

AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF GRAND JUNCTION TO BRESNAN COMMUNICATIONS LIMITED LIABILITY COMPANY, 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.

**BRESNAN COMMUNICATIONS  
AND  
THE CITY OF GRAND JUNCTION, COLORADO**

**CABLE FRANCHISE AGREEMENT**

**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 "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.

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

1.4 "Basic Service" means any Cable Service Tier which includes, at a minimum, the retransmission of local television Broadcast Signals and local Access programming.

1.5 "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.

1.6 "Cable Act" means the Title VI of the Communications Act of 1934, as amended and codified at 47 U.S.C. § 151, *et seq.*

1.7 "Cable Internet Service" means any Cable Service offered by Grantee whereby Persons receive access to the Internet through the Cable System.

1.8 "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.

1.9 "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.

1.10 "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.

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

1.12 "City" is 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 may change from time to time, and any of its legally established enterprises.

1.13 "City Council" means the Grand Junction City Council, or its successor, the governing body of the City of Grand Junction, Colorado.

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, if any, 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 "Director of Cable Services" means the person designated by the City Manager who is responsible for the City's administrative affairs arising out of or under this franchise.

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

1.19 "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.

1.20 "Expanded Basic Service" means the Tier of optional video programming services, which is the level of Cable Service above Basic Service, and does not include Premium Services.



1.21 "FCC" means the Federal Communications Commission.

1.22 "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 light wave impulses.

1.23 "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 to use the streets, alleys, public places, or other Rights of Way of the City, including references, specifications, requirements and other related matters.

1.24 "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.

1.25 "Franchise Fee" means any fee or assessment of any kind imposed by a franchising authority or other governmental entity on the Grantee or a cable subscriber or both solely because of their status as such. The term franchise fee does not include: any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers); access capital costs which are required under this agreement to be incurred by Grantee for public, educational or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or any fee imposed under Title 17 of the United States Code.

1.26 "GAAP" means generally accepted accounting principles.

1.27 "Generally Applicable" means, when referenced to ordinances, laws, or regulations, legal obligations that are applied generally and not limited solely to Grantee.

1.28 "Grantee" means BRESNAN COMMUNICATIONS or its lawful successor, transferee or assignee.

1.29 "Gross Revenues" means any and all revenue received by the Grantee, or by any other entity that is a Cable Operator of the Grantee's Cable System, which may include Affiliates of Grantee from the operation of the Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Basic Service; any expanded Tiers of Cable Service; optional Premium Services; installation, disconnection, reconnection and change-in-service fees; Leased Access Channel fees; remote control 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 and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment used to receive Cable Service; advertising revenues; the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service and accounted for as revenue under GAAP; revenues from program guides; revenue from data transmissions to the extent these transmissions are considered Cable Services under federal law; additional outlet fees; revenue from Cable Internet Service to the extent this service is considered a Cable Service under federal law; Franchise fees; revenue from interactive services to the extent they are considered Cable Services under federal law; revenue from the sale or carriage of other Cable Services on the Cable System; and revenue from home shopping, bank-at-home Channels and other revenue-sharing arrangements. Gross Revenues shall include revenue received by 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; or (ii) 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.

1.30 "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.

1.31 "Leased Access Channel" means any Channel or portion of a Channel of the Cable System available to the public in a manner consistent with 47 U.S.C. § 532 for commercial use by Persons other than Grantee, for a fee or charge.

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

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

1.34 "Public, Educational, and Governmental Access" or "PEG Access" means the availability of Channel capacity on the Cable System for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, 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.

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

1.36 "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.

1.37 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding those billed on a bulk-billing basis.

1.38 "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.

1.39 "State" means the State of Colorado.

1.40 "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.



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

1.42 "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)).

1.43 "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)).

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

1.45 "Two-Way" means capable of providing both Upstream and Downstream transmissions.

1.46 "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

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

## **SECTION 2. GRANT OF FRANCHISE**

### **2.1 Grant**

(A) The City as franchising authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct, and operate, maintain, reconstruct, rebuild and Upgrade a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Franchise Area, for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility use agreements entered into with regard to individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance or Charter provision existing as of the Effective Date, as defined in subsection 2.3 (A).

(C) Each and every term, provision or condition herein is subject to applicable State, federal and City law, and the ordinances and regulations enacted pursuant thereto. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

(E) 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.

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

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

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; 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 or prohibit Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. 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 an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

## **2.2 Use of Rights-of-Way**

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City.

(B) 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 must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, 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 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 through joint trenching and other arrangements.

## **2.3 Effective Date and Term of Franchise**

(A) This Franchise and the rights, privileges and authority granted hereunder shall take effect on May \_\_, 2005 (the "Effective Date"), and shall terminate on May \_\_, 2015 unless terminated sooner as hereinafter provided. The term shall be automatically extended for an additional five years for a total of 15 years upon the Grantee's successful completion of the initial ten-year term of the Franchise.

(B) The grant of this Franchise shall have no effect on the Grantee's duty under the Charter or any prior ordinance(s) and all amendments thereto in effect prior to the Effective Date of this Franchise.



## **2.4 Franchise Nonexclusive**

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

## **2.5 Police Powers**

(A) Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such Generally Applicable ordinances as may be deemed necessary in the exercise of its police power; provided that such ordinances shall be reasonable and not destructive of the rights granted in this Franchise.

(B) The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and 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.

## **2.6 Grant of Other Franchises**

In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to enter into the City's Rights-of-Way for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area, in which the Grantee is actually providing Cable Service under the terms and conditions of this Franchise or is required to extend Cable Service to under the provisions of this Franchise, the material provisions thereof, in the reasonable discretion of the City, shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another.

## **2.7 Familiarity with Franchise**

The Grantee and the City each acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein.

## **2.8 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) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, as existed on the effective date of this Franchise, and that it will not raise any claim to the contrary.

## **SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

(A) 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 as a Franchise fee to the City, throughout the

duration of this Franchise, an amount equal to two and one-half (2.5%) percent of Grantee's annual Gross Revenues. Accrual of such Franchise fee shall commence as of the Effective Date of this Franchise.

(B) The City recognizes that, in the future, Grantee 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), when these two types of service are bundled together in a discounted package offered to Subscribers. Due to the ambiguities that currently exist both in the business and regulatory environment on this issue, the City and the Grantee hereby reserve all rights, claims, defenses and remedies regarding the City's authority to impose and/or enforce requirements related to the revenue allocation methodology to be used when Cable Services and non-Cable Services are offered to Subscribers in a discounted package, for the purpose of calculating Franchise fee payments.

Further, in the event that the City believes that Grantee has unlawfully, unfairly, or in violation of this Franchise allocated revenue between Cable Services and non-Cable Services for the purpose of calculating Franchise fee payments, the City and the Grantee shall meet upon advance notice from the City to discuss the allocation methodology. If the City and the Grantee cannot agree on the matter within a reasonable period of time, the City and Grantee shall submit the matter to a mutually agreeable third party for mediation. The cost of the mediation shall be shared equally between the City and the Grantee. If the mediation is unsuccessful or if the City and the Grantee are unable to mutually agree on a mediator, then either the City 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**

In accordance with the Cable Act, the 12-month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. The Franchise fee payment shall be payable quarterly. Each payment shall be due and payable no later than sixty (60) days after the end of the preceding calendar quarter.

### **3.3 Acceptance of Payment and Recomputation**

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

### **3.4 Annual Franchise Fee Reports**

Grantee shall, with each Franchise fee payment, 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 signed by the General Manager or a financial officer or controller of Grantee, stating that it accurately reflects the Gross Revenues of the Grantee prior to submission to the City.

### **3.5 Audits**

Upon thirty (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. If the audit shows that Franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit, such cost not to exceed two thousand dollars (\$2,000). The City's right to audit and the Grantee's obligation to retain records related to a Franchise fee audit shall expire three (3) years after each Franchise fee payment has been made to the City.



### **3.6 Late Payments**

In the event any payment due annually is not received within sixty (60) days from the end of the calendar year, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due compounded annually), calculated from the date the payment was originally due until the date the City receives the payment.

### **3.7 Underpayments**

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

### **3.8 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 (subject to the other provisions contained in this Franchise).

### **3.9 Maximum and Equivalent Compensation**

(A) Once during each calendar year of the franchise term, the City Council, upon giving 30 days' notice to the Grantee of its intention so to do, may review and change by ordinance the Franchise Fee and any other consideration that the City is entitled to receive pursuant to this Franchise Agreement or applicable law (including PEG access support); provided, however the City Council may only change the consideration and Franchise Fee to be received by the City under the terms of this Franchise Agreement to the equivalent of the consideration and Franchise Fee paid by Grantee to any franchising authority or local jurisdiction in which the Grantee supplies Cable Services under franchise, and provided that the maximum Franchise Fee (excluding other consideration such as PEG support) may not exceed that lawfully allowed.

(B) The Grantee shall report to the City within 60 days of the execution of a subsequent franchise or of any change of franchise in another municipality(ies) under which a city receives greater consideration than is provided herein from the Grantee to the City hereunder. The Grantee's report under this subsection shall include, at a minimum, the name of the jurisdiction where the change occurred or the subsequent franchise was granted, the nature of the change or of the provision in the subsequent franchise, the effective date of the change or subsequent franchise, and a copy of the relevant franchise agreement or other document containing the change or provision.

(C) For purposes of this section 3.9 consideration means the payments and/or financial support of any kind and equipment, technical advice and assistance necessary or required for the access channel and any other benefit (whether or not denominated as a franchise fee) which is of similar significant financial benefit to a city or town in which the Grantee supplies Cable Services under franchise.

### **3.10 Additional Commitments Not Franchise Fee Payments**

No term or condition in this Franchise 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 in effect, as of the Effective Date of this Franchise, 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.

### **3.11 Tax Liability**

Subject to applicable law, 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 Financial Records**

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

### **3.13 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 revenue statement in accordance with Section 3.4, 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 therefore. Acceptance of payment by City shall not operate as a waiver of any disputed amounts claimed owed. .

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

(A) 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.

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

### **4.2 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.

### **4.3 Rate Discrimination**

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



Dwelling Unit Subscribers as authorized by FCC rules. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalty to the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

- (A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or
- (B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or
- (C) The offering of rate discounts for Cable Service; or
- (D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

#### **4.4 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 written request of the City, Grantee shall provide a complete schedule of current rates and charges for 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.

#### **4.5 Cross Subsidization**

Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

#### **4.6 Reserved Authority**

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.

#### **4.7 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.

#### **4.8 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 so approved by the City Council, and the Grantee, then the amendment(s) shall, referred to the electorate pursuant to paragraph 119 of the City Charter.

#### **4.9 Performance Evaluations**

(A) The City may hold performance evaluation sessions within thirty (30) days of the triennial anniversary dates of the Effective Date of this Franchise. All such evaluation sessions shall be conducted by the City.

(B) 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.

(C) All evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in a newspaper of general circulation in the City.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, those matters over which this Franchise and/or applicable law gives the City regulatory control or authority, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) 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.

#### **4.10 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, if any, 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 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.

#### **4.11 Force Majeure**

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is reasonably satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, 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 was 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 compliance with the terms of this Franchise, Grantee shall 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. 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.



## SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

### 5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, 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, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, or by 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. Grantee shall not be required to provide indemnification for programming cable cast over the PEG Access Channel.

(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 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 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 in which it is named, at its own cost. Grantee may not agree to any settlement of claims affecting the City without the City's approval.

(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 arising from a conflict of interest between the City and the counsel selected by Grantee to represent the City, after all reasonable measures have been taken to prevent the necessity of hiring separate counsel for the City, then the Grantee shall pay all reasonable 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 reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City 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 coverage:

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

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

(B) A certificate of insurance shall be provided to the City stating that the policy or policies 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 replacement coverage. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration 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.

(A) Deductibles.

(1) The City, its officers, officials, boards, commissions, and employees shall be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by or for which Grantee has assumed responsibility herein.;

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

(3) 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-."

(C) Verification of Coverage. The Grantee shall furnish the City with certificate of insurance reflecting blanket additional insured status. The certificate is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate is 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, 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 Construction Bond**

(A) Within 30 days of commencement of an Upgrade of the Cable System or other work in the right of way, Grantee shall provide and maintain in effect a construction bond in an amount no less than twenty five thousand dollars (\$25,000) to secure completion any and all work. Upon the successful completion of the Upgrade, the City shall release or return the bond within ten (10) business days of receipt of written request, either by signing a release form or returning the bond itself.

(B) The Construction Bond may be drawn on by City for damages relating to the System Upgrade construction. Any such draw shall be conducted according to the procedures of Section 14, including that Grantee has received written notice and thirty (30) days after receipt of notice to cure any material violations before any payment.

(C) Within thirty (30) days after notice to Grantee that any amount has been withdrawn by the Grantee from the bond pursuant to Section 14, Grantee shall restore the bond to its original amount.

(D) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the bond was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the bond has not been properly drawn upon in accordance with this Franchise. Any amounts the City erroneously or wrongfully withdraws from the bond 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 on the date the funds were withdrawn.

(E) Maintenance of the requisite construction bond shall not in any way limit the liability of the Grantee for any failure to fully perform its obligations under this Franchise Agreement.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

Grantee shall comply with Customer Service Standards promulgated by the FCC as well as any applicable customer service standards lawfully adopted of the City, as the same may be amended from time to time by the City Council acting by ordinance. Grantee reserves the right to challenge any customer service ordinance that it believes is inconsistent with its contractual rights under this Franchise.

### **6.2 Subscriber Privacy**

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law.

### **6.3 Subscriber Contracts**

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

### **6.4 Advance Notice to City**

The Grantee shall use reasonable efforts to furnish any notices 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, including the City's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, and its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to any such records on the basis that Grantee's records are under the control of any Affiliate or a third party. The City may, in writing, request copies of any such records required under this Section 7 and Grantee shall provide such copies within forty-five (45) days of the receipt of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within 30 (30) days of receipt of City's written request, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City reasonably determines that an examination of such records is necessary or appropriate for the performance of any of the City's administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

### **7.2 Confidentiality**

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. 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, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section to protect the confidentiality of Grantee's records.

### **7.3 Records Required**

(A) Except as otherwise indicated herein, Grantee shall maintain for the period of time required by FCC or other applicable governmental regulatory agency, or when there is no applicable governmental agency requirement, for five years, and shall furnish to the City upon written request:

(1) A complete set of maps showing the location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops; (b) as-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available upon reasonable notice during regular business hours, during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate at the time they are prepared by an appropriate representative of the Grantee;

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



- (3) A current 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, except for information involving the privacy rights of individual Subscribers.

#### **7.4 Annual Reports**

Upon written request, but no more often than annually, Grantee shall submit to the City a written report, in a form reasonably acceptable to the City, which shall include, but not necessarily be limited to, a summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year.

#### **7.5 Copies of Federal and State Reports**

Upon reasonable written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall submit such documents to the City no later than thirty (30) days after receipt of written request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all documents provided to any federal, State, or local regulatory agency as a routine matter in the due course of operating Grantee's Cable System within the City, Grantee shall make such documents available to the City upon reasonable written request.

#### **7.6 Complaint File and Reports**

(A) Grantee shall keep an accurate and comprehensive file of any and all complaints it receives regarding the Cable System in the Franchise Area and Grantee's actions in response to those complaints. Such files shall be kept in a manner consistent with the privacy rights of Subscribers. These files shall remain open to the City and the public during normal business hours. Upon written request, no more often than annually, Grantee shall provide the City a summary which shall include information concerning customer complaints received by Grantee during the time period specified in Grantor's request, but no greater than a one-year period, including a summary of customer complaints referred by the City in writing to Grantee.

(B) A log of all service interruptions shall be maintained and provided to City upon written request;

(C) Grantee shall provide the City such other information as reasonably requested by the City, provided that Grantee is given thirty (30) days prior written notice. .

#### **7.7 Failure to Report**

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

#### **7.8 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 initial 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) Science/documentary; and
- (H) National news, weather and information.

### **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 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.

### **8.4 Continuity of Service Mandatory**

(A) The Grantee shall use reasonable efforts so as 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.

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

(C) Subject to the *force majeure* provision of this Agreement, failure of Grantee to operate the Cable System for four (4) consecutive days without prior approval of the City or its designee, or without just cause may, be considered a material violation of this Agreement.



## **8.5 Services for the Disabled**

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

## **SECTION 9. ACCESS**

### **9.1 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. The City may authorize Designated Access Providers to control and manage the use of any and all access facilities provided by Grantee under this Franchise, including, without limitation, the operation of access channels. 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 Cable System and access facilities for the provision of access. 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.

All assigned Access Channels can be used to transmit signals in any format which 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.

### **9.2 Initial Access Channel**

(A) Within 120 days of written notification by the City to the Grantee, Grantee shall provide one (1) Downstream Government, Educational and Public Access Channel on the Cable System for the exclusive use of the City.

(B) In the event that at any time during the duration of this Franchise Agreement the City determines to enact a Government, Educational and Public Access Channel fee (PEG Fee) the City may by ordinance set and/or amend the PEG Fee.

### **9.3 Access Channels On Basic Service**

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

### **9.4 Access Channel Assignments**

Grantee will use reasonable efforts to minimize the movement of access channel assignments.

### **9.5 Relocation of Access Channels**

Grantee shall provide the City with a minimum of ninety (90) 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. 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**

The Grantee shall maintain all Access Channels at the same or better level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for other Channels.

## **9.7 Changes in Technology**

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's signal delivery technology, which affects the signal quality or transmission of Access services or programming, Grantee shall, at its own expense, take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment and training of Access personnel, to ensure that the capabilities of Access services are not diminished or adversely affected by such change. For example, this provision shall apply if the Cable System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

## **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 Grantee's requirements.

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

## **10.1 Right to Construct**

Subject to Generally 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.

## **10.2 Right-of-Way and Annual Construction Meetings**

Subject to receiving reasonable advance notice, Grantee shall make reasonable effort to regularly attend and participate in meetings of the City, regarding Right-of-Way issues that may impact the Cable System.

## **10.3 Joint Trenching/Boring**

Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permutees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the City.

## **10.4 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.

## **10.5 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. Grantee shall comply with the Generally Applicable ordinances, laws, or regulations regarding City Rights Of Way as may be adopted from time to time pursuant to the City's lawful police



powers. Grantee shall pay all Generally Applicable and lawful fees for the requisite City permits received by Grantee.

#### **10.6 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.

#### **10.7 Compliance with Applicable Codes**

(A) City Codes. Grantee shall comply with all applicable City codes, including, without limitation, the International Building Code, International Fire Code, Facilities in the Right of Way Ordinance and applicable mechanical, zoning codes and development and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as minimally specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time and City regulations. 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 City, state and federal codes and regulations.

(C) Safety Codes. Grantee shall comply with all applicable 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.

#### **10.8 Mapping**

Grantee shall comply with any Generally Applicable ordinances, rules and regulations of the City regarding mapping systems for users of the Rights-of-Way.

#### **10.9 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, constructed and maintained so as not to endanger or unreasonably interfere with the lives of persons, or to interfere with 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 unreasonably 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.

#### **10.10 Prevention of 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.

#### **10.11 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.

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

#### **10.12 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 9-1.5-105, as such may be amended from time to time. Notice to the City shall be given pursuant to Generally Applicable City ordinance and/or regulations, by written notice to the City or its designee prior to the commencement of construction.

#### **10.13 Notice to Private Property Owners**

Except in the case of an emergency involving public safety or service interruptions to a large number of Subscribers, Grantee shall give reasonable advance notice to private property owners or legal tenants of work on or adjacent to private property.

#### **10.14 Underground Construction and Use of Poles**

(A) When required by general ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense, subject to applicable law. 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 when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wire line service at no expense to the City or Subscribers subject to applicable law, unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, 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. Nothing contained in this Section shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

(C) The Grantee shall utilize existing poles and conduit wherever possible and reasonably practical.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement or conduit does not exist and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension



of Grantee's Cable System. All poles and conduit of Grantee shall be located as reasonably designated by the proper City authorities

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on utility poles or right of way of the City or any other Person. The City may reasonably use Grantee's poles, at no cost to the City, for City facilities, including but not limited to, fiber optic lines, cameras, lights or other devices. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon written request by the City.

(F) 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 provided reasonable notice to the Grantee 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 any extraordinary cost of the trenching and boring. 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.

#### **10.15 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.

#### **10.16 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:

Underground cable, feeder and trunks lines shall be buried at a minimum depth of forty-two (42) inches or as otherwise required by City development permits and construction standards.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar month of initial installation or at a time mutually agreed upon between the Grantee and the Subscriber. When freezing surface conditions 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.

#### **10.17 Electrical Bonding**

Grantee shall ensure that all new 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.

#### **10.18 Subdivision Installation**

Any ordinance of the City which requires installation of utilities in subdivisions or other developments for shall be construed to include wiring for Cable Systems.

### **10.19 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 to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year.

(D) 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.

### **10.20 Use of Conduits by the City**

Subject to any applicable state or federal regulations or tariffs, the City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes, provided that (a) such use by City does not interfere with the current or future use by the Grantee; (b) the City holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use, including, but not limited to reasonable attorney fees and costs; (c) such use by the City is restricted to non-commercial municipal purposes; (d) the City takes reasonable precautions to prevent any use of the Grantee's conduits, ducts, or equipment in any manner that results in inappropriate use thereof, or any loss or damage to the conduit, ducts, or equipment, or the Cable System; (e) the City does not use the conduits, ducts, or equipment for any purpose that is in competition with the services offered by the Grantee. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fee payments or from other fees payable to the City.

### **10.21 Common Users**

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

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

(4) "Licensee" means any Person licensed or otherwise permitted by the City to use the Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.



(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new or larger Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet applicable local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

## **10.22 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.

## **10.23 Discontinuing Use/Abandonment of Cable System Facilities**

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit to the City 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 reasonable combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City. Until such time as Grantee removes or modifies the facility as reasonably directed by the City, or until the rights to and responsibility for the facility are accepted by another Person, Grantee shall retain all liability for such facility and 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. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes. If the City chooses to utilize any such abandoned facilities, Grantee's liability for those facilities shall cease.

#### **10.24 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, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at no cost to the City. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than 10 business days and allow Grantee the opportunity to perform such action after review and approval of the relocation plan by the City. In the event of any capital improvement project exceeding \$250,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least thirty (30) 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 but a replacement location is not guaranteed. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

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 reasonable cost of the work to the Grantee, including all reasonable costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System 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.

#### **10.25 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 costs associated with the removal or relocation be paid by the benefited party at no cost to the City.

#### **10.26 Temporary Changes for Other Permittees**

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



### **10.27 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.

### **10.28 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. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

### **10.29 Inspection of Construction and Facilities**

The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least five business days notice, or, in case of emergency, upon demand without prior notice. 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 reasonably charge Grantee therefor.

### **10.30 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 Generally 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 or by facsimile 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.

### **10.31 Work of Contractors and Subcontractors**

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's Generally Applicable 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 11. CABLE SYSTEM CONFIGURATION, TECHNICAL STANDARDS AND TESTING**

### **11.1 Subscriber Network/System Upgrade**

(A) At such time as the Grantee undertakes and completes any Upgrade, Grantee shall send written notice to the City. The City shall have 90 days from receipt of notice of completion to review the sweep analysis records kept by the Grantee which verify the completion of the Cable System bandwidth expansion, and to complete such technical inspections as may be reasonably necessary to verify that the other components of the Upgrade are complete. The City Manager or his designee may require the Grantee to provide additional facts and information, in his/her reasonably exercised discretion, necessary to verify completion of any Upgrade.

(B) The Cable System shall at all times be operated and maintained in compliance with FCC standards on closed captioning. 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.

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

(D) Grantee and City shall meet, at the City's request, to discuss construction before it commences.

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

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

### **11.2 State of the Art**

The City shall not be restricted from holding any hearing at any time including before or as a condition of renewal, to review whether or not the Cable System and the Cable Services offered by the Grantee are meeting demonstrated community needs. The parties recognize and agree that the review may include but is not limited to the Grantee's participation in/contribution to local programming, PEG programming and production facilities and equipment that the City may require.

### **11.3 Standby Power**

Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks.

### **11.4 Emergency Alert Capability**

(A) Grantee shall provide an operating Emergency Alert System ("EAS") in accordance with and as required by the provisions of FCC Regulations, 47 C.F.R. Part II, and as such provision may from time to time be amended. Grantee shall test the EAS as required by federal law. Upon request, the City shall be permitted to participate in and/or witness any EAS testing. If the test indicates that the EAS is not performing consistent with



FCC requirements, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested as required by federal law.

### **11.5 Technical Performance**

The technical performance of the Cable System shall meet or exceed all applicable 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.

### **11.6 Cable System Performance Testing**

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise.

(B) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee, for as long as required by Federal law. Copies of such test results will be available to the City upon written request.

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

### **11.7 Additional Tests**

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

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

(B) the Cable System component tested;

(C) the equipment used and procedures employed in testing;

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

(E) any other information pertinent to said tests and analysis which may be required.

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

### **12.1 Universal Service**

Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area. Subject to Section 12.2, 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 subject to Section 4.3, and reasonable terms and conditions. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the demarcation point 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 12.2.

## 12.2 Service Availability

(A) In General. Except as otherwise provided herein, and under normal operating conditions, no less than 95% of the time, measured on a quarterly basis, 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) 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;

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

(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 demarcation point at a Multiple Dwelling Unit.

(C) Whenever the Grantee receives a request for Cable Service from a customer in a contiguous unserved area where there are at least sixty (60) residences within 5280 cable-bearing strand feet (one cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such customer at no cost to said customer for the Cable System extension, other than the published standard installation fees charged to all customers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a freeway crossing.

(D) Customer Charges for Extensions of Service. No customer shall be refused service arbitrarily, however, for unusual circumstances, such as a customer's request to locate the cable drop underground, the existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to customers, or a request from a customer in an area which does not meet the density requirement of subsection (C) above, 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 and other 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 sixty (60). 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.



### 12.3 Connection of Public Facilities

Grantee shall, at no cost to the City, continue to provide one outlet of Basic Service and Expanded Basic Service to all City owned and occupied buildings, schools and public libraries where such service is provided as of the Effective Date of this Franchise. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. In addition, Grantee shall provide, as directed or approved by the Director of Cable Services, at no cost to the City or other entity, one outlet of Basic and Expanded Basic Service to additional City-owned or leased and City occupied buildings, additional schools and libraries upon request if the drop line from the feeder cable to such building does not exceed one hundred twenty-five feet (125') or if the City or other entity agrees to pay the incremental cost of such drop line in excess of one hundred twenty-five feet (125'), including the cost of such excess labor and materials. 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. Outlets of Basic and Expanded 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 and shall not be used to entertain public groups or be used for commercial purposes.

## SECTION 13. FRANCHISE VIOLATIONS

### 13.1 Procedure for Remediating Franchise Violations

(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.

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

(1) Commence an action at law for monetary damages or where applicable withdraw an amount from the construction bond as monetary damages;

(2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or

(3) Recommend 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 discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under applicable law.

### **13.2 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, including any requirement added, and any change made, following the effective date of this Franchise Agreement under the most favored nations language in Section 3.9 and the access channel terms in 9.2 hereof;

(2) If Grantee willfully fails for more than forty-eight (48) consecutive 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; or

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

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

(B) Following the procedures set forth in Subsection 14.1(A) and (B), 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.

(C) Any proceeding under the paragraph above shall be conducted by the City Council or its designee 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 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 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 may at its sole discretion take any lawful action it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

### **13.3 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. 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

(2) Purchase Grantee's Cable System in accordance with the procedures set forth 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 shall remain in full force and effect during the period of removal.

(C) 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 thirty (30) days after receipt of an itemized list of the costs.

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

### **13.4 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.

(B) The City may, within sixty (60) days of such events as described in Subsection (A), 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.

### **13.5 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 appointments, 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.

### **13.6 No Monetary Recourse Against the City**

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, 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.

### **13.7 Alternative Remedies**

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

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the



procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

#### **14.2 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 or resolution.

(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.

(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 by any court of competent jurisdiction;

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

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

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

(E) The City shall act by ordinance or resolution on the request 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, subject to applicable law. 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, subject to applicable law, 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 related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of 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 Affiliate of Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be reasonably determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

## **SECTION 15. SEVERABILITY**

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

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 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.

### **16.2 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. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise:



Grantee's address shall be:

BRESNAN COMMUNICATIONS LLC  
c/o General Manager  
2502 Foresight Circle  
Grand Junction, Colorado 81505

With a copy to:

BRESNAN COMMUNICATIONS LLC  
c/o 1 Manhattanville Road  
Purchase, New York 10577  
Attention: Legal Department

The City's address shall be:

City of Grand Junction  
c/o City Manager  
250 N. 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

With a copy to:

City of Grand Junction  
c/o City Attorney  
250 N. 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

### **16.3 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.

### **16.4 Publication and Election Costs to be borne by Grantee**

Grantee shall reimburse the City for all publication and election costs of this Franchise.

### **16.5 Binding Effect**

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

### **16.6 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.

### **16.7 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.

#### **16.8 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.

#### **16.9 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.

#### **16.10 Amendments to Franchise.**

At any time during the term of this franchise, the City, through its City Council or the Grantee may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s).

#### **16.11 Successors and Assigns.**

The rights, privileges, franchises and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon Bresnan Communications Company, its successors and assigns.

#### **16.12 Third Parties**

Nothing contained in this franchise shall be construed to provide rights to third parties.

#### **16.13 Severability**

Should any one or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

#### **16.14 Entire Agreement**

This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise. Any and all provisions of the Charter in effect at the time of approval of this franchise are incorporated and made operative by this reference as if fully set forth.

#### **16.15 Council Approval.**

This grant of franchise shall not become effective unless approved by a majority vote of the City Council.

#### **16.16 Grantee Approval.**

The Grantee shall file with the City Clerk its written acceptance of this franchise and of all of its terms after the adoption of this franchise by the City Council. The acceptance shall be in form and content approved by the City Attorney.



**16.17 Voter's Approval.**

This grant of franchise shall not become effective unless approved by a majority vote of the qualified electors of the City voting thereon at the regular election to be held on a date to be hereinafter established by the City Council.

**16.18 Termination of Prior Revocable Permit**

Upon the effective date of this franchise, the revocable permit granted to the predecessors of the Grantee shall be terminated and of no further force and effect.

IN WITNESS WHEREOF, this franchise ordinance is signed in the name of the City of Grand Junction, Colorado this 8<sup>th</sup> day of November, 2005.

ATTEST:

Stephanie Tuin  
Stephanie Tuin  
City Clerk

CITY OF GRAND JUNCTION, COLORADO:

Bruce Hill  
Bruce Hill  
Mayor



APPROVED AS TO FORM:

John P. Shaver  
John P. Shaver  
City Attorney

**UNCONDITIONAL ACCEPTANCE OF FRANCHISE**

The undersigned, BRESNAN COMMUNICATIONS hereby accepts this Franchise passed and adopted by the City of Grand Junction pursuant to People's Ordinance No. 36 and approved by the electorate on April 5, 2005 and does hereby unconditionally agree that it will comply with and abide by all the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law, and that as written and to the best of its knowledge, all terms of the Franchise are consistent with federal, state and local law, as existed on the date this acceptance is signed.

Accepted and approved this 3<sup>RD</sup> day of NOVEMBER, 2005.

BRESNAN COMMUNICATIONS

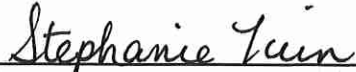
Alex Bresnan

Title: Senior Vice President  
Of It's Manager

I HEREBY CERTIFY THAT the foregoing People's Ordinance, being People's Ordinance No. 36 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 5<sup>th</sup> day of January, 2005 and that the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 16<sup>th</sup> day of March, 2005, at which People's Ordinance No. 36 was read, considered, adopted and ordered published in full by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 18<sup>th</sup> day of March, 2005.

  
\_\_\_\_\_  
Stephanie Tuin  
City Clerk

Published: January 7, 2005  
Published: March 18, 2005  
Effective: April 17, 2005