

TOWN OF GYPSUM, COLORADO

ORDINANCE NO. 08 SERIES 2019

AN ORDINANCE APPROVING THE FRANCHISE AGREEMENT WITH COMCAST OF COLORADO IX, LLC

WHEREAS, the Town of Gypsum (“Town”) is a home rule municipality duly organized and existing under Articles XX of the Colorado Constitution and the Town’s Home Rule Charter effective October 21, 1982; and

WHEREAS, the Town Council (“Council”) of the Town has the power to regulate streets and alleys and other public grounds within the Town and to enter into a franchise agreement pursuant to Article X of the Town Charter; and


WHEREAS, the Town Council finds and determines that it is in the best interest of the citizens of the Town to enter into a franchise agreement with Comcast of Colorado IX, LLC for cable television services.

NOW, THEREFORE, be it ordained by the Town Council of the Town of Gypsum, Colorado that:

1. **Approval of Franchise Agreement.** The Franchise Agreement (“Agreement”) between the Town of Gypsum and Comcast of Colorado IX, LLC, attached hereto and incorporated herein, is approved. The Mayor and the Town Clerk are authorized and directed to execute the Agreement on behalf of the Town.
2. **Public Inspection.** Copies of this ordinance and the Gypsum Municipal Code are available for public inspection at the office of the Gypsum Town Clerk.
3. **Public Hearing.** A public hearing on this Ordinance shall be held on the 25th day of June, 2019, at 7:00 p.m. at the Town of Gypsum Town Hall, 50 Lundgren Boulevard, Gypsum, Colorado.
4. **Effective Date.** This Ordinance shall become effective as a permanent Ordinance five (5) days after publication, following final adoption after a public hearing held on the 25th day of June, 2019, at 7:00 p.m., at the Gypsum Town Hall, 50 Lundgren Blvd., Gypsum, Colorado.
5. **Severability.** If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

INTRODUCED, READ AND ORDERED PUBLISHED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF GYPSUM ON THE 11TH DAY OF JUNE, 2019.

TOWN OF GYPSUM

By: 
Stephen M. Carver, Mayor *Pro Tem*
Tom Edwards

Attest:

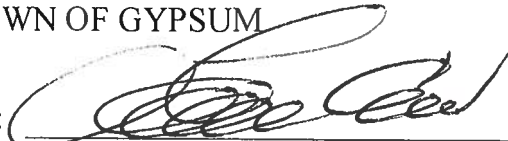

Danette Schlegel, Town Clerk



INTRODUCED ON SECOND READING, READ, CONSIDERED AT A PUBLIC HEARING AND FINALLY ADOPTED, PASSED AND APPROVED WITH AMENDMENTS, IF ANY, AND ORDERED POSTED AND PUBLISHED, BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, UPON A MOTION DULY MADE AND PASSED AT ITS MEETING HELD ON THE 25TH DAY OF JUNE, 2019, BY A VOTE OF 7 IN FAVOR AND 0 AGAINST.

TOWN OF GYPSUM

By:



Stephen M. Carver, Mayor

Attest:


Danette Schlegel, Town Clerk

(S E A L)



EXHIBIT A

FRANCHISE AGREEMENT

Ad #: 0000435723-02

Customer: TOWN OF GYPSUM,

Your account number is: 1003111

**PROOF OF PUBLICATION
VAIL DAILY**


**STATE OF COLORADO
COUNTY OF EAGLE**

I, Mark Wurzer, do solemnly swear that I am Publisher of the VAIL DAILY, that the same daily newspaper printed, in whole or in part and published in the County of Eagle, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said County of Eagle for a period of more than fifty-two consecutive weeks next prior to the first publication of the annexed legal notice or advertisement and that said newspaper has published the requested legal notice and advertisement as requested.

The VAIL DAILY is an accepted legal advertising medium, only for jurisdictions operating under Colorado's Home Rule provision.


That the annexed legal notice or advertisement was published in the regular and entire issue of every number of said daily newspaper for the period of 1 insertion; and that the first publication of said notice was in the issue of said newspaper dated 6/7/2019 and that the last publication of said notice was dated 6/7/2019 in the issue of said newspaper.

In witness whereof, I have here unto set my hand this day, 6/13/2019.



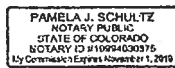
Mark Wurzer, Publisher

Subscribed and sworn to before me, a notary public in and for the County of Eagle, State of Colorado this day 6/13/2019.



Pamela J. Schultz, Notary Public

My Commission Expires: November 1, 2019



TOWN OF GYPSUM
P.O. Box 130
50 Lundgren Boulevard
Gypsum, CO 81627

NOTICE IS HEREBY GIVEN THAT Comcast of Colorado IX, LLC has applied to the Town of Gypsum, Colorado for passage of an ordinance granting a Franchise to Comcast of Colorado IX, LLC to construct, operate, maintain, reconstruct and record a cable system for the purpose of providing cable service to the Town and its constituents of the Town.

NOTICE IS FURTHER GIVEN THAT at a regular meeting of the Gypsum Town Council on June 11, 2019 at 7:00 p.m. in the Town Council Chambers at Gypsum Town Hall, 50 Lundgren Boulevard, Gypsum, Colorado, the Town Council will introduce and consider approval on final reading of the following proposed Ordinance granting the Franchise. The Ordinance may be approved, approved with amendments, disapproved, continued for amendments or continued for further consideration.

ORDINANCE NO. 08 (SERIES 2019) AN ORDINANCE APPROVING THE FRANCHISE AGREEMENT WITH COMCAST OF COLORADO IX, LLC

NOTICE IS FURTHER GIVEN THAT following the reading of the Ordinance the Town Council desires to further consider the granting of the Franchise, on June 25, 2019 at 7:00 p.m. in the Town Council Chambers at Gypsum Town Hall, 50 Lundgren Boulevard, Gypsum, Colorado, the Town Council will read and consider final adoption of the Ordinance. The text of the Ordinance and the Franchise Agreement are available for public inspection at the Office of the Town Clerk, 50 Lundgren Blvd., Gypsum, Colorado, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. and on the Town's website at <http://www.gypsum.gov> or at the Town's Office at 50 Lundgren Boulevard, Gypsum, Colorado.

Published in the Vail Daily June 7, 2019
0000435723

Ad #: 0000439295-01
Customer: TOWN OF GYPSUM
Your account number is: 1003111

PROOF OF PUBLICATION
EAGLE VALLEY ENTERPRISE
STATE OF COLORADO
COUNTY OF EAGLE

I, Pam Boyd, do solemnly swear that I am General Manager of the EAGLE VALLEY ENTERPRISE, that the same weekly newspaper printed, in whole or in part and published in the County of Eagle, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said County of Eagle for a period of more than fifty-two consecutive weeks next prior to the first publication of the annexed legal notice or advertisement; that said newspaper has been admitted to the United States mails as a periodical under the provisions of the Act of March 3, 1879, or any amendments thereof; and that said newspaper is a weekly newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado.

That the annexed legal notice or advertisement was published in the regular and entire issue of every number of said weekly newspaper for the period of 1 insertion; and that the first publication of said notice was in the issue of said newspaper dated 6/20/2019; and that the last publication of said notice was dated 6/20/2019 in the issue of said newspaper.

In witness whereof, I have hereunto set my hand this day 6/25/2019.

Pam Boyd

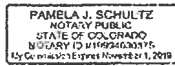
Pam Boyd, General Manager

Subscribed and sworn to before me, a notary public in and for the County of Eagle, State of Colorado this day 6/25/2019.

Pamela J. Schultz

Pamela J. Schultz, Notary Public

My Commission Expires: November 1, 2019



NOTICE OF PUBLIC HEARING

TOWN OF GYPSUM
P.O. Box 136
50 Lincoln Boulevard
Gypsum, CO 81607

This is to give notice that a public hearing on June 11, 2019 the above described map, the provisions to be approved at that meeting, and related zoning and building regulations, by the voters of the Town of Gypsum, Colorado, shall be held at 7:00 p.m. at the Town Office located at 50 Lincoln Boulevard, Gypsum, Colorado 81607.

For further information, please contact the Planning and Zoning Commission at 50 Lincoln Boulevard, Gypsum, Colorado 81607.

The town of Gypsum is a public body, organized under the laws of the State of Colorado, and is a political subdivision of the State of Colorado. It is a public body and is subject to the provisions of the Colorado Open Records Act, C.R.S. 24-72.

Ms. Danielle Schaefer, Town Clerk

Published in the Eagle Valley Enterprise on June 20, 2019. 0000439295



1899 Wynkoop St. Suite 550
Denver, CO 80202

September 3, 2019

VIA UPS OVERNIGHT DELIVERY

Mr. Jeremy Rietmann
Town Manager
Town of Gypsum
50 Lundgren Blvd.
Gypsum, CO 81637

Re: Comcast Franchise

Aaron,

Enclosed please find one fully executed original of the Franchise Agreement between the Town of Gypsum and Comcast. This original is for your files.

Per Section 1.16, the agreement is Effective August 27, 2019. The agreement term will expire on August 26, 2029.

Should you have any questions regarding this information, please feel free to contact me at 303-603-2012.

Sincerely,

A handwritten signature in cursive script that reads "Glenn Walker".

Glenn Walker
Government Affairs Manager



**COMCAST OF COLORADO IX, LLC AND
TOWN OF GYPSUM, COLORADO**

CABLE FRANCHISE AGREEMENT

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**COMCAST OF COLORADO IX, LLC AND
TOWN OF GYPSUM, COLORADO**

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS

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

1.1 "Abandons the Cable System" means:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise Agreement to 15% or more of the Subscribers within the Franchise Area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

(B) The Grantee, for any period of time, willfully and without cause refuses to provide Cable Service in accordance with this Franchise Agreement.

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

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

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

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

1.6 "Basic Service" is the level of programming service which includes, at a minimum, all Broadcast Channels required in this Franchise Agreement, and any additional programming added by the Grantee, and is made available to all Cable Service Subscribers in the Franchise Area.

1.7 "Broadcast Channels" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

COMCAST OF COLORADO IX, LLC / TOWN OF GYPSUM, COLORADO

{00697551.DOCX / 2 }

1.8 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

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

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

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

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

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

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

1.15 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking, separate bathrooms, eating facilities, living areas, and entrances shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.16 “Effective Date” means the date on which all Persons necessary to sign this Franchise Agreement in order for it to be binding on both parties have executed this Franchise Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the “Term” section herein.

1.17 “EITF” means the Emerging Issues Task Force.

- 1.18** “EAS” means an emergency alert system in compliance with FCC standards.
- 1.19** “FASB” means the Financial Accounting Standards Board.
- 1.20** “FCC” means the Federal Communications Commission.
- 1.21** “Franchise Agreement” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Town and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.
- 1.22** “Franchise Area” means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise Agreement.
- 1.23** “Franchise Fee” means that fee payable to the Town described in subsection 3.1.
- 1.24** “GAAP” means generally accepted accounting principles.
- 1.25** “Grantee” means Comcast of Colorado IX, LLC or its lawful successor, transferee or assignee.
- 1.26** “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the Cable Operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Service within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:
- monthly fees for Cable Service, regardless of whether such Cable Service are provided to residential or commercial customers, including revenues derived from the provision of all Cable Service (including but not limited to pay or Premium Cable Service, digital Cable Service, pay-per-view, pay-per-event and video-on-demand Cable Service);
 - installation, reconnection, downgrade, upgrade or similar charges associated with changes in Subscriber Cable Service levels;
 - fees paid to Grantee for Channels designated for commercial/Leased Access Channel use and shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
 - converter, remote control, and other Cable Service equipment rentals, leases, or sales;
 - Advertising Revenues;
 - late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Service revenue as a percentage of total Subscriber revenues within the Franchise Area;
 - revenues from program guides;

- FCC Regulatory Fees; and,
- commissions from home shopping Channels and other Cable Service revenue sharing arrangements which shall be allocated on a *pro rata* basis using total Cable Service Subscribers within the Franchise Area.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Town and shall be allocated on a *pro rata* basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications and Comcast Spotlight or their successors associated with sales of advertising on the Cable System within the Franchise Area allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual Bad Debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Service revenue as a percentage of total Subscriber revenues within the Franchise Area;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, State or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, State or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Service and non-Cable Service, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Town. The Town reserves its right to review and to challenge Grantee’s calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.22 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the forgoing, the Town reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

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

1.28 “Leased Access Channel” means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.29 “Manager” means the Town Manager of the Town or designee.

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

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

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

1.33 “Right-of-Way” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, right-of-way and similar public property and areas.

1.34 “School” means all State-accredited K-12 public and private schools.

1.35 “SEC” means the U.S. Securities and Exchange Commission (“SEC”).

1.36 “State” means the State of Colorado.

1.37 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee’s regular and nondiscriminatory terms and conditions for receipt of service.

1.38 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.39 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.40 “Town” is the Town of Gypsum, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.41 “Town Council” means the Gypsum Town Council, or its successor, the governing body of the Town of Gypsum, Colorado.

1.42 “Town Street Excavation Ordinance” means the provisions of Chapter 12.03 of the Gypsum Municipal Code as amended from time to time.

1.43 “Transfer” means:

(A) relative to the Grantee, conveyance by any method of 51% or greater ownership interest in Grantee.

(B) relative to the Cable System or this Franchise Agreement, conveyance by any method, except (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

1.44 “Transferee” means a person who takes by Transfer.

1.45 “Video Service Provider” or “VSP” means any entity using the public Right-of-Way to provide multiple video programming services to Subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides Cable Service, multi-Channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The Town hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Right-of-Way within the Franchise Area to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise Agreement.

(B) Nothing in this Franchise Agreement shall be deemed to waive the lawful requirements of any generally applicable Town ordinance existing as of the Effective Date, as defined in subsection 1.20.

COMCAST OF COLORADO IX, LLC / TOWN OF GYPSUM, COLORADO

{00697551.DOCX / 2 }

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the Town, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the Town, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise Agreement as if fully set out herein by this reference. Notwithstanding the foregoing, the Town may not unilaterally alter the material rights and obligations of Grantee under this Franchise Agreement. Notwithstanding any other provision of this Franchise Agreement, Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the Town that conflicts with its contractual rights under this Franchise Agreement, either now or in the future.

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

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

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

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Franchise Area that may be required by the ordinances and laws of the Town;

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

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

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

(H) This Franchise Agreement does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise Agreement is not a bar to the provision of non-Cable Service, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar,

different or the same as the conditions specified herein. This Franchise Agreement does not relieve Grantee of any obligation it may have to obtain from the Town an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Right-of-Way

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

(B) Grantee must follow Town established nondiscriminatory requirements for placement of Cable System facilities in Right-of-Way, including all requirements of the Town Street Excavation Ordinance applicable to the specific location of facilities in the Right-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Right-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the Town's role in protecting public health, safety and welfare, the Town may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Town's requirements; and may remove, or require removal of, any portion of the Cable System that is not installed by Grantee in compliance with the requirements established by the Town, or which is installed without prior Town approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Right-of-Way through joint trenching and other arrangements.

2.3 Term of Franchise

The term of the Franchise Agreement granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise Agreement, unless the Franchise Agreement is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act, or is extended by mutual agreement of the Town and Grantee.

2.4 Franchise Agreement Nonexclusive

This Franchise Agreement shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the Town to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Town

may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with Grantee's authority under this Franchise Agreement and for such additional franchises for Cable Systems as the Town deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise Agreement. Any conflict between the provisions of this Franchise Agreement and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) Purposes. The Grantee and the Town acknowledge that there is increasing competition in the video marketplace among Cable Operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to Town residents; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, State and local venues. To foster an environment where video service providers using the public Right-of-Way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to Town residents; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Town have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

(B) New Video Service Provider. Notwithstanding any other provision of this Franchise Agreement or any other provision of law, if any VSP (i) enters into any agreement with the Town to provide video services to Subscribers in the Franchise Area, or (ii) otherwise begins to provide video services to Subscribers in the Franchise Area (with or without entering into an agreement with the Town), the Town, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to Subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Town shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Town.

(C) If there is no written agreement or other authorization between the new VSP and the Town, the Grantee and the Town shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs,

taking into account the terms and conditions under which other VSPs are allowed to provide video services to Subscribers in the Franchise Area.

(D) Subsequent Change in Law. If there is a change in federal, State or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Town may request from or impose on a VSP providing video services to Subscribers in the Franchise Area, the Town agrees that, notwithstanding any other provision of law, upon Grantee's written request the Town shall: (i) permit the Grantee to provide video services to Subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Franchise Agreement to comply with the changed law; or (iii) modify this Franchise Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Town and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Town. Notwithstanding any provision of law that imposes a time or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

(E) Effect on This Franchise Agreement. Any agreement, authorization, right or determination to provide video services to Subscribers in the Franchise Area under Sections 2.6B, 2.6C or 2.6D shall supersede this Franchise Agreement, and the Grantee, at its option, may terminate this Franchise Agreement or portions thereof, upon written notice to the Town, without penalty or damages.

2.7 Familiarity with Franchise Agreement

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise Agreement and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise Agreement and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise Agreement, the Grantee: (1) acknowledges and accepts the Town's legal right to issue and enforce the Franchise Agreement; (2) accepts and agrees to comply with each and every provision of this Franchise Agreement subject to Applicable Law; and (3) agrees that the Franchise Agreement was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise Agreement and in consideration of permission to use the Town's Right-of-Way, Grantee shall, after the Effective Date and within sixty (60) days after the activation of the first Subscriber, pay as a Franchise Fee to the Town, for Cable Service provided throughout the duration of and consistent with this Franchise Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues. Since the Town has granted other Franchise Agreement(s) to other wireline Cable Service provider(s), Grantee shall not be required to pay more than the Franchise Fee rate imposed by the other Franchise Agreement(s).

3.2 Payments

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

3.3 Acceptance of Payment and Recomputation

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

3.4 Quarterly Franchise Fee Reports

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

3.5 Annual Franchise Fee Reports

Upon thirty (30) day's written notice from the Town, Grantee shall, within sixty (60) days after the end of each year, furnish to the Town a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Franchise Fees Subject to Audit

Upon reasonable prior written notice, at Town's expense and no more than once annually, during normal business hours at Grantee's principal business office located at 8000 E. Iliff Ave., Denver, CO 80231, the Town shall have the right to inspect the Grantee's financial records used to calculate the Town's Franchise Fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

3.7 Late Payments

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the Town receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of five percent (5%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Town.

3.9 Alternative Compensation

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

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise Agreement, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise Agreement may be amended unilaterally by the Town to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Town hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the Town of such amendment, so long as all Cable Operators in the Franchise Area are paying the same Franchise Fee amount.

3.11 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the Town, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise Agreement shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the Town. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.12 Financial Records

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

3.13 Payment on Termination

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

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The Town shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise Agreement in the public interest.

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

4.2 Rates and Charges

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

4.3 Rate Discrimination

(A) All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Service, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the Franchise Area. Grantee shall offer the same Cable Service to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

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

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

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

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

4.4 Filing of Rates and Charges

Grantee shall, upon thirty (30) day's written notice from the Town, provide a complete schedule of applicable rates and charges for Cable Service provided under this Franchise Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Service and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the Town reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Franchise Agreement Amendment Procedure

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

4.8 Performance Evaluations

(A) The Town may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the Town.

(B) Special evaluation sessions may be held at any time by the Town during the term of this Franchise Agreement, upon ninety (90) days written notice to Grantee.

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

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Service; application of new technologies; Cable System performance; Cable Service provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise Agreement; judicial and FCC rulings; line extension policies; Cable Service reliability; Cable Service outages; and the Town or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise Agreement.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the Town and shall provide such information and documents maintained in the ordinary course of business as the Town may reasonably require to perform the evaluation.

4.9 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise Agreement by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise Agreement or to procure a substitute for such obligation which is satisfactory to the Town. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Service in the Franchise Area and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results. When the condition beyond the control of Grantee ceases, Grantee shall resume performance of its obligations as soon as reasonably possible, which timing shall take into consideration the frequency, predictability and magnitude of the condition beyond the control of Grantee.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise Agreement, Grantee shall provide documentation as reasonably required by the Town to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the Town with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

The Grantee shall indemnify, defend and hold harmless the Town, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury

(including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Town shall give the Grantee written notice of its obligation to indemnify and defend the Town within ten (10) business days of receipt of a claim or action pursuant to this Section. Grantee shall not be obligated to indemnify the Town to the extent of the Town's negligence or willful misconduct.

If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Town and the counsel selected by Grantee to represent the Town, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and Town desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Town shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The Town's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, fees for the Town Attorney and any outside attorneys necessary to the Town's defense, and shall also include the reasonable value of any services rendered by any employees of the Town or its agents.

5.2 Insurance

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Town certificates of insurance designating the Town and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000.00) for bodily injury or death to any one person, and Two Million Dollars (\$2,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Town. The Grantee shall provide workers' compensation coverage in accordance with Applicable Law. The Grantee shall indemnify and hold harmless the Town from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

5.3 Security

(A) During the initial construction of the Cable System as described in subsection 12.1, Grantee shall provide a construction bond to ensure the performance of its responsibilities under this Franchise Agreement related to construction activity, including restoration of the Rights-of-way and other property. The amount of the bond shall be one hundred thousand dollars (\$100,000.00).

(B) Once initial construction of the Cable System is complete, the franchisee may apply for elimination of the bond required by this section at any time nine (9) months after providing notice of completion of the construction. The Town shall eliminate the bond once it determines

that Grantee has faithfully completed its construction of the Cable System and is otherwise in material compliance with the terms and conditions of this Franchise Agreement.

(C) After release of the initial construction bond, pursuant to Section (5.3.B) above, Grantee shall comply with the Town Code Title 12, Chapter 12.03 - Street Excavation. Grantee shall provide a construction bond in the amount of \$20,000 to satisfy Excavation Ordinance, Section 12.03.70(c). By posting and continuously maintaining the construction bond in a form acceptable to the Town, this covers all warranty work that may be outstanding at any time.

5.4 Performance Bond

(A) Grantee shall provide as security for the faithful performance by Grantee of all of the provisions of this Franchise a performance bond in the amount of Thirty Thousand dollars (\$30,000) to ensure the faithful performance of its responsibilities under this Franchise Agreement and applicable law. Such requirement is in addition to the financial security requirements of the Town Street Excavation Ordinance. The performance bond shall be in a form reasonably acceptable to the Town. Grantee shall pay all premiums or costs associated with maintaining the bond(s) and shall keep the same in full force and effect at all times. Except as expressly provided herein, the Grantee shall not be required to obtain or maintain other bonds as a condition of being awarded this Franchise Agreement or continuing its existence.

(B) After completion of the procedures set forth in Section 12.1 or other applicable provisions of this Franchise Agreement, the Town may draw upon the performance bond for purposes that include, but are not limited to the following:

(1) Failure of Grantee to pay the Town sums due under the terms of this Franchise Agreement;

(2) Reimbursement of damages, costs, and expenses borne by the Town to correct Franchise Agreement violations not corrected by Grantee; and

(3) Monetary remedies or damages assessed against Grantee as provided in this Franchise Agreement.

(C) The Town shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within ten (10) days following receipt of such notice, Grantee shall restore the performance bond to the amount required under this Franchise Agreement. Grantee's maintenance of the performance bond shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the performance bond or otherwise limit the Town's recourse to any other remedy available at law or in equity.

(D) The bond shall provide that the bond shall not be cancelled or materially altered so as to be out of compliance with the requirements of this Section without forty-five (45) days written notice first being given to Grantor. If the bond is cancelled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise Agreement, Grantee shall provide a replacement bond. Grantee agrees to maintain a continuous uninterrupted

performance bond in the amount required for the duration of this Franchise Agreement or as otherwise specified in this Franchise Agreement.

(E) Grantee shall have the right to appeal to the Town for reimbursement in the event Grantee believes that the performance bond was drawn upon improperly. After a determination by the Town, Grantee shall also have the right of judicial appeal if Grantee believes the performance bond has not been properly drawn upon in accordance with this Franchise Agreement. Any funds the Town erroneously or wrongfully withdraws from the performance bond shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal on the date the Town withdrew funds from the performance bond until the date the Town returns the money to Grantee. If the judicial appeal determines that the performance bond was not drawn upon improperly, Grantee shall reimburse the Town for all attorneys' fees and costs.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

The Town hereby adopts, and Grantee shall comply with, the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Subscriber Privacy

The Grantee shall comply with all applicable federal and State privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

6.3 Subscriber Bills

Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

SECTION 7. BOOKS AND RECORDS

7.1 Books and Records

Throughout the term of this Franchise Agreement, the Grantee agrees that the Town may review the Grantee's books and records that are maintained in the ordinary course of business in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office located at 8000 E. Iliff Ave., Denver, CO 80231, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the Town shall be retained by the Grantee for a minimum period of three (3) years.

7.2 Confidentiality

The Town agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the Town aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the Town believes it must release any such confidential books and records in the course of enforcing this Franchise Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the Town receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the Town shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the Town for all reasonable costs and attorney's fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the Town upon 30 days' written request or as otherwise specified herein, and subject to Applicable Law:

(1) A complete set of digital as-builts, drawings, plans, and maps showing the horizontal location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops, shall be provided within ninety (90) days following initial construction and installation of the Cable System and following any additions or modifications. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Town's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Town. These maps shall be certified as accurate by an appropriate representative of the Grantee;

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

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

(4) A list of Cable Service, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Town is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

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

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information.

8.2 Deletion or Reduction of Broad Programming Categories

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

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Service provided by Grantee on the Effective Date of this Franchise Agreement shall be deemed the mix and quality of Cable Service required under this Franchise Agreement throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

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

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored and they are in compliance with Grantee's terms of services, residential service agreement or other such provisions. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

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

(C) In the event Grantee Abandons the Cable System without prior approval of the Manager, or without just cause, in addition to any other remedy provided by this Franchise Agreement or Applicable Law, the Town may, at its option, operate the Cable System itself; designate another Cable Operator to operate the Cable System until such time as Grantee restores service under conditions acceptable to the Town or until the Franchise Agreement is revoked and a new franchisee is selected by the Town; or obtain an injunction requiring the Grantee to continue operations. If the Town exercises any of these options, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred.

8.6 Services for the Disabled

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

SECTION 9. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

9.1 Permits and General Obligations

The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Right-of-Way and the rights and reasonable convenience of property owners who own property that adjoins any such Right-of-Way.

9.2 Right-of-Way Meetings

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

9.3 Joint Trenching/Boring

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

(B) To the extent it is technically and economically feasible, Grantee shall joint trench or share bores or cuts and work with other providers (such as, but not limited to, other telecommunications, gas, and electric companies), licensees, permittees, grantees, and the Town (collectively, the "Trench Users"), so as to reduce the number of Rights-of-Way cuts within the Franchise Area, and shall provide advance notice of the opening of a trench to the Trench Users. Each Trench User installing, upgrading or repairing facilities in the same trench will pay their own costs for their facilities and will pay a pro-rata share of the cost of the trenching based on the number of Trench Users installing, upgrading or repairing facilities in the trench. No Trench User's installation of its facilities shall unreasonably interfere with the Grantee's Facilities or unreasonably delay the commencement or completion of the Grantee's construction project.

9.4 Conditions of Street Occupancy

New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee

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shall, upon reasonable advance written notice from the Town (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Right-of-Way for the purpose of defraying the cost of any of the foregoing, the Town shall notify Grantee of such funding and make available such funds to the Grantee.

9.5 Relocation at request of Third Party

The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Town to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

9.6 Restoration of Right-of-Way

If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Right-of-Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Right-of-Way existing immediately prior to the disturbance.

9.7 Safety Requirements

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and State regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

9.8 Trimming of Trees and Shrubbery

The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

9.9 Aerial and Underground Construction

At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution

facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

9.10 Burial Standards

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

- Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.
- Feeder lines shall be buried at a minimum depth of eighteen (18) inches.
- Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.
- Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

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

9.11 Undergrounding and Beautification Projects

In the event all users of the Right-of-Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Right-of-Way.

9.12 Removal of Discontinued Facilities

Whenever Grantee intends to discontinue using any portion of the Cable System within the Rights-of-Way, Grantee shall submit for Grantor's approval a complete description of the portion of the Cable System and the date on which Grantee intends to discontinue using that portion of the Cable System. Grantee may remove that portion of the Cable System or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such portion of the Cable System remain in place, Grantor may require Grantee to remove that portion of the Cable System from the Rights-of-Way or modify that portion of the Cable System to protect the public health, public welfare, or public safety. Grantor may require Grantee to perform a combination of modification and removal of that portion of the Cable System. Grantee shall complete such removal or modification in accordance with a schedule mutually agreed upon in writing by Grantee and Grantor but not to exceed twelve (12) months. Until such time as Grantee removes or modifies that portion of the Cable System as directed by Grantor, or until the rights to and responsibility for that portion of the Cable System are accepted by another Person having authority to construct and maintain such portion of the Cable System, Grantee shall be responsible for all necessary repairs and relocations of that portion of the Cable System, as well as maintenance of the Rights-of-Way, in the same manner and degree as if that portion of the Cable System were in active use, and Grantee shall retain all liability for such portion of the Cable System. If Grantee abandons the Cable System or any portion thereof, Grantor may choose to use such portion of the Cable System for any purpose whatsoever, including providing Cable Service.

SECTION 10. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

10.1 Subscriber Network

(A) The Cable System shall deliver no less than one hundred ten (110) Channels of video programming services to Subscribers.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks are retransmitted in those same formats.

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

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

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

(F) Grantee shall comply with the requirements of the Town Street Excavation Ordinance, except that Grantee shall not be required to obtain an excavation permit when connecting or disconnecting Subscribers between the distribution plant in the Rights-of-Way and

the Subscriber's residence when such work does not require cuts to the Right of Way and disturbs no more than 20 feet of the Right-of-Way.

10.2 Standby Power

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

10.3 Emergency Alert Capability

Grantee shall provide an operating EAS throughout the term of this Franchise Agreement.

10.4 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), and State technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

10.5 Cable System Performance Testing

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

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise Agreement; and
- (3) All other tests as otherwise specified in this Franchise Agreement.

(B) At a minimum, Grantee's tests shall include:

- (1) Cumulative leakage index testing of any new construction;
- (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
- (3) Tests in response to Subscriber complaints;
- (4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the Town upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise Agreement, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the Town upon request.

(E) Grantee shall be required to promptly take such corrective measures as are necessary to fully correct any performance deficiencies identified by the testing in this Sec. 10.5 and to prevent their recurrence, as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise Agreement. Sites shall be re-tested following correction.

SECTION 11. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

11.1 Service Availability

(A) In General. Nothing in this Franchise Agreement requires Grantee to build to all areas of the Franchise Area. Grantee retains the discretion to determine the scope, location, and timing of the design and construction of its network, as well as the windows during which Residential Subscribers may enroll for services, so long as such decisions are consistent with this Section. Grantee, at its sole discretion, may determine separately defined geographic areas within the Franchise Area where its System will be deployed, services will be offered, or facilities will be upgraded.

However, except as otherwise provided herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Franchise Area where Grantee's system has been deployed and the location can be connected with a standard installation consisting of a 150-foot drop. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

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

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 150-foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-

discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Town;

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

(B) Service to Multiple Dwelling Units. Consistent with this Section 11.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Service offered to other Dwelling Units in the Franchise Area and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit in the form of an access and wiring agreement that is mutually satisfactory to the Grantee and the property owner. The Town acknowledges that the Grantee cannot control the dissemination of particular Cable Service beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Subscriber Charges for Extensions of Service. The Grantee may, at Grantee's discretion, extend the Cable System to Subscriber(s) in the Franchise Area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, in the event Grantee decides to extend the Cable System, the Grantee will contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of unserved residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any non-standard installation charges to extend the Cable System from the tap to the residence.

11.2 Connection of Public Facilities

(A) Grantee shall, at no cost to the Town, provide one outlet of Basic Service to all Town owned and occupied buildings, Schools, public libraries located within the Franchise Area where Grantee provides Cable Service, so long as these facilities are already served or are located within 150 feet from the distribution point on the Cable System from which cable service can be provided to these facilities. Such obligation to provide free Cable Service shall not extend to the following Town buildings: Town of Gypsum maintenance buildings, Town of Gypsum water or sewer department buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic Service provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such Cable Service shall not be located in public waiting areas or used to entertain the public nor shall they be used in a way that might violate copyright laws. The outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld. Grantee is not required to provide free reception equipment for any complimentary account provided pursuant to this subsection. Grantee does not waive any rights under Applicable Law regarding complimentary service. The complimentary Cable Service provided for in this

Section shall not apply to qualifying locations that receive complimentary Cable Service pursuant to a Franchise Agreement between the Town and another Cable Service provider.

(B) Grantee reserves whatever rights it has under Applicable Law to deduct the value of the complementary Cable Service it provides to Town owned and occupied buildings from its payment of Franchise Fees. The Town likewise reserves all rights it has under Applicable Law to assert the maximum calculation of Gross Revenues permitted under Section 1.26 of this Franchise consistent with Section 1.26(A), but without regard to any further limitations set forth in Section 1.26(B), and the manner in which the value of the complimentary Cable Services is calculated. Subject to Applicable Law, should Grantee elect to offset complimentary Cable Services provided to Town owned and occupied buildings against Franchise Fees, Grantee shall first provide the Town with ninety (90) days' prior written notice. To the extent that the parties are engaged in good faith negotiations to determine the amount of an offset, if any, and such negotiations extend past ninety (90) days, no such offset shall be taken until the parties reach agreement or alternatively, until the matter is resolved through other legal means.

SECTION 12. FRANCHISE VIOLATIONS

12.1 Procedure for Remediating Franchise Agreement Violations

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

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

(2) cure the default; or,

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

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

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

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

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

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

12.2 Revocation

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

(1) If Grantee fails to perform any material obligation under this Franchise Agreement or under any other agreement, ordinance or document regarding the Town and Grantee;

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

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

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

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

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

(C) Any proceeding for forfeiture or termination of this Franchise Agreement shall be conducted by the Town Council and open to the public. Grantee shall be afforded at least thirty (30) days prior written notice of such proceeding.

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(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. An audio recording shall be made of the proceeding and available to the Parties at the Town's cost. Either Party, at their own cost, may have made a contemporaneous transcription or a transcription of the audio recording. The Town Council shall hear any Persons interested in the revocation, and shall allow Grantee and the Town Manager, in particular, an opportunity to state their positions on the matter.

(2) Within ninety (90) days after the hearing, the Town Hearing Officer shall determine whether to revoke the Franchise Agreement and declare that the Franchise Agreement is revoked; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Town Hearing Officer determines are reasonable under the circumstances. If the Town Hearing Officer determines that the Franchise Agreement is to be revoked, the Town Hearing Officer shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee.

(3) Grantee shall be bound by the Town Hearing Officer's decision unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision. Grantee shall be entitled to such relief as the Court may deem appropriate.

12.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise Agreement is terminated or revoked after completion of all processes available under this Franchise Agreement and federal law, the Town shall have the right to require Grantee to remove all or any portion of the Cable System utilized exclusively for the provision of Cable Services from all Rights-of-Way and public property within the Town and may, subject to Applicable Law:

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

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 12.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Town may order the removal of all or any portion of Grantee's Cable System within the Franchise Area as determined by the Town. In removing its Cable System from the Franchise Area, Grantee shall comply with all provisions of Section 9 of this Franchise Agreement, which shall remain in full force and effect, and, at its own expense, shall leave all Right-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of the Cable System and without affecting any other utilities. The indemnification and insurance provisions in Section 5 of this Franchise Agreement shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 12.3 (B) to the Town's satisfaction, after written notice to Grantee, the Town may cause the work to be done and Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs.

12.4 Purchase of Cable System

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

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

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

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

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

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

12.5 Receivership and Foreclosure

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

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

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

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

(1) The Town has approved the Transfer of the Franchise Agreement in accordance with the procedures set forth in this Franchise and as provided by law; and

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

12.6 No Monetary Recourse Against the Town

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

12.7 Alternative Remedies

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

SECTION 13. FRANCHISE RENEWAL AND TRANSFER

13.1 Renewal

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

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

Agreement and the Town may grant a renewal thereof. Grantee and Town consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise Agreement expire without a mutually agreed upon renewed Franchise Agreement, and Grantee and Town are engaged in an informal or formal renewal process, the Franchise Agreement shall continue on a month-to-month basis subject to Applicable Law, with the same terms and conditions as provided in the Franchise Agreement, and the Grantee and Town shall continue to comply with all obligations and duties under the Franchise Agreement.

13.2 Transfer of Ownership or Control

Neither the Grantee nor any other Person may Transfer the Cable System or the Franchise Agreement without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. No Transfer of control of the Grantee shall take place without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. Within thirty (30) days of receiving a request for consent, the Town shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the Transferee. If the Town has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

SECTION 14. SEVERABILITY

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

SECTION 15. MISCELLANEOUS PROVISIONS

15.1 Preferential or Discriminatory Practices Prohibited

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

15.2 Notices

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

Grantee's address shall be:

Comcast of Colorado IX, LLC
8000 E. Iliff Ave.
Denver, CO 80231
Attn: Government Affairs Dept.

The Town's address shall be:

Town of Gypsum
Attn: Town Manager
50 Lundgren Blvd.
P. O. Box 130
Gypsum, CO 81637

15.3 Descriptive Headings

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

15.4 Binding Effect

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

15.5 No Joint Venture

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

15.6 Waiver

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

15.7 Reasonableness of Consent or Approval

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

15.8 Entire Agreement

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

IN WITNESS WHEREOF, this Franchise Agreement is signed in the name of the Town of Gypsum, Colorado this 25 day of June, 2019.

ATTEST:

Annette Schlegel
Town Clerk

TOWN OF GYPSUM, COLORADO:

Paula Edwards
Mayor Pro Tem

APPROVED AS TO FORM:

[Signature]
Town Attorney

RECOMMENDED AND APPROVED:

[Signature]
Town Manager

Accepted and approved this 27 day of August, 2019.

COMCAST OF COLORADO IX, LLC

By: [Signature]
Its: Amy Lynch
Regional Senior Vice President –
Mountain West Region