agreement where the violation was not material or a good faith error that resulted in or would result in no harm or where the practical difficulties and hardship to the Grantee would outweigh the benefit to be derived by the City and/or subscribers from enforcement.

#### **ARTICLE XV: ADMINISTRATION OF THIS AGREEMENT AND MISCELLANEOUS PROVISIONS**

**15.1 Force Majeure.** In the event Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond the ability of Grantee to anticipate or control, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation or to procure a substitute for such obligation which is reasonably satisfactory to the City. Those conditions which are not within the ability to control or anticipate include, but are not limited to, fire, flood, natural disasters, or other acts of God, civil disturbances, labor disturbances or strikes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide cable services in the City and which were not caused and could not have been avoided by the Grantee using its reasonable best efforts in its operations to avoid such results. If Grantee believes that a reason beyond its control has prevented or delayed its performance under this Agreement, Grantee shall provide such documentation as reasonably required by the City to substantiate the force majeure condition, together with Grantee's proposed plan for remediation, including timing. To the extent any nonperformance is the result of any force majeure condition, Grantee shall not be held in default under, or in noncompliance with this Agreement, nor suffer any enforcement or penalty as a result.

**15.2 Authority.** The City shall reasonably regulate the exercise of the privileges permitted by this franchise in the public interest. The City may delegate that power and right, or any part thereof, in its sole discretion, to the extent permitted under State and local law; provided, however, Grantee shall have the right of appeal to the legislative body of the City any adverse determination made by a delegate of the City. In the event of a conflict between this agreement and any applicable local law this Agreement shall control

**15.3 Eminent domain.** Nothing in this franchise shall limit nor expand the City's right of eminent domain under State law.

**15.4 Reserved authority and rights.** The Grantee and the City each reserve all rights and authority arising from the Cable Act and any other relevant provisions of federal, State, or local law. Each party reserves its rights to enforce provisions of applicable law to the rights, duties and obligations of this franchise, as they may change in the future. Further, each party reserves its rights to challenge the applicability to any future changes in the law to the rights, duties and obligations of this franchise and to comply with the provisions of federal law.

**15.5 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.

**15.6 Franchise amendment procedure.** Either party may at any time seek an amendment of this Agreement by notifying the other party in writing of the proposed amendment. Within 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. The amendment shall be effective upon approval by the City Council in the form approved by the City Council.

**15.7 Equal Protection.** No cable operator shall be permitted to locate a cable system in the streets in order to provide cable service in the service area without a franchise. The Grantee acknowledged and agrees that the City reserves the right to grant other franchises or other similar lawful authorization to utilize the streets to provide cable services within the service area. If the City grants such additional franchise or other similar lawful authorization containing material terms and conditions that differ from the Grantee's material obligations under this Agreement, then the City agrees that the obligations in this Agreement will, pursuant to the process set forth in this section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms and conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: the franchise fee; gross revenue definition; insurance; cable system build-out requirements; security instruments; the access channel; and the access capital grant; customer service standards; required reports and related record keeping; level playing field; (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require word for word identical franchise provisions so long as the regulatory and financial burdens on each entity are materially equivalent.

15.7.1 The modification process of this Agreement as provided for in this section shall only be initiated by written notice by the Grantee to the City regarding specified obligations. The Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the complete Franchise which are materially different from the Grantee's obligations under this Agreement; (2) identifying the Agreement terms and conditions for which the Grantee is seeking amendments; (3) providing text for any proposed Agreement amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.

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

15.7.3 If the parties fail to reach agreement in the negotiations as provided for above, the Grantee may, at its option, elect to replace this Agreement by opting into the Franchise or other similar lawful authorization to use the Streets in order to provide cable services that the City grants to another provider of cable services, so as to ensure that the regulatory and financial burdens on each entity are equivalent. If the Grantee so elects, the City shall immediately commence proceedings to replace this Agreement with the Franchise issued to another cable service provider.

15.7.4 Nothing in this section shall be deemed a waiver of any remedies available to the Grantee under applicable law, including but not limited to Section 625 of the Cable Act (47 U.S.C. § 545).

15.7.5 Should the Grantee seek an amendment to this Agreement or replacement Franchise pursuant to this section, while the parties shall pursue the adoption of such amendments or replacement Franchise pursuant to this section, any such amendments or replacement

Franchise shall not become effective unless and until the new entrant makes cable services available for purchase by subscribers or customers under its agreement with the City.

**15.8 Notices.** Unless otherwise provided by applicable law, all notices, reports or demands pursuant to this Agreement shall be in writing and shall be deemed to be sufficiently given upon delivery to the persons at the respective addresses set forth below by hand delivery, by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service such as Federal Express. The Grantee shall provide thirty (30) days written notice of any change in rates, programming services or channel positions using any reasonable written means, including e-mail. Either party may notify the other from time to time of the email address at which the party wishes to receive notices electronically.

If City: City of Grand Junction  
Attn: City Clerk  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

With a copy to: City of Grand Junction  
Attn: City Attorney  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

If Grantee: Spectrum Pacific West, LLC  
Locally known as Charter Communications  
Attn: Government Affairs  
6399 S. Fiddler's Green Circle, 6<sup>th</sup> Floor  
Greenwood Village, CO 80111

With a copy to: Charter Communications  
Attn: Vice President of Government Affairs  
12405 Powerscourt Drive  
St. Louis, MO 63131

**15.9 Public notice.** Minimum public notice of (A) any public hearing relating to this Agreement or (B) any grant of a franchise by the City to another person(s) to be provided cable services utilizing any system or technology requiring use of the Streets, shall be as provided by applicable law unless a longer period is otherwise specifically set forth in this Agreement. The City shall utilize best efforts to provide written notice to the Grantee within thirty (30) days of the City's receipt from any other person(s) of an application or request for a franchise(s) to provide cable services utilizing any system or technology requiring use of the Streets. Notwithstanding the foregoing, it shall not be a violation of the City's obligations under this franchise if a failure to provide such notice is unintentional.

**15.10 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

**15.11 Entire agreement.** This Agreement and any exhibits attached hereto constitute the entire Agreement between the Grantee and the City and supersede all prior contemporaneous agreements, representations or understandings (whether written or oral) of the parties of the subject matter hereof.

**15.12 Administration of Franchise.** This Agreement is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein.

Any changes, modifications or amendments to this Agreement not required by applicable federal law must be made in writing, signed by the City and the Grantee.

**15.13 Effective date.** This Agreement will take effect and be in full force from such date of acceptance by the Grantee recorded on the signature page of this Agreement (the "Effective Date").

**15.14 Publication costs.** This Agreement shall be published in accordance with applicable law. The Grantee shall reimburse the City for all costs incurred in publishing any notices or ordinances in connection with its adoption if such publication is required by applicable law.

**15.15 Venue and jurisdiction.** The parties agree that any action arising out of this Agreement will be brought in the District Court of Mesa County or Federal Court located in the State of Colorado and irrevocably submit to the exclusive jurisdiction of any such court (excepting removal from the District Court of Mesa County to a Federal Court located in the State of Colorado) and waive any objection that such party may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agree not to plead or claim the same.

Considered on first reading and approved for publication this 1<sup>st</sup> day of April 2020.

Accepted on second reading and public hearing this 6<sup>th</sup> day of May 2020, subject to applicable law.



CITY OF GRAND JUNCTION, COLORADO

*C.E. Duke Wortmann*  
C.E. Duke Wortmann, President of the City Council

ATTEST:

*Wanda Winkelmann*  
Wanda Winkelmann, City Clerk

APPROVED AS TO FORM:

*John P. Shaver*  
John P. Shaver, City Attorney

**UNCONDITIONALLY ACCEPTED** this 6<sup>th</sup> day of May 2020 by Grantee:

GRANTEE:

SPECTRUM PACIFIC WEST, LLC  
Locally known and doing business as Charter  
Communications,

~~President and CEO~~

Signature: Paul Abbott 6/15/2020

Print Name: Paul Abbott

Title: VP, Local Government Affairs & Franchising

ATTEST:

APPROVED AS TO FORM:

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Introduced on first reading this 1<sup>st</sup> day of April 2020.

Adopted on second reading this 6<sup>th</sup> day of May 2020 and ordered published in pamphlet form.

C. E. Duke Wortmann

C. E. Duke Wortmann  
President of the City Council

ATTEST:

Wanda Winkelmann

Wanda Winkelmann  
City Clerk









**ADDITIONAL REMARKS SCHEDULE**

AGENCY One Federal Street Boston, MA 02110 USA	NAMED INSURED Charter Communications, Inc. 400 Atlantic Street Stamford, CT 06901
EFFECTIVE DATE: 01/01/2020	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Certificate Reference: 340365

City of Grand Junction, City of Grand Junction  
 Attn: City Clerk  
 250 N. 5th Street  
 Grand Junction, CO 81501 are added as Additional Insured to the Commercial General Liability policy but only with respects to the requirements of the written contract or agreement with the Named Insured. Additional Insured status becomes effective once the written contract or agreement is fully executed.

**WORKERS COMPENSATION POLICY INFORMATION**

Insurer	Policy Number	Effective Date	Expiration Date
C	WC 12716987 (NY)	1/1/2020	1/1/2021
D	WC 14122396 (MA, WA, WI, NY)	1/1/2020	1/1/2021
D	WC 14122397 (AZ, IL, KY, NC, NH, NJ, PA, UT, VA, VT)	1/1/2020	1/1/2021
E	WC 14122398 (CA)	1/1/2020	1/1/2021
D	WC 14122399 (AOS)	1/1/2020	1/1/2021
F	WC 14122400 (FL)	1/1/2020	1/1/2021

Insurer F: Illinois National Insurance Company

Charter Communications, Inc. branded Spectrum, Spectrum Business and Spectrum Enterprise and their

- Subsidiaries, associated, affiliated and inter-related companies;
- Controlled or majority (more than 50%) owned partnerships, limited liability companies;
- Interest only in (or its subsidiaries' interest in) any other partnerships or joint ventures or limited liability companies;
- Interest in (or its subsidiaries' interest in) any company or organization coming under its active management or control;
- Any entity or party required to be insured under any contract or agreement which may now exist, may have previously existed, or may hereafter be created or acquired.

Bresnan Broadband Holdings, LLC, Bresnan Broadband of Colorado, LLC, Bresnan Broadband of Montana, LLC, Bresnan Broadband of Utah, LLC, Bresnan Broadband of Wyoming, LLC, Bresnan Digital Services, LLC, Bresnan Microwave of Montana, LLC, Bright House Networks Information Services (Alabama), LLC, Bright House Networks Information Services (California), LLC, Bright House Networks Information Services (Florida), LLC, Bright House Networks Information Services (Indiana), LLC, Bright House Networks Information Services (Michigan), LLC, Bright House Networks, LLC, CC Systems, LLC, CCH II, LLC (CCHII), Charter Advanced Services VIII (MN), LLC, Charter Communications Entertainment I, LLC, Charter Communications Holding Company, LLC, Charter Communications Holdings, LLC, Charter Communications Operating, LLC, Charter Communications VI, L.L.C., Charter Communications VII, LLC, Charter Communications, Inc., Charter Communications, LLC, Charter Fiberlink - Alabama, LLC, Charter Fiberlink - Georgia, LLC, Charter Fiberlink - Illinois, LLC, Charter Fiberlink - Maryland II, LLC, Charter Fiberlink - Michigan, LLC, Charter Fiberlink - Missouri, LLC, Charter Fiberlink - Nebraska, LLC, Charter Fiberlink - Tennessee, LLC, Charter Fiberlink CC VIII, LLC, Charter Fiberlink COO, LLC, Charter Fiberlink CT-CCO, LLC, Charter Fiberlink IA-CCO, LLC, Charter Fiberlink MA-CCO, LLC, Charter Fiberlink MS-CCVI, LLC, Charter Fiberlink NC-CCO, LLC, Charter Fiberlink NH-CCO, LLC, Charter Fiberlink NV-CCVII, LLC, Charter Fiberlink NY-CCO, LLC, Charter Fiberlink OR-CCVII, LLC, Charter Fiberlink SC-CCO, LLC, Charter Fiberlink TX-CCO, LLC, Charter Fiberlink VA-CCO, LLC, Charter Fiberlink VT-CCO, LLC, Charter Fiberlink WA-CCVII, LLC, Charter Gateway, LLC, Charter Helicon, LLC, Coaxial Communications of Central Ohio LLC, DukeNet Communications, LLC, Falcon Cable Communications, LLC, Insight Blocker LLC, Insight Communications Company LLC, Marcus Cable Associates, L.L.C., Spectrum Advanced Services, LLC, Spectrum Captive Holdings, LLC, Spectrum Gulf Coast, LLC, Spectrum Management Holding Company, LLC, Spectrum Mid-America, LLC, Spectrum Mobile LLC, Spectrum New York Metro, LLC, Spectrum NLP, LLC, Spectrum Northeast, LLC, Spectrum Oceanic, LLC, Spectrum Pacific West, LLC, Spectrum Reach, LLC, Spectrum RSN, LLC, Spectrum Security, LLC, Spectrum Southeast, LLC, Spectrum Stamford, LLC, Spectrum TV Essentials, LLC, The Helicon Group, L.P., Time Warner Cable Business, LLC, Time Warner Cable Enterprises LLC, Time Warner Cable Information Services (Alabama), LLC, Time Warner Cable Information Services (Arizona), LLC, Time Warner Cable Information Services (California), LLC, Time Warner Cable Information Services (Colorado), LLC, Time Warner Cable Information Services (Hawaii), LLC, Time Warner Cable Information Services (Idaho), LLC, Time Warner Cable Information Services (Illinois), LLC, Time Warner Cable Information Services (Indiana), LLC, Time Warner Cable Information Services (Kansas), LLC, Time Warner Cable Information Services (Kentucky), LLC, Time Warner Cable Information Services (Maine), LLC, Time Warner Cable Information Services (Massachusetts), LLC, Time Warner Cable Information Services (Michigan), LLC, Time Warner Cable Information Services (Missouri), LLC, Time Warner Cable Information Services (Nebraska), LLC, Time Warner Cable Information Services (New Hampshire), LLC, Time Warner Cable Information Services (New Jersey), LLC, Time Warner Cable Information Services (New Mexico), LLC, Time Warner Cable Information Services (New York), LLC, Time Warner Cable Information Services (North Carolina), LLC, Time Warner Cable Information Services (Ohio), LLC, Time Warner Cable Information Services (Pennsylvania), LLC, Time Warner Cable Information Services (South Carolina), LLC, Time Warner Cable Information Services (Tennessee), LLC, Time Warner Cable Information Services (Texas), LLC, Time Warner Cable Information Services (Virginia), LLC, Time Warner Cable Information Services (Washington), LLC, Time Warner Cable Information Services (West Virginia), LLC, Time Warner Cable Information Services (Wisconsin), LLC, Time Warner Cable, LLC, TWC Administration LLC, TWC Sports Nexco LLC

...and any corporation or other business organization other than a joint venture in which the Named Insured shown in the declarations has or acquires during the policy period an ownership of more than 50% and which is domiciled within the United States of America, its territories or possessions, Puerto Rico or Canada.

I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 4919 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 1<sup>st</sup> day of April 2020 and the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, in pamphlet form, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 6<sup>th</sup> day of May 2020, at which Ordinance No. 4919 was read, considered, adopted and ordered published in pamphlet form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 8<sup>th</sup> day of May 2020.

  
\_\_\_\_\_  
Deputy City Clerk

Published: April 03, 2020  
Published: May 8, 2020  
Effective: June 7, 2020