

1 (a) "Public Access" means Access where community-
2 based, noncommercial organizations, groups or individual members of the
3 general public, on a nondiscriminatory basis, are the primary users.

4 (b) "Educational Access" means Access where schools
5 are the primary users having editorial control over programming and
6 services. For purposes of this definition, "school" means any state-
7 accredited educational institution, public or private, including, for
8 example, primary and secondary schools, colleges and universities.

9 (c) "Government Access" means Access where
10 governmental institutions or their designees are the primary users having
11 editorial control over programming and services.

12 (2) "Access Channel" or "PEG Channel" means any Channel
13 or portion thereof designated for Access purposes or otherwise made
14 available to facilitate or transmit Access programming or services.

15 (3) "Activated" means the status of any capacity or part of the
16 Cable System in which any Cable Service requiring the use of that capacity
17 or part is available without further installation of system equipment,
18 whether hardware or software.

19 (4) "Affiliate," when used in connection with Grantee, means
20 any Person who owns or controls, is owned or controlled by, or is under
21 common ownership or control with Grantee.

22 (5) "Applicable Law" means any statute, ordinance, judicial
23 decision, executive order or regulation having the force and effect of law
24 that determines the legal standing of a case or issue.

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

29 (7) "Basic Service" is the level of programming service that
30 includes the retransmission of local television Broadcast Channels and is
31 made available to all Cable Services Subscribers in the Franchise Area.

1 (8) "Broadcast Channel" means local commercial television
2 stations, qualified low power stations and qualified local noncommercial
3 educational television stations, as referenced under 47 USC § 534 and 535.

4 (9) "Broadcast Signal" means a television or radio signal
5 transmitted over the air to a wide geographic audience and received by a
6 Cable System by antenna, microwave, satellite dishes or any other means.

7 (10) "Cable Act" means the Title VI of the Communications Act
8 of 1934, as amended.

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

15 (12) "Cable Service" means the one-way transmission to
16 Subscribers of video programming or other programming service and
17 Subscriber interaction, if any, which is required for the selection or use of
18 such video programming or other programming service.

19 (13) "Cable System" means any facility, including Grantee's,
20 consisting of a set of closed transmissions paths and associated signal
21 generation, reception, and control equipment that is designed to provide
22 Cable Service which includes video programming and which is provided to
23 multiple Subscribers within a community, but such term does not include
24 a facility:

25 (a) A facility that serves only to retransmit the television
26 signals of one or more television broadcast stations;

27 (b) A facility that serves Subscribers without using any
28 Right-of-Way;

29 (c) A facility of a common carrier which is subject, in
30 whole or in part, to the provisions of Title II of the federal Communications
31 Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a
32 Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)))
33 to the extent such facility is used in the transmission of video

1 programming directly to Subscribers, unless the extent of such use is
2 solely to provide interactive on-demand services;

3 (d) An open video system that complies with federal
4 statutes; or

5 (e) Any facilities of any electric utility used solely for
6 operating its electric utility systems.

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

11 (15) "City" is Albuquerque, New Mexico, a body politic and
12 incorporated with home-rule powers under the laws of the State of New
13 Mexico.

14 (16) "City Council" means the Albuquerque City Council, or its
15 successor, the governing body of the City of Albuquerque, New Mexico.

16 (17) "Commercial Subscribers" means any Subscribers other
17 than Residential Subscribers.

18 (18) "Designated Access Provider" means the entity or entities
19 designated now or in the future by the City to manage or co-manage
20 Access Channels and facilities. The City may be a Designated Access
21 Provider.

22 (19) "Digital Starter Service" means the Tier of optional video
23 programming services, which is the level of Cable Service received by
24 most Subscribers above Basic Service, and does not include Premium
25 Services.

26 (20) "Downstream" means carrying a transmission from the
27 Headend to remote points on the Cable System or to Interconnection
28 points on the Cable System.

29 (21) "Dwelling Unit" means any building or portion thereof that
30 has independent living facilities, including provisions for cooking,
31 sanitation and sleeping, and that is designed for residential occupancy.
32 Buildings with more than one set of facilities for cooking shall be

1 considered Multiple Dwelling Units unless the additional facilities are
2 clearly accessory.

3 (22) "FCC" means the Federal Communications Commission.

4 (23) "Fiber Optic" means a transmission medium of optical
5 fiber cable, along with all associated electronics and equipment, capable
6 of carrying Cable Service by means of electric lightwave impulse.

7 (24) "Franchise" or Franchise Ordinance means the document
8 in which this definition appears, i.e., the contractual agreement, executed
9 between the City and Grantee, containing the specific provisions of the
10 authorization granted, including references, specifications, requirements
11 and other related matters.

12 (25) "Franchise Area" means the area within the jurisdictional
13 boundaries of the City, including any areas annexed by the City during the
14 term of this Franchise.

15 (26) "Franchise Fee" means that fee payable to the City
16 described in Section 3.(A).

17 (27) "Grantee" means Comcast of New Mexico, LLC, or its
18 lawful successor, transferee or assignee.

19 (28) "Gross Revenues" means and shall be construed broadly
20 to include all revenues derived directly or indirectly by Grantee and/or an
21 Affiliate that is the cable operator of the Cable System, from the operation
22 of Grantee's Cable System to provide Cable Services within the City.

23 (a) Gross Revenues include, by way of illustration and
24 not limitation:

25 (i) fees for Cable Services, regardless of whether
26 such Cable Services are provided to Residential or Commercial
27 Subscribers, including revenues derived from the provision of all Cable
28 Services (including but not limited to pay or premium Cable Services,
29 digital Cable Services, pay-per-view, pay-per-event and video-on-demand
30 Cable Services);

31 (ii) Installation, reconnection, downgrade,
32 upgrade or similar charges associated with changes in Subscriber Cable
33 Service levels;

- 1 (iii) Repair, maintenance or service call charges;
- 2 (iv) Payments made by non-Subscriber third
- 3 parties to Grantee for access to Grantee's Cable System and derived from
- 4 the operation of Grantee's Cable System for the provision of Cable
- 5 Services within the City;
- 6 (v) Fees paid to Grantee for channels designated
- 7 for commercial/leased access use, which shall be allocated on a *pro rata*
- 8 basis using total Cable Service Subscribers within the City;
- 9 (vi) Converter, remote control, and other Cable
- 10 Service equipment rentals, leases, or sales;
- 11 (vii) Advertising Revenues as defined herein;
- 12 (viii) Late fees, convenience fees, administrative
- 13 fees and similar multi-service fees, which shall be allocated on a *pro rata*
- 14 basis using Cable Services revenue as a percentage of total Subscriber
- 15 revenues within the City;
- 16 (ix) Revenues from program guides;
- 17 (x) Franchise Fees and PEG Fees;
- 18 (xi) FCC Regulatory Fees; and
- 19 (xii) Commissions from home shopping Channels
- 20 and other Cable Service revenue sharing arrangements, which shall be
- 21 allocated on a *pro rata* basis using total Cable Service Subscribers within
- 22 the City.
- 23 (b) "Advertising Revenues" shall mean revenues
- 24 derived from sales of advertising that are made available to Grantee's
- 25 Cable System subscribers within the City and shall be allocated on a *pro*
- 26 *rata* basis using total Cable Service subscribers reached by the
- 27 advertising. Additionally, Grantee agrees that Gross Revenues subject to
- 28 Franchise Fees shall include all commissions, representative fees, Affiliate
- 29 entity fees, or rebates paid to National Cable Communications and
- 30 Comcast Spotlight or their successors associated with sales of advertising
- 31 on the Cable System within the City, allocated according to this
- 32 subsection using total Cable Service Subscribers reached by the
- 33 advertising.

- 1 (c) "Gross Revenues" shall not include:
- 2 (i) Actual Bad Debt write-offs, except any portion
- 3 which is subsequently collected which shall be allocated on a *pro rata*
- 4 basis using Cable Services revenue as a percentage of total Subscriber
- 5 revenues within the City;
- 6 (ii) Any taxes and/or fees on services furnished
- 7 by Grantee imposed by any municipality, State or other governmental unit,
- 8 provided that Franchise Fees, the PEG Fee and the FCC regulatory fee
- 9 shall not be regarded as such a tax or fee;
- 10 (iii) Fees imposed by any municipality, state or
- 11 other governmental unit on Grantee;
- 12 (iv) Launch fees and marketing co-op fees
- 13 received as reimbursement by programmers for the introduction of new
- 14 programming; and
- 15 (v) Unaffiliated third-party advertising sales
- 16 agency fees which are reflected as a deduction from revenues.
- 17 (d) To the extent revenues are received by Grantee for
- 18 the provision of a discounted bundle of services which includes Cable
- 19 Services and non-Cable Services, Grantee shall calculate revenues to be
- 20 included in Gross Revenues using a methodology that allocates revenue
- 21 on a *pro rata* basis when comparing the bundled service price and its
- 22 components to the sum of the published rate card. Except as required by
- 23 specific federal, State or local law; it is expressly understood that
- 24 equipment may be subject to inclusion in the bundled price at full rate card
- 25 value. This calculation shall be applied to every bundled service package
- 26 containing Cable Service from which Grantee derives revenues in the City.
- 27 The City reserves its right to review and to challenge Grantee's
- 28 calculations.
- 29 (e) Grantee reserves the right to change the allocation
- 30 methodologies set forth in this Subsection 28 in order to meet the
- 31 standards required by governing accounting principles as promulgated
- 32 and defined by the Financial Accounting Standards Board ("FASB") the
- 33 Emerging Issues Task Force ("EITF") and/or the U.S. Securities and

1 Exchange Commission (“SEC”). Grantee will explain and document the
2 required changes to the City within three (3) months of making such
3 changes and as part of any audit or review of Franchise Fee payments,
4 and any such changes shall be subject to Subsection 28(f) below.

5 (f) Resolution of any disputes over the classification of
6 revenue should first be attempted by agreement of the Parties, but should
7 no resolution be reached, the Parties agree that reference shall be made to
8 generally accepted accounting principles (“GAAP”) as promulgated and
9 defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing,
10 the City reserves its right to challenge Grantee’s calculation of Gross
11 Revenues, including the interpretation of GAAP as promulgated and
12 defined by the FASB, EITF and/or the SEC.

13 (29) “Headend” means any facility for signal reception and
14 dissemination on a Cable System, including cables, antennas, wires,
15 satellite dishes, monitors, switchers, modulators, processors for
16 Broadcast Signals, equipment for the Interconnection of the Cable System
17 with adjacent Cable Systems and Interconnection of any networks which
18 are part of the Cable System, and all other related equipment and facilities.

19 (30) “Leased Access Channel” means any Channel or portion
20 of a Channel commercially available for video programming by Persons
21 other than Grantee, for a fee or charge.

22 (31) “Mayor” means the Mayor of the City or designee.

23 (32) “Person” means any individual, sole proprietorship,
24 partnership, association, or corporation, or any other form of entity or
25 organization.

26 (33) “Premium Service” means programming choices (such as
27 movie Channels, pay-per-view programs, or video on demand) offered to
28 Subscribers on a per-Channel, per-program or per-event basis.

29 (34) “Residential Subscriber” means any Subscriber who
30 receives Cable Service delivered to Dwelling Units or Multiple Dwelling
31 Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

32 (35) “Right-of-Way” means each of the following which have
33 been dedicated to the public or are hereafter dedicated to the public and

1 maintained under public authority or by others and located within the City:
2 streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks,
3 easements, and similar public property and areas.

4 (36) "State" means the State of New Mexico.

5 (37) "Subscriber" means any Person that elects to subscribe
6 to, for any purpose, Cable Service provided by Grantee by means of or in
7 connection with the Cable System and whose premises are physically
8 wired and lawfully Activated to receive Cable Service from Grantee's Cable
9 System, and that is in compliance with Grantee's regular and
10 nondiscriminatory terms and conditions for receipt of service.

11 (38) "Subscriber Network" means that portion of the Cable
12 System used primarily by Grantee in the transmission of Cable Services to
13 Residential Subscribers.

14 (39) "Telecommunications" means the transmission between
15 or among points specified by the user of information of the user's
16 choosing, without change in the form or content of the information as sent
17 and received (as provided in 47 U.S.C. Section 153(50)).

18 (40) "Telecommunications Service" means the offering of
19 Telecommunications for a fee directly to the public, or to such classes of
20 users as to be effectively available directly to the public, regardless of the
21 facilities used (as provided in 47 U.S.C. Section 153(53)).

22 (41) "Tier" means a group of Channels for which a single
23 periodic subscription fee is charged.

24 (42) "Two-Way" means that the Cable System is capable of
25 providing both Upstream and Downstream transmissions.

26 (43) "Upstream" means carrying a transmission to the Headend
27 from remote points on the Cable System or from Interconnection points on
28 the Cable System.

29 (B) Exhibits.

30 (1) Exhibit A, Franchise Fee Reporting Form.

31 (2) Exhibit B, Customer Service Standards.

32 (3) Exhibit C, Dark Fiber Contract.

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1 **SECTION 2. GRANT OF FRANCHISE.**

2 **(A) Grant.**

3 **(1) The City hereby grants to Grantee a nonexclusive**
4 **authorization to make reasonable and lawful use of the Right-of-Way**
5 **within the City to construct, operate, maintain, reconstruct and rebuild a**
6 **Cable System for the purpose of providing Cable Service or any other**
7 **lawful service subject to the terms and conditions set forth in this**
8 **Franchise and in any prior utility or use agreements entered into by**
9 **Grantee with regard to any individual property. This Franchise shall**
10 **constitute both a right and an obligation to provide the Cable Services**
11 **required by and to fulfill the obligations set forth in the provisions of this**
12 **Franchise.**

13 **(2) Nothing in this Franchise shall be deemed to waive the**
14 **lawful requirements of any generally applicable City ordinance existing as**
15 **of the Effective Date, as set forth in Section 2(E).**

16 **(3) Each and every term, provision or condition herein is**
17 **subject to the provisions of State law, federal law, the Charter of the City,**
18 **and the ordinances and regulations enacted pursuant thereto. The Charter**
19 **and the City of Albuquerque Code of Ordinances, as they exist on the**
20 **Effective Date of this Franchise, are hereby expressly incorporated into**
21 **this Franchise as if fully set out herein by this reference. Grantee retains**
22 **the right to challenge any City ordinance or regulation to the full extent**
23 **allowed by Applicable Law. Notwithstanding the foregoing, the City may**
24 **not unilaterally alter the material rights and obligations of Grantee under**
25 **this Franchise. In the event of a conflict between the Albuquerque Cable**
26 **and OVS Ordinance (“Cable Code”) as it existed on the Effective Date of**
27 **this Franchise Agreement and this Franchise Agreement, the Franchise**
28 **Agreement shall control, except where expressly provided otherwise in**
29 **this Franchise Agreement. While the exercise of rights hereunder is**
30 **subject to the Cable Code, the Cable Code is not a contract. Nothing in**
31 **this Section shall prevent Grantee from challenging a particular**
32 **amendment to the Cable Code as an impairment to this Franchise**
33 **Agreement.**

1 (4) This Franchise shall not be interpreted to prevent the City
2 from imposing additional lawful conditions, including additional
3 compensation conditions for use of the Right-of-Way as allowed by
4 Applicable Law, should Grantee provide service other than Cable Service,
5 or to prevent Grantee from making any other lawful uses of the Cable
6 System as permitted by Applicable Law.

7 (5) Grantee promises and guarantees, as a condition of
8 exercising the privileges granted by this Franchise, that any Affiliate of
9 Grantee directly involved in the offering of Cable Service in the Franchise
10 Area, or directly involved in the management or operation of the Cable
11 System in the Franchise Area, will also comply with the obligations of this
12 Franchise.

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

16 (a) Any other permit or authorization required for the
17 privilege of transacting and carrying on a business within the City that
18 may be required by the ordinances and laws of the City;

19 (b) Any permit, agreement, or authorization required by
20 the City for Right-of-Way users in connection with operations on or in the
21 Right-of-Way or public property including, by way of example and not
22 limitation, street cut permits; or

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

28 (7) This Franchise is intended to convey limited rights and
29 interests only as to those Rights-of-Way in which the City has an actual
30 interest. It is not a warranty of title or interest in any Right-of-Way; it does
31 not provide Grantee with any interest in any particular location within the
32 Right-of-Way; and it does not confer rights other than as expressly
33 provided in the grant hereof.

1 (8) This Franchise does not authorize Grantee to provide
2 Telecommunications Service nor is this Franchise a bar to the provision of
3 non-Cable Services, or to the imposition of any lawful conditions on
4 Grantee with respect to Telecommunications, whether similar, different or
5 the same as the conditions specified herein. This Franchise does not
6 relieve Grantee of any obligation it may have to obtain from the City an
7 authorization to provide Telecommunications Services, or relieve Grantee
8 of its obligation to comply with any such authorizations that may be
9 lawfully required.

10 (B) Use of Right-of-Way.

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

23 (2) Grantee must follow City established nondiscriminatory
24 requirements for placement of Cable System facilities in the Right-of-Way,
25 including the specific location of facilities in the Right-of-Way, and must in
26 any event install Cable System facilities in a manner that minimizes
27 interference with the use of the Right-of-Way by others, including others
28 that may be installing communications facilities. Within limits reasonably
29 related to the City's role in protecting public health, safety and welfare, the
30 City may require that Cable System facilities be installed at a particular
31 time, at a specific place or in a particular manner as a condition of access
32 to a particular Right-of-Way; may deny access if Grantee is not willing to
33 comply with City's requirements; and may remove or require removal of

1 any facility that is not installed by Grantee in compliance with the
2 requirements established by the City, or that is installed without prior City
3 approval of the time, place or manner of installation, and may charge
4 Grantee for all the costs associated with removal; and may require Grantee
5 to cooperate with others to minimize adverse impacts on the Right-of-Way
6 through joint trenching and other arrangements.

7 (C) Effective Date and Term of Franchise. This Franchise and the
8 rights, privileges and authority granted hereunder shall take effect on
9 _____, 2019 (the "Effective Date"), and shall terminate on
10 _____, 2029 unless terminated sooner as hereinafter provided.

11 (D) Franchise Nonexclusive. This Franchise shall be nonexclusive
12 and subject to all prior rights, interests, easements or licenses granted by
13 the City to any Person to use any property, Right-of-Way, right, interest or
14 license for any purpose whatsoever, including the right of the City to use
15 same for any purpose it deems fit, including the same or similar purposes
16 allowed Grantee hereunder. The City may at any time grant authorization
17 to use the Right-of-Way for any purpose not incompatible with Grantee's
18 authority under this Franchise and for such additional franchises for Cable
19 Systems as the City deems appropriate, subject to Section 2(F) below.

20 (E) Police Powers. Grantee's rights hereunder are subject to the
21 home rule and police powers of the City to adopt and enforce ordinances
22 necessary to the safety, health, and welfare of the public, and Grantee
23 agrees to comply with all laws and ordinances of general applicability
24 enacted or hereafter enacted by the City or any other legally constituted
25 governmental unit having lawful jurisdiction over the subject matter
26 hereof. The City shall have the right to adopt from time to time such
27 ordinances as may be deemed necessary in the exercise of its home rule
28 or police power; provided that such hereinafter enacted ordinances shall
29 be reasonable and not materially modify the terms of this Franchise. Any
30 conflict between the provisions of this Franchise and any other present or
31 future lawful exercise of the City's police powers shall be resolved in favor
32 of the latter. Grantee reserves all rights it may have to challenge the

1 lawfulness of any City ordinance. The City reserves all of its rights and
2 defenses to such challenges.

3 (F) Competitive Equity.

4 (1) Grantee acknowledges and agrees that the City reserves
5 the right to grant one (1) or more additional franchises or other similar
6 lawful authorization to utilize the Right-of-Way in order to provide Cable
7 Services or similar video programming service within the City. If the City
8 grants such an additional franchise or other similar lawful authorization
9 that permits a new entrant to utilize the Right-of-Way for Cable Services or
10 similar video programming services containing material terms and
11 conditions that differ from Grantee’s material obligations under this
12 Franchise, or declines to require such franchise or other similar lawful
13 authorization where it has the legal authority to do so, then the parties
14 agree that the obligations in this Franchise will, pursuant to the process
15 set forth in this Section, be amended to include any material terms or
16 conditions that it imposes upon the new entrant, or provide relief from
17 existing material terms or conditions, so as to insure that the regulatory
18 and financial burdens on each entity are materially equivalent. “Material
19 terms and conditions” include but are not limited to: Franchise Fees and
20 Gross Revenues; complementary services; insurance; System build-out
21 requirements; security instruments; Public, Education and Government
22 Access Channels and support; customer service standards; required
23 reports and related record keeping; competitive equity (or its equivalent);
24 audits; dispute resolution; remedies; and notice and opportunity to cure
25 breaches. The parties agree that this provision shall not require a word-
26 for-word identical franchise or authorization for a competitive entity so
27 long as the regulatory and financial burdens on each entity are materially
28 equivalent.

29 (2) The modification process of this Franchise as provided for
30 in Subsection 2(F)(1) shall only be initiated by written notice by Grantee to
31 the City regarding specified franchise obligations. Grantee’s notice shall
32 address the following:

1 (a) Identifying the specific terms or conditions in the
2 competitive cable services franchise which are materially different from
3 Grantee's obligations under this Franchise;

4 (b) Identifying the Franchise terms and conditions for
5 which Grantee is seeking amendments;

6 (c) Providing text for any proposed Franchise
7 amendments to the City, with a written explanation of why the proposed
8 amendments are necessary and consistent.

9 (3) Upon receipt of Grantee's written notice as provided in
10 Subsection 2(F)(2), the City and Grantee agree that they will use best
11 efforts in good faith to negotiate Grantee's proposed Franchise
12 modifications, and that such negotiation will proceed and conclude within
13 a ninety (90) day time period, unless that time period is reduced or
14 extended by mutual agreement of the parties. If the City and Grantee
15 reach agreement on the Franchise modifications pursuant to such
16 negotiations, then the City shall amend this Franchise to include the
17 modifications.

18 (4) In the alternative to Franchise modification negotiations as
19 provided for in Subsection 2(F)(3), or if the City and Grantee fail to reach
20 agreement in such negotiations, Grantee may, at its option, elect to
21 replace this Franchise by opting into the franchise or other similar lawful
22 authorization that the City grants to another multi-channel video
23 programming provider (with the understanding that Grantee may use its
24 current system design and technology infrastructure to meet any
25 requirements of the new franchise), so as to insure that the regulatory and
26 financial burdens on each entity are equivalent. If Grantee so elects, the
27 City shall immediately commence proceedings to replace this Franchise
28 with the franchise issued to the other multi-channel video programming
29 provider.

30 (5) Notwithstanding anything contained in this
31 subsection 2(F)(1) through (4) to the contrary, the City shall not be
32 obligated to amend or replace this Franchise unless the new entrant
33 makes Cable Services or similar video programming service available for

1 purchase by Subscribers or customers under its franchise agreement with
2 the City.

3 (6) Notwithstanding any provision to the contrary, at any time
4 that a wireline-based entity with facilities used to deliver Cable Services or
5 multiple Channels of video programming located in the City's Right-of-Way
6 makes available for purchase by Subscribers or customers Cable Services
7 or multiple Channels of video programming within the Franchise Area
8 without a franchise or other similar lawful authorization that permits a new
9 entrant to utilize the Right-of-Way granted by the City, then:

10 (a) Grantee may negotiate with the City to seek
11 Franchise modifications as per Subsection 2(F)(2)-(4) above; or

12 (i) the term of Grantee's Franchise shall, upon
13 ninety (90) days' written notice from Grantee, be shortened so that the
14 Franchise shall be deemed to expire on a date eighteen (18) months from
15 the first day of the month following the date of Grantee's notice and
16 Grantee shall be deemed to have timely invoked the renewal process
17 under 47 USC 546; or,

18 (ii) Grantee may assert, at Grantee's option, that
19 this Franchise is rendered "commercially impracticable" and invoke the
20 modification procedures set forth in Section 625 of the Cable Act.

1 (G) Familiarity with Franchise. Grantee acknowledges and warrants
2 by acceptance of the rights, privileges and agreements granted herein that
3 it has carefully read and fully comprehends the terms and conditions of
4 this Franchise and is willing to and does accept all lawful and reasonable
5 risks of the meaning of the provisions, terms and conditions herein.
6 Grantee further acknowledges and states that it has fully studied and
7 considered the requirements and provisions of this Franchise and finds
8 that the same are commercially practicable at this time and consistent with
9 all local, State and federal laws and regulations currently in effect,
10 including the Cable Act.

11 (H) Effect of Acceptance. By accepting the Franchise, Grantee:

12 (1) Acknowledges and accepts the City's legal right to issue and
13 enforce the Franchise;

14 (2) Accepts and agrees to comply with each and every provision
15 of this Franchise subject to Applicable Law; and

16 (3) Agrees that the Franchise was granted pursuant to processes
17 and procedures consistent with Applicable Law, and that it will not raise
18 any claim to the contrary.

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

20 (A) Franchise Fee. As compensation for the benefits and privileges
21 granted under this Franchise and in consideration of permission to use the
22 City's Right-of-Way, Grantee shall continue to pay as a Franchise Fee to
23 the City throughout the duration of and consistent with this Franchise an
24 amount equal to five percent (5%) of Grantee's Gross Revenues.

25 (B) Payments. Grantee's Franchise Fee payments to the City shall
26 be computed quarterly for the preceding calendar quarter ending March
27 31, June 30, September 30, and December 31. Each quarterly payment
28 shall be due and payable no later than forty-five (45) days after said dates.

29 (C) Acceptance of Payment and Recomputation. No acceptance of
30 any payment shall be construed as an accord by the City that the amount
31 paid is, in fact, the correct amount, nor shall any acceptance of payments
32 be construed as a release of any claim the City may have for further or

1 additional sums payable or for the performance of any other obligation of
2 Grantee.

3 (D) Quarterly Franchise Fee Reports. Each payment shall be
4 accompanied by a written report to the City, or concurrently sent under
5 separate cover, verified by an authorized representative of Grantee,
6 containing an accurate statement in summarized form, as well as in detail,
7 of Grantee's Gross Revenues and the computation of the payment amount.
8 Such reports shall detail all Gross Revenues by product or service of the
9 Cable System, an example of which is set forth on Exhibit A attached
10 hereto.

11 (E) Annual Franchise Fee Reports. Grantee shall within sixty (60)
12 days after the end of each year furnish to the City a statement stating the
13 total amount of Gross Revenues for the year and all payments, deductions
14 and computations for the period.

15 (F) Audits. On an annual basis, upon thirty (30) days' prior written
16 notice, the City, including the City's Auditor or his/her authorized
17 representative, shall have the right to conduct an independent audit/review
18 of Grantee's records reasonably related to the administration or
19 enforcement of this Franchise. Pursuant to Section 1(A)(28), as part of the
20 Franchise Fee audit/review the City shall specifically have the right to
21 review data related to the allocation of revenue to Cable Services in the
22 event Grantee offers Cable Services bundled with non-Cable Services. For
23 purposes of this section:

24 (1) "Relevant data" shall include, at a minimum, Grantee's
25 records, produced and maintained in the ordinary course of business,
26 including revenue codes, showing the Subscriber counts per package and
27 the revenue allocation per package for each package that was available for
28 City Subscribers during the audit period and Grantee's billing reports,
29 financial reports, general ledgers, and sample Subscriber bills used by
30 Grantee to determine Gross Revenues for the Franchise Area that would
31 allow the City to recompute the Gross Revenue determination.

32 (2) In addition, the relevant data shall include Grantee's
33 reconciliation of revenue accounts with the Franchise Fees paid in the

1 audit year. Such reconciliations shall include monthly reconciliations of
2 Franchise Fees owed with revenue accounts or ledgers; quarterly
3 reconciliations of payments with revenue accounts, ledgers and annual
4 reconciliations of Franchise Fees paid with financial statements.

5 (3) If the audit/review shows that Franchise Fee payments
6 have been underpaid by five percent (5%) or more (or such other contract
7 underpayment threshold as set forth in a generally applicable and
8 enforceable regulation or policy of the City related to audits), Grantee shall
9 pay the total cost of the audit/review, such cost not to exceed five
10 thousand dollars (\$5,000) for each year of the audit period. The City's right
11 to audit/review and Grantee's obligation to retain records related to this
12 subsection shall expire three (3) years after each Franchise Fee payment
13 has been made to the City.

14 (G) Late Payments. In the event any payment due quarterly is not
15 received within forty five (45) days from the end of the calendar quarter,
16 Grantee shall pay interest on the amount due (at the prime rate as listed in
17 the Wall Street Journal on the date the payment was due), compounded
18 daily, calculated from the date the payment was originally due until the
19 date the City receives the payment.

20 (H) Underpayments. If a net Franchise Fee underpayment is
21 discovered as the result of an audit, Grantee shall pay interest at the rate
22 of the eight percent (8%) per annum, compounded quarterly, calculated
23 from the date each portion of the underpayment was originally due until
24 the date Grantee remits the underpayment to the City.

25 (I) Alternative Compensation. In the event the obligation of Grantee
26 to compensate the City through Franchise Fee payments is lawfully
27 suspended or eliminated, in whole or part, then Grantee shall pay to the
28 City compensation equivalent to the compensation paid to the City by
29 other similarly situated users of the City's Right-of-Way for Grantee's use
30 of the City's Right-of-Way, provided that in no event shall such payments
31 exceed the equivalent of five percent (5%) of Grantee's Gross Revenues
32 (subject to the other provisions contained in this Franchise), to the extent
33 consistent with Applicable Law.

1 **(J) Maximum Legal Compensation.** The parties acknowledge that at
2 present applicable federal law limits the City to collection of a maximum
3 permissible Franchise Fee of five percent (5%) of Gross Revenues. In the
4 event that at any time during the duration of this Franchise, the City is
5 authorized to collect an amount in excess of five percent (5%) of Gross
6 Revenues, then this Franchise may be amended unilaterally by the City to
7 provide that such excess amount shall be added to the Franchise Fee
8 payments to be paid by Grantee to the City hereunder, provided that
9 Grantee has received at least ninety (90) days' prior written notice from the
10 City of such amendment, so long as all cable operators in the City are
11 paying the same Franchise Fee amount.

12 **(K) Tax Liability.** The Franchise Fees shall be in addition to any and
13 all taxes or other levies or assessments, including the PEG Fee required
14 under Section 9, which are now or hereafter required to be paid by
15 businesses in general by any law of the City, the State or the United States
16 including, without limitation, sales, use and other taxes, business license
17 fees or other payments. Payment of the Franchise Fees under this
18 Franchise shall not exempt Grantee from the payment of any other license
19 fee, permit fee, tax or charge on the business, occupation, property or
20 income of Grantee that may be lawfully imposed by the City. Any other
21 license fees, taxes or charges shall be of general applicability in nature
22 and shall not be levied against Grantee solely because of its status as a
23 Cable Operator, or against Subscribers solely because of their status as
24 such.

25 **(L) Financial Records.** Grantee agrees to meet with a representative
26 of the City upon request to review Grantee's methodology of
27 recordkeeping, financial reporting, the computing of Franchise Fee
28 obligations and other procedures, the understanding of which the City
29 deems necessary for reviewing reports and records.

30 **(M) Payment on Termination.** If this Franchise terminates for any
31 reason, Grantee shall file with the City within ninety (90) calendar days of
32 the date of the termination, a financial statement signed by a
33 representative of Grantee showing the Gross Revenues received by

1 Grantee since the end of the previous fiscal year. The City reserves the
2 right to satisfy any remaining financial obligations of Grantee to the City
3 by utilizing the funds available in the letter of credit or other security
4 provided by Grantee.

5 **SECTION 4. ADMINISTRATION AND REGULATION.**

6 (A) Authority.

7 (1) The City shall be vested with the power and right to
8 reasonably regulate the exercise of the privileges permitted by this
9 Franchise in the public interest or to delegate that power and right or any
10 part thereof, to the extent permitted under federal, State and local law, to
11 any agent in its sole discretion.

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

14 (B) Rates and Charges. All of Grantee's rates and charges related to
15 or regarding Cable Services shall be subject to regulation by the City to
16 the full extent authorized by applicable federal, State and local laws.
17 Grantee shall comply with the notice requirements found at 47 C.F.R.
18 §§ 76.1601 – 76.1630; *Negative Option Billing* protections found at 47
19 C.F.R. § 76.981; the customer service standards found at 47 C.F.R.
20 § 76.309; the guides against bait advertising found at 16 C.F.R. Part 238, as
21 applicable; the Customer Service Standards, Exhibit B of this Franchise
22 Ordinance and any other Applicable Law. Grantee may not engage in any
23 trade practice prohibited by State or federal law.

24 (C) Rate Discrimination.

25 (1) All of Grantee's rates and charges shall be published (in
26 the form of a publicly available rate card) and be non-discriminatory as to
27 all Persons and organizations of similar classes, under similar
28 circumstances and conditions. Grantee shall apply its rates in accordance
29 with Applicable Law, with identical rates and charges for all Subscribers
30 receiving identical Cable Services, without regard to race, color, ethnic or
31 national origin, religion, age, sex, sexual orientation, marital, military or
32 economic status, or physical or mental disability or, where consistent with
33 any requirements of federal law, geographic location within the City.

1 Grantee shall offer the same Cable Services to all Residential Subscribers
2 at identical rates to the extent required by Applicable Law and to Multiple
3 Dwelling Unit Subscribers to the extent authorized by FCC rules or
4 applicable federal law. Grantee shall permit Subscribers to make any
5 lawful in-residence connections the Subscriber chooses without additional
6 charge or penalizing the Subscriber therefor. However, if any in-home
7 connection requires service from Grantee due to signal quality, signal
8 leakage or other factors caused by improper installation of such in-home
9 wiring or faulty materials of such in-home wiring, the Subscriber may be
10 charged reasonable service charges by Grantee.

11 (2) Nothing herein shall be construed to prohibit lawful pricing
12 programs which do not discriminate based on the categories identified
13 herein. Such pricing programs may include:

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

16 (b) The offering of reasonable discounts to senior
17 citizens or economically disadvantaged citizens; or,

18 (c) The offering of rate discounts for Cable Service; or,

19 (d) The establishing of different and nondiscriminatory
20 rates and charges and classes of service for Commercial Subscribers, as
21 allowable by federal law and regulations.

22 (D) Filing of Rates and Charges.

23 (1) Throughout the term of this Franchise, Grantee shall
24 maintain on file with the City a complete schedule of applicable rates and
25 charges for Cable Services provided under this Franchise. Nothing in this
26 subsection shall be construed to require Grantee to file rates and charges
27 under temporary reductions or waivers of rates and charges in
28 conjunction with promotional campaigns or to prohibit the City from
29 auditing, reviewing or confirming that promotional campaigns are
30 consistent with the terms of this Franchise.

31 (2) Upon request of the City, Grantee shall provide a complete
32 schedule of current rates and charges for any and all Leased Access
33 Channels or portions of such Channels provided by Grantee. The

1 schedule shall include a description of the price, terms, and conditions
2 established by Grantee for Leased Access Channels.

3 (E) Cross Subsidization. Grantee shall comply with all Applicable
4 Laws regarding rates for Cable Services and all Applicable Laws covering
5 issues of cross subsidization.

6 (F) Reserved Authority. Both Grantee and the City reserve all rights
7 they may have under the Cable Act and any other relevant provisions of
8 federal, State, or local law.

9 (G) Franchise Amendment Procedure. Either party may at any time
10 seek an amendment of this Franchise, including amendments which are
11 necessary to address any significant changes, e.g., changes in the
12 community's cable-related needs and interests or changes in technology
13 affecting cable services, by so notifying the other party in writing. Within
14 thirty (30) days of receipt of notice, the City and Grantee shall meet to
15 discuss the proposed amendment(s). If the parties reach a mutual
16 agreement upon the suggested amendment(s), such amendment(s) shall
17 be submitted to the City Council for its approval. If so approved by the
18 City Council and Grantee, then such amendment(s) shall be deemed part
19 of this Franchise. If mutual agreement is not reached, there shall be no
20 amendment.

21 (H) Time Limits Strictly Construed. Subject to Section 4(K) and
22 Section 4(L), whenever this Franchise sets forth a time for any act to be
23 performed by Grantee, such time shall be deemed to be of the essence,
24 and any failure of Grantee to perform within the allotted time may be
25 considered a breach of this Franchise and sufficient grounds for the City
26 to invoke any relevant remedy in accordance with Section 13(A) of this
27 Franchise.

28 (I) Performance Evaluations.

29 (1) The City may hold performance evaluation sessions upon
30 ninety (90) days' written notice, provided that such evaluation sessions
31 shall be held no more frequently than once every two (2) years. All such
32 evaluation sessions shall be conducted by the City.

1 (2) Special evaluation sessions may be held at any time by the
2 City during the term of this Franchise, upon ninety (90) days' written notice
3 to Grantee.

4 (3) All regular evaluation sessions shall be open to the public
5 and announced at least two (2) weeks in advance in any manner within the
6 discretion of the City. Grantee shall also include with or on the Subscriber
7 billing statements for the billing period immediately preceding the
8 commencement of the session written notification of the date, time, and
9 place of the regular performance evaluation session, and any special
10 evaluation session as required by the City, provided Grantee receives
11 appropriate advance notice.

12 (4) Topics which may be discussed at any evaluation session
13 may include but are not limited to Cable Service rate structures; Franchise
14 Fee payments; liquidated damages; free or discounted Cable Services;
15 application of new technologies; Cable System performance; Cable
16 Services provided; programming offered; Subscriber complaints; privacy;
17 amendments to this Franchise; judicial and FCC rulings; line extension
18 policies; and the City or Grantee's rules; provided that nothing in this
19 subsection shall be construed as requiring the renegotiation of this
20 Franchise.

21 (5) During evaluations under this subsection, Grantee shall
22 fully cooperate with the City and shall provide such information and
23 documents as the City may reasonably require to perform the evaluation.

24 (J) Late Fees.

25 (1) For purposes of this subsection, any assessment, charge,
26 cost, fee or sum, however characterized, that Grantee imposes upon a
27 Subscriber solely for late payment of a bill is a late fee and shall be applied
28 in accordance with Applicable Law.

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

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

5 (K) Force Majeure.

6 (1) In the event Grantee is prevented or delayed in the
7 performance of any of its obligations under this Franchise by reason
8 beyond the control of Grantee, Grantee shall have a reasonable time,
9 under the circumstances, to perform the affected obligation under this
10 Franchise or to procure a substitute for such obligation that is satisfactory
11 to the City. Those conditions which are not within the control of Grantee
12 include but are not limited to natural disasters, civil disturbances, work
13 stoppages or labor disputes, power outages, telephone network outages,
14 and severe or unusual weather conditions which have a direct and
15 substantial impact on Grantee's ability to provide Cable Services in the
16 City and which was not caused and could not have been avoided by
17 Grantee, which used its best efforts in its operations to avoid such results.

18 (2) If Grantee believes that a reason beyond its control has
19 prevented or delayed its compliance with the terms of this Franchise,
20 Grantee shall provide documentation as reasonably required by the City to
21 substantiate Grantee's claim. If Grantee has not yet cured the deficiency,
22 Grantee shall also provide the City with its proposed plan for remediation,
23 including the timing for such cure.

1 (L) Minor Violations. The parties hereby agree that it is not the City's
2 intention to subject Grantee to penalties, fines, forfeitures or revocation of
3 the Franchise for violations of the Franchise where the violation was a
4 good faith error that resulted in no or minimal negative impact on the
5 Subscribers within the Franchise Area, or where strict performance would
6 result in practical difficulties and hardship to Grantee which outweighs the
7 benefit to be derived by the City and/or Subscribers. The City and Grantee
8 agree to abide by standard commercial practices and principles, including
9 the application of the good faith doctrine to all aspects of this Franchise
10 Ordinance.

11 **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS.**

12 (A) Indemnification.

13 (1) General Indemnification. Grantee shall indemnify, defend
14 and hold the City, its officers, officials, boards, commissions, agents and
15 employees, harmless from any action or claim for injury, damage, loss,
16 liability, cost or expense, including court and appeal costs and reasonable
17 attorneys' fees or reasonable expenses, arising from any casualty or
18 accident to Person or property, including without limitation copyright
19 infringement, defamation, and all other damages in any way arising out of,
20 or by reason of, any construction, excavation, operation, maintenance,
21 reconstruction, or any other act done under this Franchise, by or for
22 Grantee, its agents, or its employees, or by reason of any neglect or
23 omission of Grantee. Grantee shall consult and cooperate with the City
24 while conducting its defense of the City. Grantee shall not be obligated to
25 indemnify the City to the extent of the City's negligence or willful
26 misconduct.

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

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

5 (a) The lawful actions of the City in granting this
6 Franchise to the extent such actions are consistent with this Franchise
7 and Applicable Law.

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

13 (4) Procedures and Defense. If a claim or action arises, the
14 City or any other indemnified party shall promptly tender the defense of
15 the claim to Grantee, which defense shall be at Grantee's expense. The
16 City may participate in the defense of a claim, but if Grantee provides a
17 defense at Grantee's expense, then Grantee shall not be liable for any
18 attorneys' fees, expenses or other costs that City may incur if it chooses
19 to participate in the defense of a claim, unless and until separate
20 representation as described below in subsection 5(A)(6) is required. In
21 that event the provisions of subsection 5(A)(6) shall govern Grantee's
22 responsibility for the City's attorney's fees, expenses or other costs. In
23 any event, Grantee may not agree to any settlement of claims affecting the
24 City without the City's approval.

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

29 (6) Expenses. If separate representation to fully protect the
30 interests of both parties is or becomes necessary, such as a conflict of
31 interest between the City and the counsel selected by Grantee to represent
32 the City, Grantee shall pay, from the date such separate representation is
33 required forward, all reasonable expenses incurred by the City in

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1 defending itself with regard to any action, suit or proceeding indemnified
2 by Grantee. Provided, however, that in the event that such separate
3 representation is or becomes necessary, and the City desires to hire
4 counsel or any other outside experts or consultants and desires Grantee
5 to pay those expenses, then the City shall be required to obtain Grantee's
6 consent to the engagement of such counsel, experts or consultants, such
7 consent not to be unreasonably withheld. The City's expenses shall
8 include all reasonable out-of-pocket expenses, such as consultants' fees,
9 and shall also include the reasonable value of any services rendered by
10 the City Attorney or his/her assistants or any employees of the City or its
11 agents but shall not include outside attorneys' fees for services that are
12 unnecessarily duplicative of services provided to the City by Grantee.

13 (B) Insurance.

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

16 (a) Commercial General Liability insurance with limits of
17 no less than one million dollars (\$1,000,000) per occurrence and two
18 million dollars (\$2,000,000) general aggregate. Coverage shall be at least
19 as broad as that provided by ISO CG 00 01 1/96 or its equivalent and
20 include severability of interests. Such insurance shall name the City, its
21 officers, officials and employees as additional insureds per ISO CG 2026 or
22 its equivalent. There shall be a waiver of subrogation and rights of
23 recovery against the City, its officers, officials and employees. Coverage
24 shall apply as to claims between insureds on the policy, if applicable.

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

30 (2) The insurance shall not be canceled or materially changed
31 so as to be out of compliance with these requirements without thirty (30)
32 days' written notice first provided to the City, via certified mail, and ten
33 (10) days' notice for nonpayment of premium. If the insurance is canceled

1 or materially altered so as to be out of compliance with the requirements
2 of this subsection within the term of this Franchise, Grantee shall provide
3 a replacement policy. Grantee agrees to maintain continuous
4 uninterrupted insurance coverage in at least the amounts required for the
5 duration of this Franchise and, in the case of the Commercial General
6 Liability, for at least one (1) year after expiration of this Franchise.

7 (C) Deductibles and Certificate of Insurance.

8 (1) Any deductible of the policies shall not in any way limit
9 Grantee's liability to the City.

10 (2) Endorsements. All policies shall contain or shall be
11 endorsed so that:

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

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

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

27 (3) Acceptability of Insurers. The insurance obtained by
28 Grantee shall be placed with insurers with a Best's rating of no less than
29 "A -" or better.

30 (4) Verification of Coverage. Grantee shall furnish the City
31 with certificates of insurance and endorsements or a copy of the page of
32 the policy reflecting blanket additional insured status. The certificates and
33 endorsements for each insurance policy are to be signed by a Person

1 authorized by that insurer to bind coverage on its behalf. The certificates
2 and endorsements for each insurance policy are to be on standard forms
3 or such forms as are consistent with standard industry practices.

4 (5) Self-Insurance. In the alternative to providing a certificate
5 of insurance to the City certifying insurance coverage as required above,
6 Grantee may provide self-insurance in the same amount and level of
7 protection for Grantee and the City, its officers, agents and employees as
8 otherwise required under this Section. The adequacy of self-insurance
9 shall be subject to the periodic review and approval of the City, including
10 the City's approval of an annual letter that certifies the coverage and the
11 means through which the City can verify coverage.

12 (D) Letter of Credit.

13 (1) If there is a claim by the City of an uncured breach by
14 Grantee of a material provision of this Franchise or pattern of repeated
15 violations of any provision(s) of this Franchise, then the City may require
16 and Grantee shall establish as security for the faithful performance by
17 Grantee of all of the provisions of this Franchise, within thirty (30) days
18 from receiving notice from the City, a letter of credit from a financial
19 institution satisfactory to the City in the amount of one hundred thousand
20 dollars (\$100,000).

21 (2) In the event that Grantee establishes a letter of credit
22 pursuant to the procedures of subsection 5(D)(1), then the letter of credit
23 shall be maintained at one hundred thousand dollars (\$100,000) until the
24 allegations of the uncured breach have been resolved.

25 (3) After completion of the procedures set forth in
26 Section 13(A) or other applicable provisions of this Franchise, the letter of
27 credit may be drawn upon by the City for purposes including but not limited
28 to the following:

29 (a) Failure of Grantee to pay the City sums due under
30 the terms of this Franchise;

31 (b) Reimbursement of costs borne by the City to correct
32 Franchise violations not corrected by Grantee;

1 (c) Monetary remedies or damages assessed against
2 Grantee due to default or breach of Franchise requirements; and

3 (d) Failure to comply with the Customer Service
4 Standards of the City, as the same may be amended from time to time by
5 the City Council acting by ordinance or resolution.

6 (4) The City shall give Grantee written notice of any
7 withdrawal under this subsection upon such withdrawal. Within seven (7)
8 days following receipt of such notice, Grantee shall restore the letter of
9 credit to the amount required under this Franchise.

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

18 SECTION 6. CUSTOMER SERVICE.

1 (A) **Customer Service Standards.** Grantee shall comply with
2 **Customer Service Standards of the City as the same may be amended**
3 **from time to time by the City Council in its sole discretion, acting by**
4 **ordinance. Any requirement in Customer Service Standards for a “local”**
5 **telephone number may be met by the provision of a toll-free number. The**
6 **Customer Services Standards in effect as of the Effective Date of this**
7 **Franchise are attached as Exhibit B. Notwithstanding any other provision**
8 **of this Section 6(A), Grantee reserves the right to challenge any customer**
9 **service ordinance that it believes is inconsistent with its contractual rights**
10 **and obligations under this Franchise.**

11 (B) **Subscriber Privacy.** Grantee shall fully comply with any
12 **provisions regarding the privacy rights of Subscribers contained in**
13 **federal, State, or local law, including the Customer Service Standards of**
14 **the City, attached as Exhibit B.**

15 (C) **Subscriber Contracts.** Grantee shall not enter into a contract
16 **with any Subscriber which is in any way inconsistent with the terms of this**
17 **Franchise or any Exhibit hereto or the requirements of any applicable**
18 **Customer Service Standard. Upon request, Grantee will provide to the City**
19 **a sample of the Subscriber contract or service agreement then in use.**

20 (D) **Advance Notice to City.** Grantee shall use reasonable efforts to
21 **furnish information provided to Subscribers in accordance with the**
22 **Customer Service Standards and to the media in the normal course of**
23 **business to the City in advance.**

24 (E) **Identification of Local Franchise Authority on Subscriber Bills.**
25 **Within sixty (60) days after written request from the City, Grantee shall**
26 **place the City’s phone number on its Subscriber bills to identify where a**
27 **Subscriber may call to address escalated complaints.**

28 **SECTION 7. REPORTS AND RECORDS.**

29 (A) **Open Records.**

30 (1) **Grantee shall manage all of its operations in accordance**
31 **with a policy of keeping its documents and records open and accessible to**
32 **the City. The City, including the City’s auditor or his/her authorized**
33 **representative, shall have access to and the right to inspect any books and**

1 records of Grantee, its parent corporations and Affiliates which are
2 reasonably related to the administration or enforcement of the terms of
3 this Franchise. Grantee shall not deny the City access to any of Grantee's
4 records on the basis that Grantee's records are under the control of any
5 parent corporation, Affiliate or a third party.

6 (2) The City may, in writing, request copies of any such
7 records or books, and Grantee shall provide such copies within thirty (30)
8 days of the transmittal of such request. One (1) copy of all reports and
9 records required under this or any other subsection shall be furnished to
10 the City, at the sole expense of Grantee. If the requested books and
11 records are too voluminous or for security reasons cannot be copied or
12 removed, then Grantee may request, in writing, within ten (10) days that
13 the City inspect them at Grantee's local offices. If any books or records of
14 Grantee are not kept in a local office and not made available in copies to
15 the City upon written request as set forth above, and if the City determines
16 that an examination of such records is necessary or appropriate for the
17 performance of any of the City's duties, administration or enforcement of
18 this Franchise, then all reasonable travel and related expenses incurred in
19 making such examination shall be paid by Grantee.

20 (B) Confidentiality.

21 (1) The City agrees to treat as confidential any books or
22 records that constitute proprietary or confidential information under
23 federal or State law, to the extent Grantee makes the City aware of such
24 confidentiality. Grantee shall be responsible for clearly and conspicuously
25 stamping the word "Confidential" on each page that contains confidential
26 or proprietary information, and shall provide a brief written explanation as
27 to why such information is confidential under State or federal law.

28 (2) If the City believes it must release any such confidential
29 books and records in the course of enforcing this Franchise or complying
30 with a court order or other legal requirement or for any other reason, it
31 shall advise Grantee in advance so that Grantee may take appropriate
32 steps to protect its interests. If the City receives a demand from any
33 Person for disclosure of any information designated by Grantee as

1 confidential, the City shall, so far as consistent with Applicable Law,
2 advise Grantee and provide Grantee with a copy of any written request by
3 the party demanding access to such information within a reasonable time.
4 Until otherwise ordered by a court or agency of competent jurisdiction, the
5 City agrees that to the extent permitted by State and federal law, it shall
6 deny access to any of Grantee's books and records marked confidential,
7 as set forth above, to any Person. Grantee shall reimburse the City for all
8 reasonable costs and attorney's fees incurred in any legal proceedings
9 pursued under this Section.

10 (C) Records Required.

11 (1) Grantee shall at all times maintain and shall make available
12 to the City upon 30 days' written request and subject to Applicable Law:

13 (a) A complete set of maps showing the general
14 location of all Cable System facilities in the Right-of-Way but excluding
15 detail on proprietary electronics contained therein and Subscriber drops.
16 As-built maps including proprietary electronics shall be available at
17 Grantee's offices for inspection by the City's authorized representative(s)
18 or agent(s) and made available to such during the course of technical
19 inspections as reasonably conducted by the City. These maps shall be
20 certified as accurate by an appropriate representative of Grantee;

21 (b) A copy of all FCC filings on behalf of Grantee, its
22 parent corporations or Affiliates which relate to the operation of the Cable
23 System in the City;

24 (c) A list of Cable Services, rates and Channel lineups.

25 (2) Subject to Section 7(B), all information furnished to the
26 City is public information and shall be treated as such, except for
27 information involving the privacy rights of individual Subscribers.

28 (D) Annual Reports. Within sixty (60) days of the City's written
29 request, Grantee shall submit to the City a written report in a form
30 acceptable to the City which shall include but not necessarily be limited to
31 the following information for the City:

32 (1) A Gross Revenue statement, as required by Section 3(E) of
33 this Franchise;

1 (2) A summary of the previous year's activities in the
2 development of the Cable System, including, but not limited to, Cable
3 Services begun or discontinued during the reporting year and the number
4 of Subscribers for each class of Cable Service (i.e. Basic, Digital Starter
5 and Premium);

6 (3) The number of homes passed, beginning and ending plant
7 miles, any services added or dropped, and any significant technological
8 changes occurring in the Cable System;

9 (4) A statement of planned construction, if any, for the next
10 year; and

11 (5) A copy of the most recent annual report Grantee filed with
12 the SEC or other governing body.

13 (E) Copies of Federal and State Reports. Within thirty (30) days of a
14 written request, Grantee shall submit to the City copies of all pleadings,
15 applications, notifications, communications and documents of any kind,
16 submitted by Grantee or its parent corporation(s), to any federal, State or
17 local courts, regulatory agencies and other government bodies if such
18 documents directly relate to the operations of Grantee's Cable System
19 within the City. Grantee shall not claim confidential, privileged or
20 proprietary rights to such documents unless such documents have been
21 determined by a court of competent jurisdiction, or a federal or State
22 agency to be confidential.

23 (F) Complaint File and Reports.

24 (1) Grantee shall keep an accurate and comprehensive file of
25 any complaints regarding the Cable System in a manner consistent with
26 the privacy rights of Subscribers and Grantee's actions in response to
27 those complaints.

28 (2) Within thirty (30) days of a written request, Grantee shall
29 provide the City a quarterly executive summary in the form attached to the
30 Customer Service Standards, which shall include the following information
31 from the preceding quarter:

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

- 1 (b) A log of all service interruptions;
- 2 (c) A summary of customer complaints referred by the
- 3 City to Grantee; and
- 4 (d) Such other information as reasonably requested by
- 5 the City.

6 (3) The parties agree the City's request for the reports
7 described in this Section 7 shall remain effective and need only be made
8 once. Such a request shall require the Grantee to continue to provide the
9 reports until further written notice from the City to the contrary.

10 (G) Failure to Report. The failure or neglect of Grantee to file any of
11 the reports or filings required under this Franchise or such other reports
12 as the City may reasonably request (not including clerical errors or errors
13 made in good faith), may, at the City's option, be deemed a breach of this
14 Franchise.

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

21 **SECTION 8. PROGRAMMING.**

22 (A) Broad Programming Categories. Grantee shall provide or enable
23 the provision of at least the following initial broad categories of
24 programming to the extent such categories are reasonably available:

- 25 (1) Educational programming;
- 26 (2) New Mexico news, weather and information;
- 27 (3) Sports;
- 28 (4) General entertainment (including movies);
- 29 (5) Children/family-oriented;
- 30 (6) Arts, culture and performing arts;
- 31 (7) Foreign language;
- 32 (8) Science/documentary;
- 33 (9) National news, weather and information; and,

1 (10) Public, Educational and Government Access, to the extent
2 required by this Franchise.

3 (B) Deletion or Reduction of Broad Programming Categories.

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

7 (2) In the event of a modification proceeding under federal
8 law, the mix and quality of Cable Services provided by Grantee on the
9 Effective Date of this Franchise shall be deemed the mix and quality of
10 Cable Services required under this Franchise throughout its term.

11 (C) Ascertainment of Programming and Customer Satisfaction.
12 Upon request of the City, Grantee shall, at the sole expense of Grantee,
13 undertake a survey of community views of cable operations in the City,
14 including but not limited to programming, response to community needs,
15 satisfaction and dissatisfaction with Cable Services offered by Grantee,
16 and customer service. The City may make such request no more than
17 once every two (2) years. Grantee shall consult and cooperate with the
18 City in developing and implementing an ascertainment methodology. The
19 final form and content of the survey shall be as mutually agreed upon by
20 Grantee and the City. Grantee shall provide the results of such survey to
21 the City within two (2) months after completing the survey. Upon request,
22 Grantee shall also provide a copy of results from any other ascertainment
23 survey of Subscribers in the City conducted independently by Grantee
24 within the previous year. Any survey results conducted within the City
25 which are intended for external publication shall also be provided to the
26 City. Nothing herein shall be construed to limit the right of the City to
27 conduct its own surveys at its own expense.

28 (D) Obscenity. Grantee shall not transmit or permit to be transmitted
29 over any Channel subject to its editorial control any programming which is
30 obscene under or violates any provision of Applicable Law relating to
31 obscenity and which is not protected by the Constitution of the United
32 States. Grantee shall be deemed to have transmitted or permitted a
33 transmission of obscene programming only if a court of competent

1 jurisdiction has found that any of Grantee’s officers or employees or
2 agents have permitted programming which is obscene under or violative
3 of any provision of Applicable Law relating to obscenity, and is otherwise
4 not protected by the Constitution of the United States, to be transmitted
5 over any Channel subject to Grantee’s editorial control. Grantee shall
6 comply with all relevant provisions of federal law relating to obscenity.

7 (E) Parental Control Device. Upon request by any Subscriber,
8 Grantee shall make available a parental control or lockout device, traps or
9 filters to enable a Subscriber to control access to both the audio and video
10 portions of any or all Channels. Grantee shall inform its Subscribers of
11 the availability of the lockout device at the time of their initial subscription
12 and periodically thereafter. Any device offered shall be at a rate, if any, in
13 compliance with Applicable Law.

14 (F) Continuity of Service Mandatory.

15 (1) It shall be the right of all Subscribers to continue to receive
16 Cable Service from Grantee insofar as their financial and other obligations
17 to Grantee are honored. Grantee shall act so as to ensure that all
18 Subscribers receive continuous, uninterrupted Cable Service regardless of
19 the circumstances. For the purposes of this subsection, “uninterrupted”
20 does not include short-term outages of the Cable System for maintenance
21 or testing.

22 (2) In the event of a change of Grantee or in the event a new
23 Cable Operator acquires the Cable System in accordance with this
24 Franchise, Grantee shall cooperate with the City, new franchisee or Cable
25 Operator in maintaining continuity of Cable Service to all Subscribers.
26 During any transition period, Grantee shall be entitled to the revenues for
27 any period during which it operates the Cable System, and shall be entitled
28 to reasonable costs for its services when it no longer operates the Cable
29 System.

30 (3) In the event Grantee fails to operate the Cable System for
31 four (4) consecutive days without prior approval of the City, or without just
32 cause, the City may, at its option, operate the Cable System itself or
33 designate another Cable Operator to operate the Cable System until such

1 time as Grantee restores service under conditions acceptable to the City
2 or a permanent Cable Operator is selected. If the City is required to fulfill
3 this obligation for Grantee, Grantee shall reimburse the City for all
4 reasonable costs or damages that are the result of Grantee's failure to
5 perform.

6 (G) Services for the Disabled. Grantee shall comply with the
7 Americans with Disabilities Act and any amendments thereto.

8 SECTION 9. PEG ACCESS.

9 (A) Designated Access Providers.

10 (1) The City shall have the sole and exclusive responsibility
11 for identifying the Designated Access Providers, including itself, for
12 Access purposes, to control and manage the use of any or all Access
13 facilities provided by Grantee under this Franchise. As used in this
14 Section, such "Access facilities" includes the Channels, services,
15 facilities, equipment, technical components and/or financial support
16 provided under this Franchise, which are used or useable by and for
17 Public Access, Educational Access, and Government Access ("PEG" or
18 "PEG Access").

19 (2) Grantee shall cooperate with the City in the City's efforts to
20 provide Access programming but will not be responsible or liable for any
21 damages resulting from a claim in connection with the programming
22 placed on the Access Channels by the Designated Access Provider.

23 (B) Channel Capacity and Use.

24 (1) As of the Effective Date Grantee shall provide standard
25 definition Access Channels and high definition Access Channels for use
26 by the City or its Designated Access Providers, as set forth in subsections
27 9(B)(3) and (4).

28 (2) Grantee shall have the right to temporarily use any
29 Channel or portion thereof which is allocated under this subsection for
30 Public, Educational, or Governmental Access use, within sixty (60) days
31 after a written request for such use is submitted to the City, if such
32 Channel is not "fully utilized" as defined herein. A Channel shall be
33 considered fully utilized if substantially unduplicated programming is

1 delivered over it more than an average of 38 hours per week over a six (6)
2 month period. Programming that is repeated on an Access Channel up to
3 two times per day shall be considered “unduplicated programming.”
4 Character generated programming shall be included for purposes of this
5 subsection but may be counted towards the total average hours only with
6 respect to one (1) Channel provided to the City. If a Channel allocated for
7 Public, Educational, or Governmental Access use will be used by Grantee
8 in accordance with the terms of this subsection, the institution to which
9 the Channel has been allocated shall have the right to require the return of
10 the Channel or portion thereof. City shall request return of such Channel
11 space by delivering written notice to Grantee stating that the institution is
12 prepared to fully utilize the Channel or portion thereof in accordance with
13 this subsection. In such event, the Channel or portion thereof shall be
14 returned to such institution within sixty (60) days after receipt by Grantee
15 of such written notice.

16 (3) Standard Definition (“SD”) Digital Access Channels.

17 (a) Grantee shall continue to provide four (4) Activated
18 Downstream Channels for PEG Access use in a standard definition (“SD”)
19 digital format in Grantee’s Basic Service (“SD Access Channel”) until
20 such time as the City activates additional Access Channels as set forth in
21 Subsection 9(B)(4). Grantee shall carry all components of the SD Access
22 Channel Signals provided by a Designated Access Provider including but
23 not limited to closed captioning, stereo audio and other elements
24 associated with the Programming. A Designated Access Provider shall
25 be responsible for providing the SD Access Channel Signal in an SD or
26 high definition (“HD”) format to the demarcation point at the designated
27 point of origination for the SD Access Channel, and Grantee shall be
28 responsible for downconverting any HD signal to SD for distribution on
29 the Cable System. Grantee shall transport and distribute the SD Access
30 Channel signal on its Cable System and shall not unreasonably
31 discriminate against SD Access Channels with respect to accessibility,
32 functionality and the application of any applicable FCC Rules &

1 Regulations, including without limitation Subpart K Channel signal
2 standards.

3 (b) With respect to signal quality, Grantee shall not be
4 required to carry a SD Access Channel in a higher quality format than that
5 of the SD Access Channel signal delivered to Grantee, but Grantee shall
6 distribute the SD Access Channel signal without degradation. Upon
7 reasonable written request by a Designated Access Provider, Grantee shall
8 verify signal delivery to Subscribers with the Designated Access Provider,
9 consistent with the requirements of this Subsection 9(B)(3).

10 (c) Grantee shall be responsible for costs associated
11 with the transmission of SD Access signals on its side of the demarcation
12 point which, for the purposes of this subsection 9(B)(3)(c), shall mean up
13 to and including the modulator where the City signal is converted into a
14 format to be transmitted over a fiber connection to Grantee. The City or
15 Designated Access Provider shall be responsible for costs associated with
16 SD Access signal transmission on its side of the demarcation point.

17 (d) SD Access Channels may require Subscribers to
18 buy or lease special equipment, available to all Subscribers, and subscribe
19 to those Tiers of Cable Service upon which SD channels are made
20 available. Grantee is not required to provide free SD equipment to
21 Subscribers, including complimentary government and educational
22 accounts, nor modify its equipment or pricing policies in any manner.

23 (4) High Definition (“HD”) Digital Access Channels.

24 (a) Within one hundred twenty (120) days of the
25 Effective Date and upon written request from the City, Grantee shall
26 activate on its Cable System two (2) High Definition (“HD”) digital format
27 PEG Access Channels (“HD Access Channel”), for which the City shall
28 provide Access Channel signals in HD format to the demarcation point at
29 the designated point of origination for the Access Channel.

30 (b) After the first anniversary of the Effective Date, and
31 if the City returns one (1) SD Access Channel provided under Subsection
32 9(B)(3), and with at least 120 days’ written notice to Grantee, Grantee shall

1 provide on its Cable System one (1) additional HD Access Channels for
2 PEG Access use.

3 (c) Activation of the one (1) HD Access Channels shall
4 only occur after the following conditions are satisfied with respect to each
5 of the HD Access Channels:

6 (i) The City shall, in its written notice to Grantee
7 as provided for in this subsection, confirm that it or its Designated Access
8 Provider has the capabilities to produce, has been producing and will
9 produce programming in an HD format for the newly Activated HD Access
10 Channel and,

11 (ii) There will be a minimum of five (5) hours per-
12 day, five days per-week of HD PEG programming available for the HD
13 Access Channel. For the purposes of this subsection, character-
14 generated programming (i.e., community bulletin boards) shall not satisfy,
15 in whole or in part, this programming requirement.

16 (d) The City shall be responsible for providing the HD
17 Access Channel signals in an HD digital format to the demarcation point at
18 the designated point of origination for the HD Access Channel. For
19 purposes of this Franchise, an HD signal refers to a television signal
20 delivering picture resolution of either 720p or 1080i, or such other
21 resolution in this same range that Grantee utilizes for other similar non-
22 sport, non-movie programming channels on the Cable System, whichever
23 is greater.

24 (e) Grantee shall transport and distribute the HD Access
25 Channels signal on its Cable System and shall not unreasonably
26 discriminate against the HD Access Channels with respect to accessibility,
27 functionality and to the application of any applicable FCC Rules &
28 Regulations, including without limitation Subpart K Channel signal
29 standards. With respect to signal quality, Grantee shall not be required to
30 carry an HD Access Channel in a higher quality format than that of the HD
31 Access Channel signal delivered to Grantee, but Grantee shall distribute
32 the HD Access Channel signal without degradation. Grantee shall carry all
33 components of the HD Access Channel signals provided by the

1 Designated Access Provider including but not limited to closed captioning,
2 stereo audio and other elements associated with the Programming. Upon
3 reasonable written request by the City, Grantee shall verify signal delivery
4 to Subscribers with the City, consistent with the requirements of this
5 subsection 9(B)(4).

6 (f) HD Access Channels may require Subscribers to
7 buy or lease special equipment, available to all Subscribers, and subscribe
8 to those Tiers of Cable Service, upon which HD Channels are made
9 available. Grantee is not required to provide free HD equipment to
10 Subscribers, including complimentary government and educational
11 accounts, nor modify its equipment or pricing policies in any manner.

12 (g) The City or any Designated Access Provider is
13 responsible for acquiring all equipment necessary to produce
14 programming in HD.

15 (h) Grantee shall cooperate with the City to procure and
16 provide, at City's cost, all necessary transmission equipment from the
17 Designated Access Provider channel origination point, at Grantee's
18 Headend and through Grantee's distribution system, in order to deliver the
19 HD Access Channel. The City shall be responsible for the costs of all
20 transmission equipment, including HD modulator and demodulator and
21 encoder or decoder equipment, and multiplex equipment, required in order
22 for Grantee to receive and distribute the HD Access Channel signal, or for
23 the cost of any resulting upgrades to the video return line. The City and
24 Grantee agree that such expense of acquiring and installing the
25 transmission equipment or upgrades to the video return line qualifies as a
26 capital cost for PEG Facilities within the meaning of the Cable Act 47
27 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of
28 revenues derived from those PEG capital fees provided for in this
29 Franchise.

30 (5) Grantee shall simultaneously carry the two (2) HD Access
31 Channels provided for in subsection 9(B)(4)(a) in high definition format on
32 the Cable System, in addition to simultaneously carrying in standard
33 definition format the four (4) SD Access Channels provided pursuant to

1 subsection 9(B)(3). The total number of Access Channels shall be four (4)
2 SD Access Channels and two (2) HD Access Channels. At such time as the
3 City returns one (1) SD Access Channel and Grantee activates the third
4 (3rd) HD Access Channel in accordance with subsection 9(B)(4)(b), the
5 number of SD Access Channels shall be reduced to three (3) and the
6 number of HD Access Channels shall be three (3) and the total number of
7 Access Channels shall be six (6) - three (3) SD Access Channels and three
8 (3) HD Access Channels.

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

19 (7) At such time as Grantee provides ninety-eight percent
20 (98%) of its video programming content on the Cable System exclusively
21 in HD, all of the existing SD Access Channels will be converted to HD
22 Access Channels. Prior to the time that Grantee provides ninety eight
23 percent (98%) of its video programming content on the Cable System
24 exclusively in HD, the parties may from time to time discuss transitioning
25 SD Access Channels access to HD Access Channels, and such transition
26 may occur if in Grantee's discretion such action is technically and
27 commercially feasible.

28 (C) Access Channel Assignment. Grantee will use reasonable efforts
29 to minimize the movement of SD and HD Access Channel assignments. In
30 addition, Grantee will make reasonable efforts to locate the HD Access
31 Channel provided pursuant to Section 9(B)(4) in a location on its HD
32 Channel lineup that is easily accessible to Subscribers.

1 (D) Relocation of Access Channels. Grantee shall provide City a
2 minimum of sixty (60) days' notice and use its best efforts to provide one
3 hundred and twenty (120) days' notice prior to the time PEG Access
4 Channel designations are changed.

5 (E) Web-Based Video On Demand and Streaming.

6 (1) Grantee shall provide at no cost to the City, at 400
7 Marquette NW, 1st Floor, Room 106, Albuquerque, a business class
8 broadband connection, broadband service and all necessary hardware to
9 enable the City's delivery of web-based PEG content. If during the term of
10 this Franchise the City moves its location and such new location does not
11 have the capacity to connect and receive the broadband service described
12 in this subsection 9(E)(1), the cost of upgrading the network to enable
13 such service shall be incurred by the City. The broadband connection
14 provided herein shall be used exclusively for web-based on demand
15 Access programming and/or web-based video streaming of Access
16 content. Within ninety (90) days after written request of the City, Grantee
17 shall additionally provide a one-time grant of funding, in an amount not to
18 exceed twenty-five thousand dollars (\$25,000), which the City shall use to
19 acquire and/or for replacement costs for a video on-demand server for
20 facilitating the web-based Access programming described in this
21 subsection 9(E).

22 (2) The City's Designated Access Provider(s) may provide
23 web-based video on-demand programming on line; provided, however,
24 that such Designated Access Provider(s) shall be responsible for its own
25 costs related to a video on-demand server, broadband connection and
26 service and any other associated equipment.

27 (3) Any costs incurred by Grantee in facilitating the web-
28 based on-demand Access programming described in this Subsection 9(E)
29 may be recovered from Subscribers by Grantee in accordance with
30 Applicable Law.

31 (F) Support for PEG Access and Network Costs.

32 (1) During the term of this Franchise Agreement, Grantee shall
33 provide sixty-two cents (\$0.62) per month per Residential Subscriber (the

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1 “PEG Contribution”) to be used solely for capital costs related to PEG
2 Access, including the City’s institutional network connections or as may
3 be permitted by Applicable Law. At the fifth (5th) anniversary of the
4 Effective Date of this Franchise, the City at its discretion, by ordinance or
5 resolution after one hundred twenty (120) days’ notice and an opportunity
6 for the Grantee to be heard, may require Grantee to increase the PEG
7 Contributions to sixty-five cents (\$0.65) per month per Residential
8 Subscriber for the remaining term of this Franchise. At the eighth (8th)
9 anniversary of the Effective Date of this Franchise, the City at its
10 discretion, by ordinance or resolution after one hundred twenty (120) days’
11 notice and an opportunity for the Grantee to be heard, may require Grantee
12 to increase the PEG Contributions to sixty-eight cents (\$0.68) per month
13 per Residential Subscriber for the remaining term of this Franchise.

14 (2) Grantee shall make PEG Contribution payments quarterly,
15 following the Effective Date of this Franchise Agreement for the preceding
16 quarter ending March 31, June 30, September 30, and December 31. Each
17 payment shall be due and payable no later than forty-five (45) days
18 following the end of the quarter.

19 (3) The City shall have sole discretion to allocate the
20 expenditure of such payments for any capital costs related to PEG Access.
21 The parties agree that this Franchise shall provide the City discretion to
22 utilize the PEG Contribution for new internal network connections and
23 enhancements to the City’s existing network.

24 (4) The PEG Contribution shall not be collected and remitted
25 on:

26 (a) Subscribers residing in Multiple Dwelling Units
27 billed on a bulk-billing basis for any additional services;

28 (b) Subscribers and/or employees receiving Cable
29 Service on a gratis or complimentary basis; and

30 (c) Subscribers whose accounts are written off as
31 uncollectable or are considered Bad Debt.

32 (G) Access Support Not Franchise Fees. Grantee agrees that capital
33 support for Access costs arising from or relating to the obligations set

1 forth in this Section shall in no way modify or otherwise affect Grantee's
2 obligations to pay Franchise Fees to the City. Grantee agrees that
3 although the sum of Franchise Fees plus the payments set forth in this
4 Section may total more than five percent (5%) of Grantee's Gross
5 Revenues in any 12-month period, the PEG Contribution shall not be offset
6 or otherwise credited in any way against any Franchise Fee payments
7 under this Franchise Agreement so long as such support is used for
8 capital Access purposes, including the City's institutional network
9 connections consistent with this Franchise and federal law or as provided
10 by Applicable Law.

11 (H) Access Channels on Basic Service or Lowest Priced HD Service
12 Tier. All SD Access Channels shall be available on the tier of service to
13 which Grantee requires all Subscribers to subscribe (as of the Effective
14 Date, the Basic Service tier), or if there is no such tier, the Access
15 Channels will be made available to every Subscriber without charge
16 beyond the charge the Subscriber pays for the Cable Services and
17 equipment the Subscriber receives. The HD Access Channels under this
18 Franchise Agreement shall be included by Grantee without limitation as
19 part of the lowest priced tier of HD Cable Service upon which Grantee
20 provides HD programming content.

21 (I) Change in Technology. In the event Grantee makes any change
22 in the Cable System and related equipment and Facilities or in Grantee's
23 signal delivery technology which directly or indirectly affects the signal
24 quality or transmission of Access services or programming, Grantee shall
25 at its own expense take necessary technical steps or provide necessary
26 technical assistance, including the acquisition of all necessary equipment
27 and full training of the City's Access personnel to ensure that the
28 capabilities of Access services are not diminished or adversely affected by
29 such change. If the City implements a new video delivery technology that
30 is currently offered and can be accommodated on Grantee's local Cable
31 System, then the same provisions above shall apply. If the City
32 implements a new video delivery technology that is not currently offered
33 on and/or that cannot be accommodated by Grantee's local Cable System,

1 then the City shall be responsible for acquiring all necessary equipment,
2 facilities, technical assistance, and training to deliver the signal to
3 Grantee's Headend for distribution to subscribers.

4 (J) Technical Quality. Grantee shall maintain all Upstream and
5 Downstream Access services and Channels on its side of the demarcation
6 point at the same level of technical quality and reliability required by this
7 Franchise Agreement and all other Applicable Laws, rules and regulations
8 for Residential Subscriber Channels. Grantee shall provide routine
9 maintenance for all transmission equipment on its side of the demarcation
10 point, including modulators, decoders, multiplex equipment, and
11 associated cable and equipment necessary to carry a quality signal to and
12 from the City's facilities for the Access Channels provided under this
13 Franchise Agreement. Grantee shall also provide, if requested in advance
14 by the City, advice and technical expertise regarding the proper operation
15 and maintenance of transmission equipment on the City's side of the
16 demarcation point. The City shall be responsible for all initial and
17 replacement costs of all HD modulator and demodulator equipment. The
18 City shall also be responsible, at its own expense, to replace any of
19 Grantee's equipment that is damaged by the gross negligence or
20 intentional acts of City staff. Grantee shall be responsible, at its own
21 expense, to replace any of Grantee's equipment that is damaged by the
22 gross negligence or intentional acts of Grantee's staff. The City will be
23 responsible for the cost of repairing and/or replacing any HD PEG Access
24 transmission equipment that Grantee maintains that is used exclusively
25 for transmission of the City's and/or its Designated Access Providers' HD
26 Access programming.

27 (K) Access Cooperation. The City may designate any other
28 jurisdiction which has entered into an agreement with Grantee or an
29 Affiliate of Grantee based upon this Franchise Agreement, to receive any
30 Access benefit due the City hereunder, or to share in the use of Access
31 Facilities hereunder. The purpose of this Section shall be to allow
32 cooperation in the use of Access and the application of any provision
33 under this Section as the City in its sole discretion deems appropriate, and

1 Grantee shall cooperate fully with, and in, any such arrangements by the
2 City.

3 (L) Return Lines/Access Origination.

4 (1) Grantee shall continuously maintain the two (2) return
5 lines previously constructed to the City Hall and the PEG Access Studio
6 throughout the term of the Franchise, in order to enable the distribution of
7 Access programming to Residential Subscribers on the Access Channels;
8 provided, however, that Grantee's maintenance obligations with respect to
9 either of these locations shall cease if a location is no longer used in the
10 future by the City to originate Access programming.

11 (2) Grantee shall construct and maintain new Fiber Optic
12 return lines to the Headend from production facilities of new or relocated
13 Designated Access Providers delivering Access programming to
14 Residential Subscribers as requested in writing by the City. All actual
15 construction costs incurred by Grantee from the nearest interconnection
16 point to the Designated Access Provider shall be paid by the City or the
17 Designated Access Provider. New return lines shall be completed within
18 one (1) year from the request of the City or its Designated Access
19 Provider, or as otherwise agreed to by the parties. If an emergency
20 situation necessitates movement of production facilities to a new location,
21 the parties shall work together to complete the new return line as soon as
22 reasonably possible.

23 (M) Access Program Listings in Subscriber Guide. To the extent the
24 configuration of the Cable System allows for detailed program listings to
25 be included on the digital Channel guide, Grantee will allow the City or the
26 Designated Access Provider to make arrangements with the Channel guide
27 vendor to make detailed Programming listings available on the guide. The
28 City or the Designated Access Provider will be solely responsible for
29 providing the program information to the vendor in the format and timing
30 required by the vendor and shall bear all costs of this guide service.

31 SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION.

32 (A) Right to Construct. Subject to Applicable Law, generally
33 applicable regulations, rules, resolutions and ordinances of the City, and

1 the provisions of this Franchise, Grantee may perform all construction in
2 the Right-of-Way for any facility needed for the maintenance or extension
3 of Grantee's Cable System.

4 (B) Right-of-Way Meetings. Grantee will regularly attend and
5 participate in meetings of the City of which Grantee is made aware
6 regarding Right-of-Way issues that may impact the Cable System.

7 (C) Joint Trenching/Boring Meetings. Grantee will regularly attend
8 and participate in planning meetings of the City of which Grantee is made
9 aware to anticipate joint trenching and boring. Whenever it is possible and
10 reasonably practicable to joint trench or share bores or cuts, Grantee shall
11 work with other providers, licensees, permittees, and franchisees in order
12 to reduce as much as possible the number of Right-of-Way cuts within the
13 City subject to the provisions in this Section including Sections 10(T) and
14 10(U).

15 (D) General Standard. All work authorized and required hereunder
16 shall be done in a safe, thorough and workman-like manner. All
17 installations of equipment shall be permanent in nature, durable and
18 installed in accordance with good engineering practices.

19 (E) Permits Required for Construction. Prior to doing any work in
20 the Right-of Way or other public property, Grantee shall apply for and
21 obtain appropriate permits, including without limitation excavation and/or
22 barricade permits, from the City pursuant to Chapter 6, Article 5, Part 2, of
23 the Revised Ordinances of Albuquerque. As part of the permitting
24 process, the City may impose such conditions and regulations as are
25 necessary for the purpose of protecting any structures in such Right-of-
26 Way, proper restoration of such Right-of-Way and structures, the
27 protection of the public, and the continuity of pedestrian or vehicular
28 traffic, and the joint use of trenches. Such conditions may also include the
29 provision of a construction schedule and maps showing the location of the
30 facilities to be installed in the Right-of-Way. Grantee shall pay all
31 applicable fees for the requisite City permits received by Grantee. Grantee
32 shall complete work in compliance with all permit, construction and
33 building codes, and all other legal requirements; if work is non-compliant,

1 **Grantee shall be subject to applicable penalties, including the remediation**
2 **or removal of the infrastructure or equipment improperly constructed**
3 **and/or installed.**

4 **(F) Emergency Permits. In the event that emergency repairs are**
5 **necessary, Grantee shall immediately notify the City of the need for such**
6 **repairs. Grantee may initiate such emergency repairs and shall apply for**
7 **appropriate permits within forty-eight (48) hours after discovery of the**
8 **emergency.**

9 **(G) Compliance with Applicable Codes.**

10 **(1) City Construction Codes. Grantee shall comply with all**
11 **applicable City construction and zoning ordinances and codes, State of**
12 **New Mexico construction and building codes, including without limitation**
13 **the New Mexico Commercial Building Code, the New Mexico Residential**
14 **Building Code; and other building codes, such as the International Fire**
15 **Code, the New Mexico Mechanical Code, and other generally applicable**
16 **zoning codes and regulations.**

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

24 **(3) Safety Codes. Grantee shall comply with all federal, State**
25 **and City safety requirements, rules, regulations, laws and practices, and**
26 **employ all necessary devices as required by Applicable Law during**
27 **construction, operation and repair of its Cable System. By way of**
28 **illustration and not limitation, Grantee shall comply with the National**
29 **Electric Code, National Electrical Safety Code and Occupational Safety and**
30 **Health Administration (OSHA) Standards.**

31 **(H) GIS Mapping. Grantee shall comply with any generally applicable**
32 **ordinances, rules and regulations of the City regarding geographic**
33 **information mapping systems for users of the Right-of-Way. In addition,**

1 Grantee shall comply with the following filing and reporting requirements,
2 subject to Section 7(B):

3 (1) Preconstruction: Grantee shall submit preconstruction
4 maps in hard copy printed form and in the City's Albuquerque Geographic
5 Information System (AGIS) or compatible format which shall show the
6 location and dimension of any facilities Grantee proposes for the
7 placement in the City's Right-of-Way.

8 (2) Post-Construction: Grantee shall submit maps after the
9 completion of construction which shall show the approximate location of
10 installed facilities.

11 (3) Availability of Maps: Grantee shall maintain on file at all
12 times maps, operational data, and reports showing Grantee's network and
13 operations in the City. The City may inspect the maps and data at any time
14 during business hours upon request without charge.

15 (I) Minimal Interference.

16 (1) Work in the Right-of-Way, on other public property, near
17 public property, or on or near private property shall be done in a manner
18 that causes the least interference with the rights and reasonable
19 convenience of property owners and residents. Grantee's Cable System
20 shall be constructed and maintained in such manner as not to interfere
21 with sewers, water pipes, or any other property of the City, or with any
22 other electrical, gas or telecommunications infrastructure, including
23 without limitation pipes, wires, conduits, pedestals, structures, or other
24 facilities that may have been laid in the Right-of-Way by or under the City's
25 authority. Grantee's Cable System shall be located, erected and
26 maintained so as not to endanger or interfere with the lives of Persons, or
27 to interfere with new improvements the City may deem proper to make or
28 to unnecessarily hinder or obstruct the free use of the Right-of-Way or
29 other public property, and shall not interfere with the travel and use of
30 public places by the public during the construction, repair, operation or
31 removal thereof, and shall not obstruct or impede traffic. In the event of
32 such interference, the City may require the removal or relocation of

1 Grantee's lines, cables, equipment and other appurtenances from the
2 property in question at Grantee's expense.

3 (2) Grantee shall not place any facilities on, over, under, or
4 within any City park or the median portion of any boulevard or parkway
5 except for perpendicular crossings without first having obtained the
6 written permission of the City.

7 (3) The City reserves the right to regulate the time, location,
8 and manner of work in the Right-of-Way. The City shall not unreasonably
9 withhold or restrict a Grantee's access to particular locations in the Right-
10 of-Way.

11 (4) Grantee shall employ trenchless technology in the
12 placement of its facilities where technically and financially appropriate and
13 required by generally applicable code or ordinance.

14 (J) Prevent Injury/Safety. Grantee shall provide and use any
15 equipment and facilities necessary to control and carry Grantee's signals
16 so as to prevent injury to the City's property or property belonging to any
17 Person. Grantee at its own expense shall repair, renew, change and
18 improve its facilities to keep them in good repair and safe and presentable
19 condition. All excavations made by Grantee in the Right-of-Way shall be
20 properly safeguarded for the prevention of accidents by the placement of
21 adequate barriers, fences or boarding, the bounds of which during periods
22 of dusk and darkness shall be clearly designated by warning lights.

23 (K) Hazardous Substances.

24 (1) Grantee shall comply with any and all Applicable Laws,
25 statutes, regulations and orders concerning hazardous substances
26 relating to Grantee's Cable System in the Right-of-Way.

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

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

5 (L) Locates. Prior to doing any work in the Right-of-Way, Grantee
6 shall comply with each and every requirement found in Chapter 62, Article
7 14, of the New Mexico Statutes Annotated 1978, regarding the one-call
8 notification system for the making and locating of underground facilities,
9 as the same may be amended from time to time.

10 (M) Grantee Notice to Private Property Owners; Notice of Substantial
11 Rebuilds and Upgrades.

12 (1) Work on Private Properties. Grantee shall give notice to
13 private property owners of work on or adjacent to private property in
14 accordance with the City's Customer Service Standards, as the same may
15 be amended from time to time by the City Council acting by ordinance or
16 resolution. Grantee shall not install any cable, line, wire, amplifier,
17 converter or other piece of equipment inside a dwelling or other occupied
18 structure without first securing the permission of the owner or the lawful
19 occupant of the property.

20 (2) Substantial Rebuilds or Upgrades. Grantee shall publicize
21 any substantial rebuild or upgrade of its Cable System in each affected
22 neighborhood as follows:

23 (a) At least one week before commencing that work
24 Grantee shall provide written notice to the City and those persons whose
25 property is within three hundred (300) feet of the work in at least two of the
26 following ways:

- 27 (i) Telephone;
- 28 (ii) In person;
- 29 (iii) Mail;
- 30 (iv) Distribution of flyers to residences;
- 31 (v) Publication in local newspapers and
32 broadcast television public service announcements;
- 33 (vi) Email; or

1 (vii) Any other notification practice that would
2 reasonably provide notice to the affected Subscribers.

3 (b) The City may require Grantee to attend
4 neighborhood meetings about substantial rebuilds and upgrades; and

5 (c) For the purposes of this subsection, the term
6 “substantial rebuild or upgrade” means the planned replacement or
7 addition of trunk or distribution cable (but not drops) affecting:

8 (i) More than ten percent (10%) of the Cable
9 System Subscribers; or

10 (ii) Involving more than sixteen (16) square miles
11 of plant.

12 (N) Underground Construction and Use of Poles.

13 (1) When required by general ordinances, resolutions,
14 regulations or rules of the City or applicable State or federal law, Grantee’s
15 Cable System shall be placed underground at Grantee’s expense unless
16 funding is generally available for such relocation to all users of the Right-
17 of-Way. Placing facilities underground does not preclude the use of
18 ground-mounted appurtenances.

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

31 (3) Grantee shall utilize existing poles and conduit wherever
32 possible.

1 (4) In the event Grantee cannot obtain the necessary poles
2 and related facilities pursuant to a pole attachment agreement, and only in
3 such event, then it shall be lawful, upon Grantee obtaining all necessary
4 permits and any other required approvals, for Grantee to make all needed
5 excavations in the Right-of-Way for the purpose of placing, erecting,
6 laying, maintaining, repairing, and removing poles, supports for wires and
7 conductors, and any other facility needed for the maintenance or
8 extension of Grantee's Cable System. All poles of Grantee shall be located
9 as designated by the proper City authorities.

10 (5) This Franchise does not grant, give or convey to Grantee
11 the right or privilege to install its facilities in any manner on specific utility
12 poles or equipment of the City or any other Person.

13 (O) **Undergrounding of Multiple Dwelling Unit Drops.** In cases of
14 single site Multiple Dwelling Units, Grantee shall minimize the number of
15 individual aerial drop cables by installing multiple drop cables
16 underground between the pole and Multiple Dwelling Unit where
17 determined to be technologically feasible in agreement with the owners
18 and/or owner's association of the Multiple Dwelling Units.

19 (P) **Burial Standards.**

20 (1) **Depths.** Unless otherwise required by law, Grantee and its
21 contractors shall comply with the following burial depth standards. In no
22 event shall Grantee be required to bury its cable deeper than electric or
23 gas facilities, or existing telephone facilities in the same portion of the
24 Right-of-Way, so long as those facilities have been buried in accordance
25 with Applicable Law:

26 (a) **Underground cable drops from the curb shall be**
27 **buried at a minimum depth of twelve (12) inches unless a sprinkler system**
28 **or other construction concerns preclude it, in which case underground**
29 **cable drops shall be buried at a depth of at least six (6) inches.**

30 (b) **Feeder lines shall be buried at a minimum depth of**
31 **eighteen (18) inches.**

32 (c) **Trunk lines shall be buried at a minimum depth of**
33 **thirty-six (36) inches.**

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

3 (2) Timeliness. Cable drops installed by Grantee to
4 residences shall be buried according to these standards within one (1)
5 calendar week of initial installation, or at a time mutually agreed upon
6 between Grantee and the Subscriber. When freezing surface conditions
7 prevent Grantee from achieving such timetable, Grantee shall apprise the
8 Subscriber of the circumstances and the revised schedule for burial and
9 shall provide the Subscriber with Grantee's telephone number and
10 instructions as to how and when to call Grantee to request burial of the
11 line if the revised schedule is not met.

12 (Q) Cable Drop Bonding. Grantee shall ensure that all cable drops
13 are properly bonded at the home, consistent with applicable code
14 requirements.

15 (R) Prewiring. Any ordinance or resolution of the City that requires
16 prewiring of subdivisions or other developments for electrical and
17 telephone service shall be construed to include wiring for Cable Systems.

18 (S) Repair and Restoration of Property.

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

22 (2) Whenever Grantee disturbs or damages any Right-of-Way,
23 other public property or any private property, Grantee shall promptly
24 restore the Right-of-Way or property to at least its prior condition, normal
25 wear and tear excepted, at Grantee's sole expense. At a minimum,
26 Grantee shall, subject to the terms of any permit issued to Grantee,
27 remove all surplus material, reseed as necessary, and otherwise restore
28 the public Right-of-Way no more than one day after completion of the
29 work, weather permitting.

30 (3) Right-of-Way and Other Public Property. Grantee shall
31 warrant any restoration work performed by or for Grantee in the Right-of-
32 Way or on other public property in accordance with Applicable Law. If
33 restoration is not satisfactorily performed by Grantee within a reasonable

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1 time, the City may, after prior notice to Grantee or without notice where the
2 disturbance or damage may create a risk to public health or safety, cause
3 the repairs to be made and recover the cost of those repairs from Grantee.
4 Within thirty (30) days of receipt of an itemized list of those costs,
5 including the costs of labor, materials and equipment, Grantee shall pay
6 the City.

7 (4) Private Property. Upon completion of the work which
8 caused any disturbance or damage, Grantee shall promptly commence
9 restoration of private property and will use best efforts to complete the
10 restoration within seventy-two (72) hours, considering the nature of the
11 work that must be performed. Grantee shall also perform such restoration
12 in accordance with the City's Customer Service Standards, as the same
13 may be amended from time to time by the City Council acting by ordinance
14 or resolution.

15 (5) Grantee shall be responsible for the maintenance of its
16 own equipment, facilities, and appurtenances placed upon, over, or under
17 the public Right-of-Way, including the removal of all graffiti. If after notice
18 from the City that such graffiti has not been removed, it will be removed by
19 the City at Grantee's sole cost.

20 (6) Grantee shall ensure its facilities in the public Right-of-
21 Way are located and constructed in a manner consistent with any
22 requirements of the Americans with Disabilities Act (ADA) applicable at the
23 time of construction. Following notice by the City of an ADA construction
24 problem, Grantee shall have thirty (30) days or other reasonable time to
25 remedy the problem, subject to a Grantee's right to contest the alleged
26 ADA violation.

27 (T) City Use of Grantee's Trenches, Bores, Conduits, or
28 Infrastructure.

29 (1) Grantee agrees to cooperate with the City in the City's use
30 of Grantee's trenches, bores, conduits, and/or infrastructure, provided that
31 the City has first notified Grantee in some manner that it is interested in
32 sharing the trenches, bores, conduits or other infrastructure such as poles
33 or towers in the area where Grantee's construction is occurring.

1 (2) The City may install or affix and maintain wires and
2 equipment owned by the City for City purposes in or upon any and all of
3 Grantee’s trenches, bores, conduits, or infrastructure in the Right-of-Way
4 and other public places without charge to the City, provided space is
5 reasonably available and such placement does not interfere with Grantee’s
6 use of its facilities.

7 (3) This right shall not extend to trenches, bores, conduits, or
8 infrastructure owned by an affiliate of Grantee who has facilities in the
9 public Right-of-Way for the provision of non-Cable Services.

10 (4) For the purposes of this subsection, “City purposes”
11 include without limitation to the use of the structures and installations for
12 City fire, police, traffic, water, telephone, and/or signal systems, but not for
13 Cable Service or transmission of telecommunications or information
14 services to third parties in competition with Grantee.

15 (U) Common Users; Joint Trenching and Use.

16 (1) For the purposes of this subsection:

17 (a) “Conduit” or “Conduit Facility” means any structure
18 or section thereof containing one or more ducts, conduits, manholes, hand
19 hole, or other such facilities in Grantee’s Cable System;

20 (b) “Duct” means a single enclosed raceway for cables,
21 Fiber Optics or other wires;

22 (c) “Surplus Ducts or Conduits” are facilities other than
23 those occupied and used by Grantee or prior Grantee, or used by Grantee
24 as emergency use spares, or reasonably projected by Grantee for
25 Grantee’s use within two (2) years from the date of City’s request for use.

26 (2) Grantee acknowledges that the Right-of-Way has a finite
27 capacity for containing infrastructure such as conduits and ducts. Thus,
28 Grantee agrees that whenever the City determines it is impracticable to
29 permit construction of underground conduit, duct, or other infrastructure
30 by any other person with the legal authority to do so, excluding persons
31 providing Cable Services in competition with Grantee, the City may require
32 Grantee to afford to such person (third party) the right to use Grantee’s
33 Surplus Ducts or Conduits pursuant to the terms and conditions of an

1 agreement for use of Surplus Ducts or Conduits entered into by Grantee
2 and such other person. Nothing herein shall require Grantee to enter into
3 an agreement with such person if in Grantee's reasonable determination
4 such an agreement could compromise the integrity of the Cable System.

5 (V) Acquisition of Facilities. Upon Grantee's acquisition of Cable
6 System-related facilities in any City Right-of-Way, or upon the addition to
7 the City of any area in which Grantee owns or operates any such facility,
8 Grantee shall within fifteen (15 days) of the City's request submit to the
9 City a statement describing all such facilities involved, whether authorized
10 by franchise, permit, license or other prior right, and specifying the
11 location of all such facilities to the extent Grantee has possession of such
12 information. Such Cable System-related facilities shall immediately be
13 subject to the terms of this Franchise.

14 (W) Use of Grantee's Facilities by Third Parties. Grantee
15 acknowledges that, notwithstanding any legal rights that a
16 telecommunications provider, cable television provider or any other
17 service provider may have to use the Grantee's Facilities in the Right-of-
18 Way, including pole attachments, the City retains a paramount interest in
19 managing the Right-of-Way. The City shall be solely responsible for
20 enforcement of its permitting requirements as a result of a third party's
21 use of Facilities. Grantee agrees that it will comply with any generally
22 applicable City ordinances regarding use of Grantee's Facilities in the
23 Right-of-Way, provided, however, that Grantee retains its right to challenge
24 any City ordinance or regulation to the full extent allowed by Applicable
25 Law or this Franchise. Grantee shall use best efforts to ensure that no
26 third party entity shall use Grantee's Facilities where such use violates any
27 lawful City ordinance or regulation.

28 (X) Discontinuing Use/Abandonment of Cable System Facilities.
29 Whenever Grantee intends to discontinue using any facility within the
30 Right-of-Way, Grantee shall submit for the City's approval a complete
31 description of the facility and the date on which Grantee intends to
32 discontinue using the facility. Grantee may remove the facility or request
33 that the City permit it to remain in place. Notwithstanding Grantee's

1 request that any such facility remain in place, the City may require Grantee
2 to remove the facility from the Right-of-Way or modify the facility to
3 protect the public health, welfare, safety and convenience, or otherwise
4 serve the public interest. The City may require Grantee to perform a
5 combination of modification and removal of the facility. Grantee shall
6 complete such removal or modification in accordance with a schedule set
7 by the City. Until such time as Grantee removes or modifies the facility as
8 directed by the City, or until the rights to and responsibility for the facility
9 are accepted by another Person having authority to construct and
10 maintain such facility, Grantee shall be responsible for all necessary
11 repairs and relocations of the facility as well as maintenance of the Right-
12 of-Way in the same manner and degree as if the facility were in active use,
13 and Grantee shall retain all liability for such facility. If Grantee abandons
14 its facilities, the City may choose to use such facilities for any purpose
15 whatsoever, including but not limited to Access purposes.

16 (Y) Relocation and other Movement of Cable System Facilities For
17 City Purposes.

18 (1) The City shall have the right to require Grantee to relocate,
19 remove, replace, modify or disconnect Grantee's facilities and equipment
20 located in the Right-of-Way or on any other property of the City for public
21 purposes in the event of an emergency or when the public health, safety or
22 welfare requires such change (for example, without limitation, by reason of
23 traffic conditions, public safety, Right-of-Way vacation, Right-of-Way
24 construction, change or establishment of Right-of-Way grade, installation
25 of sewers, drains, gas or water pipes, or any other types of structures or
26 improvements by the City for public purposes). Such work shall be
27 performed at Grantee's expense. Except during an emergency, the City
28 shall provide reasonable notice to Grantee, not to be less than forty-five
29 (45) business days, and allow Grantee the opportunity to perform such
30 action. In the event of any capital improvement project exceeding five
31 hundred thousand dollars (\$500,000) in expenditures by the City, which
32 requires the removal, replacement, modification or disconnection of
33 Grantee's facilities or equipment, the City shall provide at least sixty (60)

1 days' written notice to Grantee. Following notice by the City, Grantee shall
2 relocate, remove, replace, modify or disconnect any of its facilities or
3 equipment within any Right-of-Way or on any other property of the City. If
4 the City requires Grantee to relocate its facilities located within the Right-
5 of-Way, the City shall make a reasonable effort to provide Grantee with an
6 alternate location within the Right-of-Way. If funds are generally made
7 available to users of the Right-of-Way for such relocation, Grantee shall be
8 entitled to its *pro rata* share of such funds.

9 (2) If Grantee fails to complete this work within the time
10 prescribed and to the City's satisfaction, the City may cause such work to
11 be done and bill the cost of the work to Grantee, including all costs and
12 expenses incurred by the City due to Grantee's delay. In such event, the
13 City shall not be liable for any damage to any portion of Grantee's Cable
14 System. Within thirty (30) days of receipt of an itemized list of those costs,
15 Grantee shall pay the City.

16 (Z) Reimbursement of Grantee Costs. Grantee specifically reserves
17 any rights it may have under Applicable Law for reimbursement of costs
18 related to undergrounding or relocation of the Cable System, and nothing
19 herein shall be construed as a waiver of such rights.

20 (AA) Movement of Cable System Facilities for Other Franchise
21 Holders. If any removal, replacement, modification or disconnection of the
22 Cable System is required to accommodate the construction, operation or
23 repair of the facilities or equipment of another City franchise holder,
24 Grantee shall, after at least thirty (30) days' advance written notice, take
25 action to effect the necessary changes requested by the responsible
26 entity. Grantee shall require that the costs associated with the removal or
27 relocation be paid by the benefited party.

28 (BB) Temporary Changes for Other Permittees. At the request of any
29 Person holding a valid permit and upon reasonable advance notice,
30 Grantee shall temporarily raise, lower or remove its wires as necessary to
31 permit the moving of a building, vehicle, equipment or other item. The
32 expense of such temporary changes must be paid by the permit holder,

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1 and Grantee may require a reasonable deposit of the estimated payment in
2 advance.

3 (CC) Reservation of City Use of Right-of-Way. Nothing in this
4 Franchise shall prevent the City or public utilities owned, maintained or
5 operated by public entities other than the City from constructing sewers,
6 grading, paving, repairing or altering any Right-of-Way, laying down,
7 repairing or removing water mains, or constructing or establishing any
8 other public work or improvement. Subject to applicable local, State and
9 federal law, all such work shall be done insofar as practicable so as not to
10 obstruct, injure or prevent the use and operation of Grantee's Cable
11 System.

12 (DD) Tree Trimming. Subject to City Ordinance, Article 16, Sections 6-
13 6-2-1 to 6-6-2-9 regarding trees in the Right-of-Way, and State and federal
14 law, Grantee may prune or cause to be pruned, using proper pruning
15 practices, any tree in the City's Right-of-Way which interferes with
16 Grantee's Cable System. Grantee shall comply with any general ordinance
17 or regulations of the City regarding tree trimming. Except in emergencies,
18 Grantee may not prune trees at a point below thirty (30) feet above
19 sidewalk grade until one (1) weeks' written notice has been given to the
20 owner or occupant of the premises abutting the Right-of-Way in or over
21 which the tree is growing. The owner or occupant of the abutting
22 premises may prune such tree at his or her own expense during this one
23 (1) week period. If the owner or occupant fails to do so, Grantee may
24 prune such tree at its own expense. For purposes of this subsection,
25 emergencies exist when it is necessary to prune to protect the public or
26 Grantee's facilities from imminent danger only.

27 (EE) Inspection of Construction and Facilities. The City may inspect
28 any of Grantee's facilities, equipment or construction at any time upon at
29 least twenty-four (24) hours' notice or, in case of emergency, upon
30 demand without prior notice. The City shall have the right to charge
31 generally applicable inspection fees. If an unsafe condition is found to
32 exist, the City, in addition to taking any other action permitted under
33 Applicable Law, may order Grantee, in writing, to make the necessary

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1 repairs and alterations specified therein forthwith to correct the unsafe
2 condition by a time the City establishes. The City has the right to correct,
3 inspect, administer and repair the unsafe condition if Grantee fails to do so
4 and to charge Grantee for its costs.

5 (FF) Stop Work.

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

11 (2) The stop work order shall:

12 (a) Be in writing;

13 (b) Be given to the Person doing the work, or posted on
14 the work site;

15 (c) Be sent to Grantee by overnight delivery at the
16 address given herein;

17 (d) Indicate the nature of the alleged violation or unsafe
18 condition; and

19 (e) Establish conditions under which work may be
20 resumed.

21 (GG) Work of Contractors and Subcontractors. Grantee's contractors
22 and subcontractors shall be licensed and bonded in accordance with the
23 City's ordinances, regulations and requirements. Work by contractors and
24 subcontractors is subject to the same restrictions, limitations and
25 conditions as if the work were performed by Grantee. Grantee shall be
26 responsible for all work performed by its contractors and subcontractors
27 and others performing work on its behalf as if the work were performed by
28 it, and shall ensure that all such work is performed in compliance with this
29 Franchise and other Applicable Law, and shall be jointly and severally
30 liable for all damages and correcting all damage caused by them. It is
31 Grantee's responsibility to ensure that contractors, subcontractors or
32 other Persons performing work on Grantee's behalf are familiar with the

1 requirements of this Franchise and other Applicable Law governing the
2 work performed by them.

3 **SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING.**

4 **(A) Subscriber Network.**

5 (1) As of the Effective Date of this Franchise, Grantee
6 upgraded its Cable System to a fiber to the fiber node Cable System
7 architecture, with Fiber Optic cable deployed from Grantee's Headend to
8 Grantee's fiber nodes, tying into Grantee's coaxial Cable System already
9 serving Subscribers. Grantee's Cable System shall be equivalent to or
10 exceed the technical characteristics of a traditional hybrid fiber coaxial
11 ("HFC") 870 MHz Cable System and provide Activated Two-Way capability.
12 The Cable System is capable of supporting video and audio. The Cable
13 System shall be capable of delivering no less than one hundred ten (110)
14 Channels of digital video programming services or its equivalent to
15 Subscribers. Equipment must be installed so that:

16 (a) All closed captioning programming received by the
17 Cable System shall include the closed caption signal so long as the closed
18 caption signal is provided consistent with FCC standards;

19 (b) All local signals received in stereo or with secondary
20 audio tracks (broadcast and Access) are retransmitted in those same
21 formats;

22 (c) All PEG access channels shall meet the signal
23 quality set forth in Section 9(B); and

24 (d) All channels have the technical means through
25 which Subscribers will be able to block audio and/video in order to
26 exercise their parental control.

27 (2) All construction shall be subject to the City's permitting
28 process.

29 (3) Grantee and the City shall meet at the City's request to
30 discuss the progress of the design plan and construction.

31 (4) Grantee will take prompt corrective action consistent with
32 the requirements of federal law and this Franchise if it finds that any
33 facilities or equipment on the Cable System are not operating as expected,

1 or if it finds that facilities and equipment do not comply with the
2 requirements of this Franchise or Applicable Law.

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

7 (6) Grantee agrees to maintain the Cable System in a manner
8 that:

9 (a) Is consistent with, or in excess of these
10 specifications throughout the term of the Franchise with sufficient
11 capability and technical quality to enable the implementation and
12 performance of all the requirements of this Franchise, including the
13 Exhibits hereto;

14 (b) Meets or exceeds FCC technical quality standards at
15 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a
16 signal is transmitted and as these federal standards are amended from
17 time to time.

18 (c) Provides the quality of Cable Service, including
19 signal quality, commensurate with an 870 MHz Cable System according to
20 cable industry standards.

21 (B) Technology Assessment.

22 (1) The City may notify Grantee on or after the fourth (4th) year
23 anniversary of the Effective Date that the City will conduct a technology
24 assessment of Grantee's Cable System during or after the fifth (5th) year of
25 the Franchise. The technology assessment may include but is not be
26 limited to determining whether Grantee's Cable System technology and
27 performance are consistent with current technical practices and range and
28 level of services existing in the fifteen (15) U.S. cable systems owned and
29 operated by Grantee's parent corporation and/or Affiliates pursuant to
30 franchises that have been renewed or extended since the Effective Date,
31 which cable systems serve approximately the same number of subscribers
32 as are served by Grantee in the City.

1 (2) Grantee shall cooperate with the City to provide necessary
2 non-confidential and non-proprietary information upon the City's
3 reasonable request as part of the technology assessment.

4 (3) At the discretion of the City, findings from the technology
5 assessment may be included in any proceeding commenced for the
6 purpose of identifying future cable-related community needs and interests
7 undertaken by the City pursuant to 47 U.S.C. §546 or other proceedings
8 authorized by State, federal or local law.

9 (C) Standby Power. Grantee's Cable System Headend shall be
10 capable of providing at least twelve (12) hours of emergency operation. In
11 addition, throughout the term of this Franchise Grantee shall have a plan
12 in place, along with all resources necessary for implementing such plan,
13 for dealing with outages of more than four (4) hours. This outage plan and
14 evidence of requisite implementation resources shall be presented to the
15 City no later than thirty (30) days following receipt of a request.

16 (D) Emergency Alert Capability. Grantee has provided and shall
17 continue to provide an operating Emergency Alert System ("EAS")
18 throughout the term of this Franchise in compliance with FCC standards
19 and any State of New Mexico and Bernalillo County ("County")
20 requirements. If the City wishes to use the EAS system to transmit
21 emergency signals, it shall work out procedures with the New Mexico –
22 State Emergency Communications Committee and provide Grantee prior
23 notice of not less than sixty (60) days. Grantee shall test the EAS as
24 required by the FCC. Upon request, if the City is using the EAS, the City
25 shall be permitted to participate in and/or witness the EAS testing up to
26 twice a year on a schedule formed in consultation with Grantee. If the test
27 indicates that the EAS is not performing properly, Grantee shall make any
28 necessary adjustment to the EAS, and the EAS shall be retested.

29 (E) Technical Performance and Enforcement Remedies. The
30 technical performance of the Cable System shall meet or exceed all
31 applicable federal (including but not limited to the FCC), State and local
32 technical standards, including without limitation the Digital Cable Network
33 Interface Standard, developed by the Society of Cable

1 Telecommunications Engineers (“SCTE” and “SCTE-40”) and adopted by
2 the FCC on September 22, 2017 at 47 C.F.R. Section 76.602, as any of
3 these federal standards or any applicable State or local standards may be
4 amended from time to time, regardless of the transmission technology
5 utilized. The City shall have the full authority permitted by Applicable Law
6 to enforce compliance with these technical standards.

7 (F) Cable System Performance Testing.

8 (1) Grantee shall at Grantee’s expense perform all tests
9 required by the FCC on its Cable System; all other tests reasonably
10 necessary to determine Grantee’s compliance with technical standards
11 adopted by the FCC or effective at any time during the term of this
12 Franchise; and all other tests otherwise specified in Section 11(G) of this
13 Franchise. On the Effective Date of this Franchise, this shall include,
14 without limitation, the digital signal leakage testing required if Grantee
15 maintains coaxial cable in its Cable System and otherwise meets the
16 FCC’s parameters.

17 (2) Grantee shall maintain written records of all results of its
18 Cable System tests performed by or for Grantee. Copies of such test
19 results will be provided to the City upon reasonable request.

20 (3) Grantee shall be required to promptly take such corrective
21 measures as are necessary to correct any performance deficiencies fully
22 and to prevent their recurrence as far as possible. Grantee’s failure to
23 correct ongoing and repeated material deficiencies identified through this
24 testing process shall be a material violation of this Franchise. Sites shall
25 be retested following correction.

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

- 8 **(1) The nature of the complaint or problem which precipitated**
9 **the special tests;**
10 **(2) The Cable System component tested;**
11 **(3) The equipment used and procedures employed in testing;**
12 **(4) The method, if any, in which such complaint or problem**
13 **was resolved; and**
14 **(5) Any other information pertinent to said tests and analysis**
15 **which may be required.**

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

18 **(A) Service Availability.**

19 **(1) Except as otherwise provided herein, Grantee shall provide**
20 **Cable Service within the Franchise Area within seven (7) days of a request**
21 **or within FCC time limits established at any time during the term of this**
22 **Franchise if less than seven (7) days from the request. For purposes of**
23 **this Section, a request shall be deemed made on the date of signing a**
24 **service agreement, receipt of funds by Grantee, receipt of a written request**
25 **by Grantee or receipt by Grantee of a verified verbal request. Except as**
26 **otherwise provided herein, Grantee shall provide such service:**

27 **(a) With no line extension charge except as specifically**
28 **authorized elsewhere in this Franchise Agreement;**

29 **(b) At a non-discriminatory installation charge for a**
30 **standard installation, consisting of a one hundred twenty five (125) foot**
31 **drop connecting to an inside wall for Residential Subscribers, with**
32 **additional charges for non-standard installations computed according to a**

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1 non- discriminatory methodology for such installations, adopted by
2 Grantee and provided in writing to the City; and

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

5 (2) Service to Multiple Dwelling Units. Consistent with this
6 Section 12(A), Grantee shall offer the individual units of a Multiple Dwelling
7 Unit all Cable Services offered to other Dwelling Units in the City and shall
8 individually wire units upon request of the property owner or renter who
9 has been given written authorization by the owner; provided, however, that
10 any such offering is conditioned upon Grantee having legal access to said
11 unit. The City acknowledges that Grantee cannot control the
12 dissemination of particular Cable Services beyond the point of
13 demarcation at a Multiple Dwelling Unit.

14 (3) Customer Charges for Extensions of Service. Grantee
15 agrees to extend its Cable System to all persons living in areas with a
16 residential density of twenty-five (25) residences per mile of Cable System
17 plant. If the residential density is less than twenty-five (25) residences per
18 five thousand two hundred eighty (5,280) cable-bearing strand feet of trunk
19 or distribution cable, service may be made available on the basis of a
20 capital contribution in aid of construction, including cost of material, labor
21 and easements. For the purpose of determining the amount of capital
22 contribution in aid of construction to be borne by Grantee and customers
23 in the area in which service may be expanded, Grantee will contribute an
24 amount equal to the construction and other costs per mile multiplied by a
25 fraction whose numerator equals the actual number of residences per
26 5,280 cable-bearing strand feet of its trunk or distribution cable and whose
27 denominator equals twenty-five (25). Customers who request service
28 hereunder will bear the remainder of the construction and other costs on a
29 *pro rata* basis. Grantee may require that the payment of the capital
30 contribution in aid of construction borne by such potential customers be
31 paid in advance.

32 (4) Service to Annexed Areas. Grantee shall have the right but
33 not the obligation to extend the Cable System into any annexed area which

1 is not contiguous or is partially contiguous to the present Franchise Area
2 of the City or to any area that is technically infeasible. Nothing herein
3 shall require Grantee to expand its Cable System to serve or to offer
4 service to any area annexed by the City if such area is then served by
5 another Cable Operator.

6 (B) Connection of Public Facilities. Grantee shall upon the City's
7 request and at no cost to the City provide one (1) activated subscriber
8 network service drop and outlet and one (1) converter which shall deliver
9 Basic Service and Digital Starter Service to all City-owned and occupied
10 buildings, schools and public libraries located in areas where Grantee
11 provides Cable Service, so long as these facilities are already served or
12 the interconnection point on these facilities is located within one hundred
13 fifty (150) feet of the distribution point on the Cable System. For purposes
14 of this subsection, "school" means all State-accredited K-12 public and
15 private schools. Such obligation to provide free Cable Service shall not
16 extend to areas of City buildings where Grantee would normally enter into
17 a commercial contract to provide such Cable Service (e.g., golf courses,
18 airport restaurants and concourses, and recreation center workout
19 facilities), and such Cable Service shall not be used in a way that might
20 violate copyright laws. The City, public libraries and schools may use an
21 outlet, drop and converter provided in accordance with this subsection to
22 extend Cable Services throughout the qualifying building in which the
23 outlet is located, provided such distribution can be accomplished without
24 causing Cable System disruption and general technical standards are
25 maintained. Such outlets may only be used for lawful purposes. The
26 Cable Service provided shall not be distributed beyond the originally
27 installed outlets without authorization from Grantee, which shall not be
28 unreasonably withheld.

29 (C) Institutional Network. In satisfaction of the City's request for
30 institutional network capacity pursuant to 47 U.S.C §531(b), the City will
31 enter into a Dark Fiber Lease Agreement with Comcast Business of New
32 Mexico, an Affiliate of Grantee ("Dark Fiber Agreement"), a copy of which
33 is attached as Exhibit C. Except as expressly provided herein, the terms

1 and conditions of the Dark Fiber Agreement will govern and supersede any
2 inconsistent terms set forth in this Franchise. The term of the Dark Fiber
3 Agreement shall run coterminous with the term of this Franchise. As the
4 Dark Fiber Agreement is a commercial arrangement between Comcast
5 Business of New Mexico and the City, the value of the fiber leased
6 pursuant to such agreement shall not be deemed a part of the Franchise
7 Fee or subject to offset from the Franchise Fee.

8 **SECTION 13. FRANCHISE VIOLATIONS.**

9 (A) Procedure for Remedying Franchise Violations.

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

15 (a) Respond to the City, contesting the City's assertion
16 that a default has occurred, and requesting a meeting in accordance with
17 Subsection 13(A)(2), below;

18 (b) Cure the default; or,

19 (c) Notify the City that Grantee cannot cure the default
20 within the thirty (30) days because of the nature of the default. In the event
21 the default cannot be cured within thirty (30) days, Grantee shall promptly
22 take all reasonable steps to cure the default and notify the City in writing
23 and in detail as to the exact steps that will be taken and the projected
24 completion date. In such case, the City may set a meeting in accordance
25 with Subsection 13(A)(2) below to determine whether additional time
26 beyond the thirty (30) days specified above is indeed needed and whether
27 Grantee's proposed completion schedule and steps are reasonable.

28 (2) If Grantee does not cure the alleged default within the cure
29 period stated above, or by the projected completion date under Subsection
30 13(A)(1), or denies the default and requests a meeting in accordance with
31 Subsection 13(A)(1)(a), or the City orders a meeting in accordance with
32 Subsection 13(A)(1)(c), the City shall set a meeting to investigate said
33 issues or the existence of the alleged default. The City shall notify Grantee

1 of the meeting in writing, and such meeting shall take place no less than
2 thirty (30) days after Grantee's receipt of notice of the meeting. At the
3 meeting, Grantee shall be provided an opportunity to be heard and to
4 present evidence in its defense.

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

10 (a) Withdraw an amount from the letter of credit as
11 monetary damages;

12 (b) Recommend the revocation of this Franchise
13 pursuant to the procedures in Section 13.2; or,

14 (c) Recommend any other legal or equitable remedy
15 available under this Franchise or any Applicable Law.

16 (4) The determination as to whether a violation of this
17 Franchise has occurred shall be within the discretion of the City, provided
18 that any such final determination may be subject to appeal to a court of
19 competent jurisdiction under Applicable Law.

20 (B) Revocation.

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

26 (a) If Grantee fails to perform any material obligation
27 under this Franchise or under any other agreement, ordinance or
28 document regarding the City and Grantee; or

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

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

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

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

5 (2) Following the procedures set forth in Section 13(A) and
6 prior to forfeiture or termination of the Franchise, the City shall give
7 written notice to Grantee of its intent to revoke the Franchise and set a
8 date for a revocation proceeding. The notice shall set forth the exact
9 nature of the noncompliance.

10 (3) Any proceeding under the subsection above shall be
11 conducted by the City Council and open to the public. Grantee shall be
12 afforded at least forty-five (45) days' prior written notice of such
13 proceeding.

14 (a) At such proceeding Grantee shall be provided a fair
15 opportunity for full participation, including the right to be represented by
16 legal counsel, to introduce evidence, and to question witnesses. A
17 complete verbatim record and transcript shall be made of such proceeding
18 and the cost shall be shared equally between the parties. The City Council
19 shall hear any Persons interested in the revocation and shall allow
20 Grantee, in particular, an opportunity to state its position on the matter.

21 (b) Within ninety (90) days after the hearing, the City
22 Council shall determine whether to revoke the Franchise and declare that
23 the Franchise is revoked and the letter of credit forfeited; or if the breach
24 at issue is capable of being cured by Grantee, direct Grantee to take
25 appropriate remedial action within the time and in the manner and on the
26 terms and conditions that the City Council determines are reasonable
27 under the circumstances. If the City determines that the Franchise is to be
28 revoked, the City shall set forth the reasons for such a decision and shall
29 transmit a copy of the decision to Grantee. Grantee shall be bound by the
30 City's decision to revoke the Franchise unless it appeals the decision to a
31 court of competent jurisdiction within fifteen (15) days of the date of the
32 decision.

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

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

6 (C) Procedures in the Event of Termination or Revocation.

7 (1) If this Franchise expires without renewal after completion
8 of all processes available under this Franchise and federal law or is
9 lawfully terminated or revoked, the City shall have the right to require
10 Grantee to remove all or any portion of the System utilized exclusively for
11 the provision of Cable Services from all Right-of-Way and public property
12 within the City, and may, subject to Applicable Law:

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

18 (b) Purchase Grantee's Cable System in accordance
19 with the procedures set forth in Section 13(D), below.

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

1 (3) If Grantee fails to complete any removal required by
2 subsection 13.3(B) to the City's satisfaction, after written notice to Grantee
3 the City may cause the work to be done, and Grantee shall reimburse the
4 City for the costs incurred within thirty (30) days after receipt of an
5 itemized list of the costs, or the City may recover the costs through the
6 letter of credit provided by Grantee.

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

9 (D) Purchase of Cable System.

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

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

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

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

25 (a) In the case of the expiration of the Franchise without
26 renewal, at fair market value determined on the basis of Grantee's Cable
27 System valued as a going concern, but with no value allocated to the
28 Franchise itself. In order to obtain the fair market value, this valuation
29 shall be reduced by the amount of any lien, encumbrance, or other
30 obligation of Grantee which the City would assume.

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

1 **(E) Receivership and Foreclosure.**

2 **(1) At the option of the City, subject to Applicable Law, this**
3 **Franchise may be revoked one hundred twenty (120) days after the**
4 **appointment of a receiver or trustee to take over and conduct the business**
5 **of Grantee whether in a receivership, reorganization, bankruptcy or other**
6 **action or proceeding, unless:**

7 **(a) The receivership or trusteeship is vacated within**
8 **one hundred twenty (120) days of appointment; or**

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

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

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

24 **(b) The purchaser has covenanted and agreed with the**
25 **City to assume and be bound by all of the terms and conditions of this**
26 **Franchise.**

27 **(F) No Monetary Recourse against the City. Grantee shall not have**
28 **any monetary recourse against the City or its officers, officials, boards,**
29 **commissions, agents or employees for any loss, costs, expenses or**
30 **damages arising out of any provision or requirement of this Franchise or**
31 **the enforcement thereof, in accordance with the provisions of applicable**
32 **federal, State and local law. The rights of the City under this Franchise are**

1 in addition to and shall not be read to limit any immunities the City may
2 enjoy under federal, State or local law.

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

13 (H) Assessment of Monetary Damages.

14 (1) The City may assess against Grantee monetary damages:

15 (a) Up to five hundred dollars (\$500) per day for general
16 construction delays, violations of PEG obligations or payment obligations;

17 (b) Up to two hundred fifty dollars (\$250) per day for any
18 other material breaches, or

19 (c) Up to one hundred dollars (\$100) per day for
20 defaults, and withdraw the assessment from the letter of credit or collect
21 the assessment as specified in this Franchise.

22 (2) Damages pursuant to this Section shall accrue for a period
23 not to exceed one hundred twenty (120) days per violation proceeding. To
24 assess any amount from the letter of credit, the City shall follow the
25 procedures for withdrawals from the letter of credit set forth in the letter of
26 credit and in this Franchise. Such damages shall accrue beginning thirty
27 (30) days following Grantee's receipt of the notice required by
28 Section 13(A)(1), or such later date if approved by the City in its sole
29 discretion, but may not be assessed until after the procedures in
30 Section 13(A) have been completed.

31 (3) The assessment does not constitute a waiver by the City of
32 any other right or remedy it may have under the Franchise or Applicable
33 Law, including its right to recover from Grantee any additional damages,

1 losses, costs and expenses that are incurred by the City by reason of the
2 breach of this Franchise.

3 (I) Effect of Abandonment. If Grantee abandons its Cable System
4 during the Franchise term or fails to operate its Cable System in
5 accordance with its duty to provide continuous service, the City, at its
6 option, may operate the Cable System; designate another entity to operate
7 the Cable System temporarily until Grantee restores service under
8 conditions acceptable to the City, or until the Franchise is revoked and a
9 new franchisee is selected by the City; or obtain an injunction requiring
10 Grantee to continue operations. If the City is required to operate or
11 designate another entity to operate the Cable System, Grantee shall
12 reimburse the City or its designee for all reasonable costs, expenses and
13 damages incurred.

14 (J) What Constitutes Abandonment. The City shall be entitled to
15 exercise its options in Section 13(I) if:

16 (1) The Grantee fails to provide Cable Service in accordance
17 with this Franchise over a substantial portion of the Franchise Area for
18 four (4) consecutive days, unless the City authorizes a longer interruption
19 of service; or

20 (2) The Grantee, for any period, willfully and without cause
21 refuses to provide Cable Service in accordance with this Franchise.

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

23 (A) Renewal.

24 (1) The City and Grantee agree that any proceedings
25 undertaken by the City that relate to the renewal of the Franchise shall be
26 governed by and comply with the provisions of Section 626 of the Cable
27 Act, unless the procedures and substantive protections set forth therein
28 shall be deemed to be preempted and superseded by the provisions of any
29 subsequent provision of federal or State law.

30 (2) In addition to the procedures set forth in said
31 Section 626(a), the City agrees to notify Grantee of the completion of its
32 assessments regarding the identification of future cable-related
33 community needs and interests, as well as the past performance of

1 Grantee under the then-current Franchise term. Notwithstanding anything
2 to the contrary set forth herein, Grantee and the City agree that at any time
3 during the term of the then-current Franchise, while affording the public
4 adequate notice and opportunity for comment, the City and Grantee may
5 agree to undertake and finalize negotiations regarding renewal of the then-
6 current Franchise, and the City may grant a renewal thereof. Grantee and
7 the City consider the terms set forth in this subsection to be consistent
8 with the express provisions of Section 626 of the Cable Act.

9 (B) Transfer of Ownership or Control.

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

17 (2) Grantee shall promptly notify the City of any actual or
18 proposed change in or transfer of or acquisition by any other party of
19 control of Grantee. The word “control” as used herein is not limited to
20 majority stockholders but includes actual working control in whatever
21 manner exercised. Every change, transfer or acquisition of control of
22 Grantee shall make this Franchise subject to cancellation unless and until
23 the City shall have consented in writing thereto.

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

27 (4) In seeking the City’s consent to any change in ownership
28 or control, the proposed transferee shall indicate whether it:

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

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

4 (c) Has pending any material legal claim, lawsuit, or
5 administrative proceeding arising out of or involving a cable system or a
6 broadband system;

7 (d) Is financially solvent, by submitting financial data
8 including financial statements that are audited by a certified public
9 accountant who may also be an officer of the transferee; and

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

13 (5) The City shall act by ordinance on the request within one
14 hundred twenty (120) days of the request, provided it has received all
15 information required by this Franchise. The City and Grantee may by
16 mutual agreement at any time extend the 120-day period. Subject to the
17 foregoing, if the City fails to render a final decision on the request within
18 one hundred twenty (120) days, such request shall be deemed granted
19 unless the requesting party and the City agree to an extension of time.

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

30 (7) In reviewing a request for sale or transfer, the City may
31 inquire into the legal, technical and financial qualifications of the
32 prospective controlling party or transferee, and Grantee shall assist the
33 City in so inquiring. The City may condition said sale or transfer upon

1 such terms and conditions as it deems reasonably appropriate, in
2 accordance with Applicable Law.

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

15 **SECTION 15. SEVERABILITY.**

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

22 **SECTION 16. MISCELLANEOUS PROVISIONS.**

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1 **(A) Preferential or Discriminatory Practices Prohibited.** In
2 connection with the performance of work under this Franchise, Grantee
3 agrees not to refuse to hire, discharge, promote or demote, or discriminate
4 in matters of compensation against any Person otherwise qualified, solely
5 because of race, color, religion, national origin, gender, age, military
6 status, sexual orientation, marital status, or physical or mental disability;
7 and Grantee further agrees to insert the foregoing provision in all
8 subcontracts hereunder. Throughout the term of this Franchise, Grantee
9 shall fully comply with all equal employment or non-discrimination
10 provisions and requirements of federal, State and local laws and, in
11 particular, FCC rules and regulations relating thereto.

12 **(B) Notices.** Throughout the term of the Franchise, each party shall
13 maintain and file with the other a local address for the service of notices
14 by mail. All notices shall be sent via overnight delivery postage prepaid to
15 such respective address, and such notices shall be effective upon the date
16 of mailing. These addresses may be changed by the City or Grantee by
17 written notice at any time. At the Effective Date of this Franchise:

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**Grantee's address shall be:
Comcast of New Mexico, LLC
8440 Washington St. NE
Albuquerque, NM 87113
Attn: Government Affairs**

**With a copy to:
Comcast of New Mexico, LLC
1899 Wynkoop Street, Suite 55
Denver, CO 80202
Attn: Franchising Department**

**The City's address shall be:
Chief Administrative Officer
City of Albuquerque
Mayor's Office
P.O. Box 1293
Albuquerque, NM 87103**

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**With a copy to:
City Attorney
City of Albuquerque
Office of the City Attorney
P.O. Box 2248
Albuquerque, NM 87103**

1 (C) Descriptive Headings. The headings and titles of the Sections
2 and subsections of this Franchise are for reference purposes only and
3 shall not affect the meaning or interpretation of the text herein.

4 (D) Publication Costs to be Borne by Grantee. Grantee shall
5 reimburse the City for all costs incurred in publishing this Franchise, if
6 such publication is required.

7 (E) Binding Effect. This Franchise shall be binding upon the parties
8 hereto, their permitted successors and assigns.

9 (F) No Joint Venture. Nothing herein shall be deemed to create a
10 joint venture or principal-agent relationship between the parties, and
11 neither party is authorized to nor shall either party act toward third
12 Persons or the public in any manner which would indicate any such
13 relationship with the other.

14 (G) Waiver. The failure of the City at any time to require performance
15 by Grantee of any provision hereof shall in no way affect the right of the
16 City hereafter to enforce the same. Nor shall the waiver by the City of any
17 breach of any provision hereof be taken or held to be a waiver of any
18 succeeding breach of such provision or as a waiver of the provision itself
19 or any other provision.

20 (H) Reasonableness of Consent or Approval. Whenever under this
21 Franchise "reasonableness" is the standard for the granting or denial of
22 the consent or approval of either party hereto, such party shall be entitled
23 to consider public and governmental policy, moral and ethical standards
24 as well as business and economic considerations.

25 (I) Entire Agreement. This Franchise and all Exhibits represent the
26 entire understanding and agreement between the parties hereto with
27 respect to the subject matter hereof and supersede all prior oral
28 negotiations between the parties.

29 (J) Jurisdiction. Venue for any judicial dispute between the City and
30 Grantee arising under or out of this Franchise shall be in Bernalillo County
31 District Court, New Mexico, or in the United States District Court in
32 Albuquerque.

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1 SECTION 17. REPEALER. Section 13-5-3-1 through 13-5-3-20 is hereby
2 repealed.

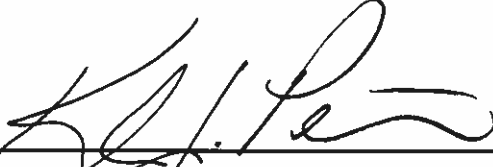
3 SECTION 18. COMPILATION. This Ordinance shall be incorporated
4 and made part of the Revised Ordinances of Albuquerque, New Mexico.

5 SECTION 19. EFFECTIVE DATE. This Ordinance shall take effect
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1 PASSED AND ADOPTED THIS 6th DAY OF May, 2019
2 BY A VOTE OF: 8 FOR 0 AGAINST.

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4 Recused: Winter

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8 _____
9 Klarissa J. Peña, President
10 City Council

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12 APPROVED THIS 17 DAY OF May, 2019

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15 Bill No. O-18-47

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19 _____
20 Timothy M. Keller, Mayor
21 City of Albuquerque

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25 ATTEST:

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27 _____
28 Katy Duhigg, City Clerk

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