

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. 503

SERIES OF 1999

COMMITTEE OF REFERENCE:

A BILL

1 FOR AN ORDINANCE SUBMITTING TO THE QUALIFIED AND
2 REGISTERED ELECTORS OF THE CITY AND COUNTY OF DENVER
3 AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY,
4 NOVEMBER 2, 1999, THE QUESTION OF THE CITY AND COUNTY OF
5 DENVER RENEWING THE NON-EXCLUSIVE FRANCHISE OF MILE HI
6 CABLE PARTNERS, L.P. (DOING BUSINESS AS AT&T) TO
7 CONSTRUCT, OPERATE, UPGRADE, AND MAINTAIN A CABLE
8 SYSTEM IN THE PUBLIC RIGHTS-OF-WAY (AS DEFINED IN THE
9 FRANCHISE) FOR A TERM OF TEN YEARS (TO BE EXTENDED BY
10 FIVE YEARS IF CERTAIN UPGRADE REQUIREMENTS ARE MET),
11 AND ALSO ESTABLISHING NEW TERMS AND CONDITIONS FOR
12 THAT FRANCHISE, INCLUDING PROVISIONS FOR AN EMERGENCY
13 ALERT SYSTEM; CUSTOMER SERVICE STANDARDS; FREE
14 SERVICE TO THE PUBLIC SCHOOLS; CHANNELS FOR PUBLIC,
15 EDUCATIONAL, AND GOVERNMENT USE; ENFORCEMENT; AND
16 OTHER RELATED PUBLIC BENEFITS; AND FOR THE EXECUTION
17 AND DELIVERY OF SAID FRANCHISE ACCORDING TO ITS
18 PROPOSED TERMS, IF THE RESULT OF SUCH VOTE OF THE
19 QUALIFIED AND REGISTERED ELECTORS AT SUCH ELECTION
20 SHALL HAVE BEEN DETERMINED TO HAVE BEEN AFFIRMATIVE
21 FOR THE RENEWAL OF SAID FRANCHISE.
22

23 **WHEREAS**, by a special election held on June 5, 1984, the qualified and
24 registered electors of the City and County of Denver ("City") granted a franchise to Mile Hi
25 Cablevision Associates, Ltd. ("Mile Hi Cablevision"); and

26 **WHEREAS**, the City and Mile Hi Cablevision thereafter executed a franchise
27 agreement dated June 14, 1984, for the construction and full activation of a cable television
28 system in the City, which franchise was subsequently modified by ordinance; and

29 **WHEREAS**, by the enactment of Ordinance No. 92, Series of 1993, the City
30 granted consent to the transfer of the franchise to Mile Hi Cable Partners, L.P., which is
31 currently doing business as AT&T, and will hereinafter be referred to as the "Grantee"; and

32 **WHEREAS**, by letter dated June 21, 1996, Grantee has requested a renewal of its
33 cable television franchise pursuant to Section 626 of the Cable Act (47 U.S.C. § 546); and

34 **WHEREAS**, by the enactment of Ordinance No. 159, Series of 1999, the City
35 approved a modification of the term of the cable television franchise to December 31,
36 1999; and

37 **WHEREAS**, the City has reviewed Grantee's performance under the franchise and
38 the quality of service during the franchise term, has identified the future cable-related needs
39 and interests of the City and its citizens, has considered the financial, technical and legal
40 qualifications of Grantee, and has determined whether Grantee's plans for constructing,
41 operating and maintaining its cable system are adequate, in a full public proceeding
42 affording due process to all parties; and

43 **WHEREAS**, the public has had adequate notice and opportunity to comment on
44 Grantee's proposal to provide cable television service within the City; and

45 **WHEREAS**, the City has a legitimate and necessary regulatory role in ensuring the
46 availability of state-of-the-art cable communications service, high technical capability and

47 reliability of cable systems in its jurisdiction, the availability of local programming (including
48 public, educational and governmental access programming) and optimum customer
49 service; and

50 **WHEREAS**, diversity in cable service and local and non-local programming is an
51 important policy goal and the Grantee's cable system should offer a wide range of
52 programming services; and

53 **WHEREAS**, flexibility to respond to changes in technology, subscriber interests and
54 competitive factors within the cable service market should be an essential characteristic of
55 the renewed franchise and both the City and the Grantee will stress maximum system
56 flexibility to take advantage of new technology to benefit subscribers and citizens as such
57 technology becomes available; and

58 **WHEREAS**, the City is authorized to grant one or more nonexclusive franchises to
59 construct, operate and maintain a cable television system within the boundaries of the City;
60 and

61 **WHEREAS**, Grantee has made a deposit with the City Treasurer in the sum of
62 seventy-five thousand dollars (\$75,000.00) to defray the expense of the submission of the
63 question of the renewal of such franchise to the qualified and registered electors of the City
64 and County of Denver.

65 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND**
66 **COUNTY OF DENVER:**

67 **Section 1.** There is hereby submitted to the qualified and registered electors of the
68 City and County of Denver, at a special municipal election, which is hereby called and to be
69 held as provided by law in the City and County of Denver on Tuesday, November 2, 1999,
70 for their approval or rejection, the question of renewing the franchise of Mile Hi Cable
71 Partners, L.P., under the terms and conditions hereinafter set forth.

72 **Section 2.** Said franchise, by the City and County of Denver to Mile Hi Cable
73 Partners, L.P., is as follows:

**MILE HI CABLE PARTNERS, L.P. AND
THE CITY AND COUNTY OF DENVER, COLORADO**

CABLE FRANCHISE AGREEMENT

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EXHIBIT A: Members of the Greater Metro Telecommunications Consortium

EXHIBIT B: List of Streets, Alleys and Public Places

EXHIBIT C: Customer Service Standards

**MILE HI CABLE PARTNERS, L.P. AND
THE CITY AND COUNTY OF DENVER, COLORADO**

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

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

1.1 "Access" means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under applicable law including, but not limited to:

- a. "Public Access" means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.
- b. "Educational Access" means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, "school" means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.
- c. "Government Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

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

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

1.4 "Affiliate," when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee, including AT&T Corp. and its successor corporations.

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

1.7 "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.

1.8 "Cable Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and including regulations promulgated pursuant to such Act and as it may be amended, and any future federal cable television laws, acts or regulations.

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

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. To the extent consistent with applicable law, Cable Service shall include Cable Internet Service and other interactive services such as, but not limited to, game Channels, information services and enhanced services made available to Subscribers by the Grantee.

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 "City" is the City and County of Denver, Colorado, a body politic and corporate under the laws of the State of Colorado, and all of the area within its boundaries, as such may change from time to time.

1.15 "City Council" means the Denver City Council, or its successor, the governing body of the City and County of Denver.

- 1.16 "Commercial Subscribers" means any Subscribers other than Residential Subscribers.
- 1.17 "Demarcation Point" means the patch panel, termination block or other termination device provided by the Grantee, located within each I-Net site, which represents the interface between the I-Net and the Qualified I-Net User's local network or end user electronics. In all cases the Demarcation Point will be clearly marked as such by Grantee, and will provide an identifiable interface for the end user electronics.
- 1.18 "Designated Access Provider" means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.
- 1.19 "Director" means the Director of the Office of Telecommunications of the City.
- 1.20 "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.
- 1.21 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.
- 1.22 "Expanded Basic Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.
- 1.23 "FCC" means the Federal Communications Commission.
- 1.24 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service or Institutional Network service by means of electric lightwave impulses.
- 1.25 "Franchise" means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.
- 1.26 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.
- 1.27 "GAAP" means generally accepted accounting principles.
- 1.28 "Grantee" means Mile Hi Cable Partners, L.P., or its lawful successor, transferee or assignee.
- 1.29 "Greater Metro Telecommunications Consortium" or "GMTC" means a Colorado agency, formed by intergovernmental agreement between franchising authorities in the greater Denver metropolitan area to communicate with regard to franchising matters collectively and cooperatively. The official list of

Members of the GMTC is contained in Exhibit A, which Exhibit the City may update from time to time at its sole discretion as additional franchising authorities join, or separate from, the GMTC.

1.30 "Gross Revenues" means any and all revenue received by the Grantee, or by any other entity that is a Cable Operator of the Cable System including Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Basic Service; any expanded Tiers of Cable Service; optional Premium Services; installation, disconnection, reconnection and change-in-service fees; Leased Access Channel fees; remote control rental fees; all Cable Service lease payments from the Cable System; late fees and administrative fees; fees, payments or other consideration received by the Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment; advertising revenues; the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service and accounted for as revenue under GAAP; revenues from program guides; revenue from data transmissions to the extent these transmissions are considered Cable Services under federal law; additional outlet fees; revenue from Cable Internet Service to the extent this service is considered a Cable Service under federal law; franchise fees; revenue from interactive services to the extent they are considered Cable Services under federal law; revenue from the sale or carriage of other Cable Services; and revenue from home shopping, bank-at-home Channels and other revenue-sharing arrangements. Gross Revenues shall include revenue received by any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the franchise fees. Gross Revenues shall not include (i) to the extent consistent with GAAP, Bad Debt; provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) the Capital Contribution specified in subsection 9.3; or (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The franchise fee is not such a tax.

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

1.31 "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.

1.32 "Hub" means an intermediary exchange point in the signal distribution portion of the Cable System (including the I-Net), located between the Headend and the Nodes.

1.33 "Institutional Network" or "I-Net" means that part of the Cable System facilities or capacity designed principally for use by Qualified I-Net Users (as that term is defined in subsection 10.2); provided, however, nothing in this definition prevents the Institutional Network from being used to send communications to or receive communications from Subscribers or the general public, by remote terminals or otherwise including, by way of example and not limitation, through connections between the Institutional Network and the Subscriber Network.

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

1.35 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming by Persons other than Grantee, for a fee or charge.

1.36 "Node" means an exchange point in the signal distribution system portion of the Cable System (including the I-Net), where in the case of the Subscriber Network, optical signals are converted to RF signals.

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

1.38 "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.

1.39 "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.

1.40 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas, including without limitation, those listed in Exhibit B.

1.41 "State" means the State of Colorado.

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

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

1.44 "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)).

1.45 "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)).

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

1.47 "Two-Way" means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.48 "Upgrade" means improvements to the Cable System, as specifically detailed in subsection 12.1 of this Franchise.

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

(B) EXHIBITS

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

- 1) *Exhibit A*, entitled Members of the Greater Metro Telecommunications Consortium.
- 2) *Exhibit B*, entitled List of Streets, Alleys and Public Places.
- 3) *Exhibit C*, entitled Customer Service Standards.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the City to construct, operate, maintain, reconstruct, rebuild and Upgrade a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

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

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City and County of Denver, and the ordinances and regulations enacted pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

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

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any 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 terms and conditions of this Franchise.

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

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

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

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

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

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Rights-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City's Rights-of-Way in compliance with all applicable City construction

codes and procedures. As trustee for the public, the City is entitled to fair compensation to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow City-established requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City 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 Rights-of-Way through joint trenching and other arrangements.

2.3 Effective Date and Term of Franchise

(A) This Franchise and the rights, privileges and authority granted hereunder shall take effect on January 1, 2000 (the "Effective Date"), and shall terminate on December 31, 2009, unless terminated sooner as hereinafter provided. If the Cable System is Upgraded pursuant to subsection 12.1 (A) within three (3) years of the Effective Date, the term of this Franchise shall be extended by five (5) years, until December 31, 2014.

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

2.4 Franchise Nonexclusive

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

2.5 Police Powers

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

(B) The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2.6 Grant of Other Franchises

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

2.7 Familiarity with Franchise

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 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 relating to the Upgrade of the Cable System, and all other requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, 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 and in consideration of permission to use the City's Rights-of-Way, Grantee shall pay as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such franchise fee shall commence as of the Effective Date of this Franchise.

3.2 Payments

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

3.3 Acceptance of Payment and Recomputation

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

3.4 Quarterly Franchise Fee Reports

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

3.5 Annual Franchise Fee Reports

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

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the City, including the City's Auditor or his/her authorized representative, shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that franchise fee payments have been underpaid by one percent (1%) or more, Grantee shall pay the total cost of the audit, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period. The City's right to audit and the Grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the City.

3.7 Late Payments

In the event any payment due quarterly is not received within thirty (30) 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 City receives the payment.

3.8 Underpayments

If a net franchise fee underpayment is discovered as the result of an audit, Grantee will be assessed damages and interest pursuant to Article VII, paragraph 10 of the City Charter, as such may be amended from time to time. The City will provide at least ten (10) days written notice to the Grantee prior to the imposition of this Charter provision.

3.9 Alternative Compensation

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

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the City 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, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the franchise fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not franchise fees as defined under any federal law, nor are they to be offset or credited against any franchise fee payments due to the City, nor do they represent an increase in franchise fees to be passed through to Subscribers pursuant to any federal law.

3.12 Tax Liability

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

3.13 Financial Records

Grantee agrees to meet with a representative of the City 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 City deems necessary for reviewing reports and records.

3.14 Payment on Termination

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

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under State and local law, to any agent including, but not limited to, the GMTC, in its sole discretion.

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

4.2 Rates and Charges

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

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates and to Multiple Dwelling Unit Subscribers as authorized by FCC rules. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor 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:

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

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

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

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

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than four (4) consecutive months (or such other period as may be approved by the City) to purchase Cable Services at such rate or charge.

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

4.5 Cross Subsidization

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

4.6 Reserved Authority

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

4.7 Time Limits Strictly Construed

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

4.8 Regulations Promulgated by City Council

(A) In addition to the powers held by the City under the Colorado Constitution and the City Charter, the City Council is hereby authorized to promulgate by ordinance, in the exercise of its lawful powers, such additional regulations as it shall find necessary to effectuate fully the construction and operation of a Cable System pursuant to this Franchise; provided that such additional regulations shall be consistent with the terms and conditions of this Franchise and shall not expand the obligations of the Grantee, nor limit the Grantee's benefits, as provided in this Franchise.

(B) The Grantee may propose additional regulations by application to the City Council, but the City Council shall not adopt any such proposal unless it expressly determines that such proposal is consistent with the terms and conditions of this Franchise.

4.9 Franchise Modification Procedure

The application procedure of this subsection shall be followed by the City and the Grantee whenever a change to a term or condition of this Franchise is sought.

(A) An application shall be filed with the Director, in a form and containing such supporting facts and information as the Director, in his/her reasonably exercised discretion, may determine to be necessary.

(B) An application may be rejected for inadequacy by the Director if it contains an inadequate description of what is being applied for, is not in an acceptable form, or contains insufficient facts and information for adequate consideration.

(C) A rejection of an application for inadequacy shall be made by written notice to the Grantee within thirty (30) days after the Director receives such application, and shall state the deficiencies. The Director shall use his/her best efforts to identify in the notice all apparent deficiencies in such application so as to diminish, to the extent reasonably possible, the need for repeated applications. The Grantee shall use its best efforts to remedy the deficiencies in the application identified by the Director. The Director shall have fifteen (15) days after receipt of the Grantee's revised application to determine the adequacy of such application. If the Director again rejects the application, the Grantee may appeal such rejection to the City Council, which shall make a determination of the adequacy of the application within thirty (30) days after the Grantee files its appeal. The City Council may, if it determines that the application is adequate, proceed to determine the merits of the application pursuant to subsections (F) through (K) below.

(D) Upon acceptance, the Director shall review and study the application and consider the necessity of further study and reporting prior to making a determination or submitting the matter to the City Council. The review and study shall be completed within sixty (60) days unless such period is extended by the City Council for cause shown by the Director, or for a longer period of time by agreement with the Grantee.

(1) If the matter is one which under the terms of this Franchise shall be determined by the City Council, the Director shall, within the time specified for completion of review and study, submit to the City Council for its consideration the Grantee's application, the results of the review and study, together with the Director's recommendation and other pertinent information, documents and exhibits. At the expiration of the review and study period, if the matter has not been placed upon the City Council agenda, the City Council shall, upon request of the Grantee, place the application upon the City Council agenda for the next regular meeting.

(2) If the matter is one which under the terms of this Franchise is to be determined by the Director or has been delegated by the City Council to the Director, the Director shall, within the time specified for completion of review and study, render a decision on the Grantee's application and give written notice of such decision to the Grantee within ten (10) days after

rendering the decision. If the Director fails to act within the times specified in this subsection, the Grantee may appeal to the City Council pursuant to subsections (F) through (K) below.

(3) Notwithstanding any provision of this Franchise to the contrary, the Director may, upon completion of the review and study period, request that the City Council determine the matter in accordance with subsections (F) through (K) below.

(4) Any determination made by the Director pursuant to the terms of this Franchise may be appealed by the Grantee to the City Council. The City Council shall determine such appeal in accordance with subsections (F) through (K) below.

(E) During the review and study period, the Grantee shall fully cooperate with the Director in providing information and documents which are related to and reasonably necessary for the proper evaluation of the application. Failure of the Grantee to so cooperate or the Grantee's unreasonable delay in providing information and documents shall be grounds for the City Council to grant a reasonable extension of the review and study period or, if either the lack of cooperation or the delay substantially impairs the study, the City Council may summarily deny the application.

(F) Upon submission, the City Council shall review the application or appeal, any Director or staff studies, and information and documents which accompany the application or appeal. The City Council shall by ordinance approve or deny the application or appeal based on the record within thirty (30) days after completion of the review and study period. However, if the City Council desires a public hearing, or if one is required, the City Council shall set a public hearing to be held within thirty (30) days after completion of the review and study period. Public notice of the hearing shall be given.

(G) At a public hearing pursuant to this subsection, the City Council shall hear reports from the Director, consultants, the Grantee and the public. The City Council shall provide a reasonable but not unlimited opportunity for rebuttal. The City Council may impose reasonable time limitations on verbal presentations, which may be selectively waived to facilitate adequate evaluation of the application or appeal.

(H) If, at the hearing, the City Council determines that additional information or documents are necessary to adequately evaluate the application or appeal, it may continue the hearing from time to time pending receipt of such information or documents. A continuance shall not exceed fifteen (15) days at a time, and the duration of the hearing (including all continuances) shall not exceed thirty (30) days.

(I) Within thirty (30) days after the close of the hearing, the City Council shall, by ordinance, approve or deny the application or appeal. Notice of action on the application or appeal and grounds therefor shall be in writing. The City Council may attach reasonable conditions to its approval of the Grantee's application or its grant of the appeal, provided that such conditions are consistent with this Franchise. If conditions are attached to the City Council's approval, the Grantee shall accept those conditions in writing prior to taking the actions approved by the City Council.

(J) Any time limit provided in this subsection may be waived by consent of both the City Council and the Grantee.

(K) Any application or appeal made or brought pursuant to this subsection shall be deemed to have been approved by the City Council if the City Council fails to act on the matter within the times prescribed in this subsection.

(L) In addition to the application procedure specified above, the City may at any time seek a modification of this Franchise by so notifying Grantee in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed modification(s). If the parties reach a mutual agreement upon the City's suggested modification(s), such modification(s) shall be submitted to the City Council for its approval. If so approved by the City Council, acting by ordinance, then such modification(s) shall be deemed part of this Franchise. If mutual agreement is not reached on the City's request, there shall be no modification.

4.10 Performance Evaluations

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

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in a newspaper of general circulation in the City. 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 City, 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 Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; modifications to this Franchise; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

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

4.11 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with Exhibit C: Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with applicable law, including FCC law, rule or regulation.

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

4.12 Force Majeure

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

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

This subsection shall not be used to extend the term of the Franchise beyond that specified in subsection 2.3 (A). Additionally, this subsection shall not apply to the provisions of this Franchise concerning the extension of the term as provided in subsections 2.3 (A) and 12.1 (A), or to the monetary damages related to the Upgrade of the Franchise set forth in subsection 14.8 (A).

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City arising out of, or resulting from,

directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City.

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

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

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

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims affecting the City without the City's approval.

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

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

5.2 Insurance

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

(1) Commercial General Liability insurance with limits of no less than five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and three million dollars (\$3,000,000.00) aggregate with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the City. The policy shall contain a severability of interests provision.

(3) Employer's Liability: One million dollars (\$1,000,000.00).

(B) Each policy shall provide that the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without forty-five (45) days' written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

(C) Self insurance is not permitted for this Franchise, unless approved in advance and in writing by the Director and the City's Risk Administrator.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

(A) Endorsements.

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

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

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

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

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

(C) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City prior to the commencement of activities associated with this Franchise. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise and City laws.

5.4 Letter of Credit

(A) No later than the Effective Date of this Franchise, Grantee shall establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of one hundred thousand dollars (\$100,000).

(B) The letter of credit shall be maintained at one hundred thousand dollars (\$100,000) throughout the term of this Franchise, provided that once every three (3) years, the City shall have the right to increase this amount to reflect increases in the Denver Metropolitan Area Consumer Price Index during the prior three (3) year period.

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

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

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

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

5.5 Payment and Performance Bonding

Upon the Effective Date of this Franchise, Grantee shall provide a payment and performance bond to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to Upgrade its Cable System; to relocate and remove its facilities; and to restore City Rights-of-Way and other property. The amount of the payment and performance bond(s) shall be one million dollars (\$1,000,000). Grantee may be required to obtain additional bonds, such as generally applicable construction bonds, in accordance with the City's ordinary practices. The bond shall be in a form and with a surety acceptable to the City's Risk Administrator and in a form acceptable to the City Attorney. 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.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance. The City's current Customer Service Standards are set forth in Ordinance No. 487, Series of 1994, attached hereto as Exhibit C. The City and the Grantee agree that the letter of credit required by subsection 5.4 of this Franchise shall serve as the security fund referenced in Section IV (B) of the Customer Service Standards, and the City shall not draw upon the GMTC letter of credit for violations of the Customer Service Standards. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

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

6.3 Subscriber Contracts

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

6.4 Advance Notice to City

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

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

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

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon request:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by

the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

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

(3) Current Subscriber Records and information;

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

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

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

7.4 Annual Reports

Within sixty (60) days after the end of the calendar year, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information for the City:

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

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

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

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

7.5 Copies of Federal and State Reports

Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall submit such documents to the City no later than thirty (30) days after filing, mailing, publication, or completion. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all documents provided to any federal, State, or local regulatory agency

as a routine matter in the due course of operating Grantee's Cable System within the City, Grantee shall make such documents available to the City upon request.

7.6 Complaint File and Reports

Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain open to the City during normal business hours. Grantee shall provide the City an executive summary monthly in accordance with Exhibit C: Customer Service Standards, which shall include the following information:

- (A) A summary of service requests, identifying the number and nature of the requests and their disposition;
- (B) A log of all service interruptions;
- (C) A summary of customer complaints referred by the City to Grantee;
- (D) Average response time for service calls;
- (E) Phone activity report;
- (F) Video programming changes (additions/deletions); and
- (G) Such other information as reasonably requested by the City, provided that Grantee is given thirty (30) days prior written notice of such request before the beginning of the applicable month.

7.7 Failure to Report

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

7.8 False Statements

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

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

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

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information;
- (J) Programming addressed to diverse ethnic and minority interests in the City;
- (K) National, State, and local government affairs;
- (L) Access programming;
- (M) Local programming regarding the City, as well as regional issues, events and affairs; and
- (N) Programming of interest to the City's elderly population.

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 City.

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

8.3 Ascertainment of Programming and Customer Satisfaction

Upon request of the City, the Grantee shall, at the sole expense of Grantee, undertake a biennial survey of community views of cable operations in the City, including but not limited to programming, response to community needs, satisfaction and dissatisfaction with Cable Services offered by Grantee, and customer service. Grantee shall consult and cooperate with the City in developing and implementing an ascertainment methodology. The final form and content of the survey shall be as mutually agreed upon by the Grantee and the City. Grantee shall provide the results of such survey to the City within two (2) months after completing the survey. Upon request, Grantee shall also provide a copy of results from any

other survey of Subscribers in the City conducted independently by the Grantee within the previous year. Any survey results conducted within the City which are intended for external publication shall also be provided to the City. Nothing herein shall be construed to limit the right of the City to conduct its own surveys at its own expense.

8.4 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.

8.5 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.

8.6 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service 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, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Director, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.7 Cable Bill Inserts

Upon reasonable advance notice, but no more often than twice per calendar year, the Grantee will provide the City with an insert space in Subscribers' cable television bills. Grantee shall provide the City with the printing specifications for the inserts. The City shall be responsible for the content and printing costs of the insert, and for the cost of shipping the printed inserts to the Grantee's billing agent. The City shall only pay incremental mailing costs if the City's insert results in an increase to the standard mailing costs normally incurred by the Grantee in sending its Subscriber billing statements.

The Grantee shall also use reasonable efforts to accommodate the City's requests for the placement of messages on billing statements, at no cost to the City.

8.8 Services for the Disabled

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

8.9 Cable Internet Service to Schools and Libraries

Grantee has established a voluntary initiative to provide Cable Internet Service to all State-accredited K-12 public and private schools and public libraries which are passed by the Cable System at no cost to the City or institutions. Grantee intends to provide each of these schools and libraries with one outlet of unlimited Internet access, including the necessary cable modem. The City encourages and supports Grantee's efforts in this area.

SECTION 9. ACCESS

9.1 Support for Access

The payments made by Grantee under this subsection shall be in satisfaction and in lieu of the payments in support of community programming specified to be made in January 2000 and January 2001 under Section 1.7 (c)(1) of the June 14, 1984 Franchise between Grantee and City, as modified by Ordinance No. 55, Series of 1989. The parties acknowledge that these obligations arose under the terms of the June 14, 1984 Franchise, and are therefore grandfathered under the Cable Act. This support may be used by the City for Access operating support at its sole discretion.

Grantee shall provide Access support to the City as follows:

\$500,000	On or before January 31, 2000
\$500,000	On or before January 31, 2001
\$500,000	On or before January 31, 2002
\$500,000	On or before January 31, 2003
\$170,000	On or before January 31, 2004

9.2 Initial Capital Grants

Grantee shall provide initial capital grants for Access or I-Net purposes to the City as follows:

\$825,000	On or before January 31, 2000
\$1,200,000	On or before January 31, 2001
\$850,000	On or before January 31, 2002

These grants are to be used by the City, in its sole discretion, for Access equipment (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment), for Access-related facilities renovation or construction, or for City I-Net purposes in accordance with Section 10 of this Franchise.

Grantee may recover each of these capital grants over a one (1) year period or more at its discretion in accordance with applicable federal rate regulations.

9.3 Capital Contribution

Beginning with June 2003 billing cycles, Grantee shall collect and provide to the City up to \$.63 per month per Residential Subscriber for Access or I-Net capital (the "Capital Contribution"). Beginning with June 2004 billing cycles, Grantee shall collect and provide to the City up to \$.87 per month per Residential Subscriber for the Capital Contribution. Beginning with June 2005 billing cycles, Grantee shall collect and provide up to \$1.00 per month per Residential Subscriber for the Capital Contribution. Grantee shall not be responsible for collecting or paying the Capital Contribution with respect to gratis accounts. The City shall give Grantee at least ninety (90) days advance written notice of Grantee's obligation to begin payment of the Capital Contribution, including the monthly amount to be collected. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter from when the Capital Contribution takes effect. The City shall have discretion to allocate the Capital Contribution in accordance with applicable law. The City may adjust the amount of the Capital Contribution on an annual basis (up to the maximum amount specified in this subsection), provided that Grantee is given ninety (90) days advance written notice.

9.4 Management and Control of Access Channels

The City shall have sole and exclusive responsibility for identifying the Designated Access Providers and allocating the Access resources under this Section. The City may authorize Designated Access Providers to control and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. To the extent of such designation by the City, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access facilities. The City or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise. Grantee shall cooperate with the City and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access. Nothing herein shall prohibit the City from authorizing itself to be a Designated Access Provider. Nothing herein shall prohibit the City from assigning several Designated Access Providers to share a single Access Channel.

9.5 Access Channels

Grantee shall, at its expense, provide eight (8) Downstream Access Channels. As of the Effective Date, these Access Channels shall be allocated as follows: three (3) Public Access Channels, one (1) K-12 Educational Access Channel, one (1) Higher Education Access Channel, two (2) Government Access Channels, and one (1) unassigned Access Channel.

As of the Effective Date, two (2) Public Access Channels, two (2) Educational Access Channels, and two (2) Government Access Channels shall be Activated. When fifty percent (50%) of Subscribers have the ability to receive the expanded Channel line-up as a result of the Upgrade required by subsection 12.1 (A), and within sixty (60) days following receipt of a written request of the City, the third Public Access Channel will be Activated. Following the Upgrade, the one (1) unassigned Access Channel may be Activated pursuant to the procedures in subsection 9.8. Until such time, the unassigned Access Channel may be used by the Grantee for programming of its sole discretion.

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

9.6 Change In Technology

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

9.7 Underutilized Access Channels

Grantee and the City agree that it is their mutual goal to fully and efficiently use the Channel capacity of the Cable System, which may include allowing the Grantee to use underutilized time on Access Channels. If Grantee believes that any Access Channel has underutilized time, Grantee may file a request with the Director to use that time. In response to the request, the Director will consider a combination of factors, including but not limited to, the community's needs and interests, and the source, quantity, type and schedule of the programming carried on the Access Channel. The Director will also consider, taking into account the mission of the Access programming, whether it is feasible for the Designated Access Providers to cluster Access programming into blocks of time such that the Channel space can be compatibly shared between the Designated Access Provider and the Grantee and/or if several Designated Access Providers can combine their programming onto a single Access Channel. The Director shall render his/her decision regarding the matter within sixty (60) days of receiving the request. Should the Director find that the Access Channel or portion of the Access Channel may be used by the Grantee, then Grantee may begin using

such time ninety (90) days after receipt of the decision. The Grantee's request shall not be unreasonably denied. Any permission granted pursuant to this subsection for use of an Access Channel or a portion thereof shall be considered temporary.

At such time as a Designated Access Provider believes that it has the resources and ability to utilize the Access Channel time currently used by the Grantee pursuant to this subsection, a Designated Access Provider may request that the Director return such Channel or portion of the Channel for Access purposes. In response to the request, the Director will consider a combination of factors, including but not limited to, the community's needs and interests, and the source, quantity, type and schedule of the programming proposed to be carried on the Access Channel as well the applicant's ability and resources to acquire or produce the proposed Access programming. The Director will also consider, taking into account the mission of the Access programming, whether it is feasible for the Designated Access Providers to cluster Access programming into blocks of time such that the Channel space can be compatibly shared between the Designated Access Provider and the Grantee and/or if several Designated Access Providers can combine their programming onto a single Access Channel. The Director shall render his/her decision regarding the matter within sixty (60) days of receiving the request. Should the Director find that the evidence exists to support the return of the Access Channel or portion of the Access Channel to the Designated Access Provider, then Grantee shall surrender the requested time on the Access Channel within ninety (90) days of receiving the decision. The Designated Access Provider's request shall not be unreasonably denied.

9.8 Additional Access Channels

The City may require Grantee to Activate, at Grantee's expense, up to two (2) additional Downstream Access Channels, for a maximum of ten (10) Access Channels, under the procedures specified below.

If a Designated Access Provider believes that additional Access Channel capacity is needed, the Designated Access Provider may file a request with the Director. In his/her deliberations, the Director will consider supply and demand, and, in particular, the ability and resources of the Designated Access Provider to produce additional Access programming, the interest of the community in the additional Access programming as measured through a survey methodology that is mutually-acceptable between the City and the Grantee, consideration of the programming that would be displaced, how much programming is produced on the existing Access Channels in the Denver metro area, how much programming on the existing Access Channels is repeated, how much programming on the existing Access Channels is character-generated, whether it is feasible for the Designated Access Providers to cluster Access programming into blocks of time such that the Channel space can be compatibly shared between multiple Designated Access Providers, and if several Designated Access Providers should combine their programming onto a single Access Channel.

Should the Director find that the evidence exists to support the Activation of an additional Access Channel, then the Director shall provide his/her decision in writing and Grantee shall provide the Activated Channel within ninety (90) days of receiving the request. Grantee may appeal the decision of the Director to the City Council.

9.9 Access Channels On Basic Service

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

9.10 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall also use reasonable efforts to institute common Channel assignments among the GMTC members for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number.

9.11 Relocation of Access Channels

Grantee shall provide the City with a minimum of ninety (90) days notice, and use its best efforts to provide one hundred twenty (120) days notice, prior to the time any Access Channel designation is changed, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible. In addition, Grantee shall pay to the City an amount equal to the City's costs in remarketing the location of the Access Channels and managing the relocation administratively and technologically, up to a maximum of fifty cents (\$.50) per Subscriber. Grantee shall only be allowed to

recover such amounts paid to City as “external costs” (as that term is used in 47 C.F.R. Section 76.922) if the movement of Channels is required by federal, State or local law. Grantee, at Grantee's expense, will place the City's notices of the Channel change on or with its regular monthly billings, upon the City's request. Any new Channel designations for the Access Channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards.

9.12 Access Interconnections

Grantee acknowledges that is the City’s goal to further the community’s needs and interests by providing for the Interconnection of Access Channels between the City and surrounding communities. Therefore, Grantee shall continue the Access Channel Interconnection which is in place as of the Effective Date which facilitates the sharing of Access programming between and among participating GMTC members. In addition, the City shall have the right to use any Access Channel for Access programming provided to it through an Interconnect.

9.13 Return Lines

(A) Grantee shall, at its expense, continuously maintain throughout the life of this Franchise return lines to the Headend from the production facilities of each of the Designated Access Providers that are in existence on the Effective Date, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels, unless these locations are no longer used by Designated Access Providers.

(B) Grantee shall upgrade the return lines to the Headend from the production facilities of each of the Designated Access Providers that are in existence on the Effective Date to Fiber Optics and construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the City. All Base Construction Costs shall be paid by the City or the Designated Access Provider, in accordance with subsection 10.5 of this Franchise.

9.14 Technical Quality

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

9.15 Information about Access Programming to Subscribers

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

SECTION 10. INSTITUTIONAL NETWORK

10.1 Private Network

The I-Net is a private communications network governed by this Franchise and the Cable Act. The I-Net may be used by the City and any Qualified I-Net User to provide any technically and legally compatible, non-commercial service. The City agrees to require all Qualified I-Net Users to stipulate and agree to this limitation. “Technically compatible” includes, but is not limited to, the understanding that the I-Net will not be used in any way that will intentionally or unreasonably interfere with the signal quality and the normal operation of Grantee's Subscriber Network. “Legally compatible” includes, but is not limited to, the understanding that the I-Net may not be used for Telecommunications Services unless by separate agreement between the Grantee and Qualified I-Net Users, and that the Qualified I-Net Users will not resell access to the I-Net; provided, however, that the Qualified I-Net Users shall have the right to provide for the internal switching, routing and/or cross connection to Telecommunications carriers of its choice, for its normal voice and data communications operations, unless expressly prohibited by State or federal law. In addition, the Grantee and the City shall at all times provide such management of the I-Net as applicable to ensure the necessary protection of proprietary I-Net signals.

10.2 Qualified I-Net Users

The I-Net will be for the use of the City and any Qualified I-Net Users. Qualified I-Net Users are any of the following which are passed by the Cable System and located in the Franchise Area: (i) the City and its agencies (including, without limitation, the Denver Zoological Gardens, the Denver Botanic Gardens, the Colorado Museum of Natural History, the Denver Health Medical Center, the Water Board, and the Denver Performing Arts Complex), other governments and their agencies, public libraries, and all State-accredited public schools, and (ii) other entities that Grantee and the City agree in the future may use the I-Net.

10.3 I-Net Use

(A) Continued Use of the I-Net. The City is hereby granted the irrevocable right of continued use of the I-Net described in this Franchise, during the term of this Franchise. If, at any point, Grantee ceases to operate or maintain the I-Net, due to abandonment, revocation or for any other reason, the City may operate and maintain the I-Net and shall have an absolute right to obtain access to and utilize any Grantee facilities or equipment required to do so.

(B) Appropriate uses of the I-Net include, by way of example and not limitation:

(1) High-speed transmission of GIS and other data to and from City departments and to and from other Qualified I-Net Users;

(2) Transmitting live and stored instructional materials (whether in the form of data, video or otherwise) for distance learning and staff training purposes to and from Qualified I-Net Users;

(3) Providing videoconferencing among municipal and educational locations and to other locations for municipal and educational purposes;

- (4) Linking public libraries and providing terminals at library locations that allow members of the public to access library databases and other remote databases;
- (5) Providing for remote origination of Access programming;
- (6) Facilitating connections for telephone systems, security systems and other critical public entity communications applications, so long as such systems are not providing Telecommunications Services.

10.4 I-Net Components

The City has delivered to Grantee a document which specifies certain sites to be served by the I-Net and the performance specifications needed at each site, such as capabilities for bi-directional video, voice, and low- and high-speed data communications. The following I-Net components are available and will be selected by the City in cooperation with the Grantee in order to ensure the most efficient and cost-effective I-Net options. The parties intend that the initial construction of the I-Net will be performed concurrently with the Upgrade of Grantee's Subscriber Network to the greatest extent possible.

(A) Incremental Backbone. An “Incremental I-Net Backbone” means those Fiber Optics which are integrated into the Fiber Optic portion of the Grantee’s Subscriber Network, from the Headend to each Node in the City, as constructed during the Upgrade outlined in subsection 12.1 of this Franchise, and will be owned and maintained by the Grantee. The number of Fiber Optic lines constructed from the Headend to each individual Hub, and from each Hub to each individual Node, shall be dependent upon the I-Net locations and uses determined by the City. Based on the I-Net specifications determined by the City in cooperation with the Grantee, the Fiber Optics constructed may be dedicated for I-Net uses, or the I-Net signals may be multiplexed over shared Subscriber Network and I-Net Fiber Optics and related electronics in order that the shared Fiber Optics and related electronics may be used by the Grantee for other purposes in addition to the I-Net.

Should the City require any separate backbone electronics to be installed by the Grantee at the Hub or Node locations of the Grantee’s Subscriber Network, the Grantee shall own and maintain such electronics, and Grantee shall install same during the construction of the incremental Fiber Optic construction period. Alternatively, if the City wants to own these separate backbone electronics, the City and the Grantee shall enter into a separate agreement for the Grantee to maintain such components. If the City wants such equipment returned to it at any time, it shall give written notice to the Grantee, and Grantee shall return such equipment to the City.

(B) Separate Backbone. A “Separate I-Net Backbone” means those Fiber Optics and related electronics which are in separate sheaths and not integrated into the Fiber Optic portion of the Grantee’s Subscriber Network. Although the separate Fiber Optics and related electronic components will be constructed during the Upgrade outlined in subsection 12.1 of this Franchise to the greatest extent possible, any separate I-Net backbone will be owned, operated and maintained by the City, unless a separate business arrangement is made with Grantee.

(C) Node to I-Net Site. Distribution from the Nodes to designated Qualified I-Net User sites will be as directed by the City. The Qualified I-Net User will provide the route and the access from the property line of the I-Net site into the facility. Efforts will be made by Grantee and the City to ensure that the I-Net distribution system and drops share common paths with the Grantee's Subscriber Network where it is possible to do so, in order to minimize costs to the Qualified I-Net Users. This portion of the I-Net will be owned and maintained by the Grantee, unless otherwise specified by the City.

(D) I-Net Site to I-Net Site. In some locations, Grantee may be directed by the City to construct Fiber Optics between two I-Net sites. These I-Net components will be owned, operated and maintained by the City, unless otherwise requested by the City.

(E) Interconnection to Existing City Infrastructure. At some locations, Grantee may be directed to Interconnect the I-Net to the City's existing Fiber Optic infrastructure. The I-Net components constructed by the Grantee may be owned, operated and maintained by either the City or the Grantee, as specified by the City.

(F) Interconnection Between I-Net and the Subscriber Network. Grantee will provide an Interconnection between the I-Net and the Subscriber Network at the Headend.

(G) Network Equipment. Working in cooperation, the City and the Grantee shall determine the network equipment that is necessary for the operation of the I-Net from the Headend to the Demarcation Point at each I-Net site (excluding end user electronics), and Grantee shall install this equipment at appropriate points on the I-Net. Grantee shall not install or be responsible for any I-Net end user equipment past the Demarcation Point, unless through a separate agreement with the City; provided, however, that Grantee shall provide technical expertise as necessary to ensure that the end user equipment is compatible with the I-Net.

10.5 Determination of I-Net Costs

The City or Qualified I-Net User shall pay the following in return for Grantee's construction of the I-Net.

(A) Base Construction Cost. The "Base Construction Cost" is the direct incremental costs of labor and materials that Grantee incurs in the construction, installation, and initial testing of the I-Net Fiber Optics, hardware and equipment, as specified below.

(1) Costs of necessary materials, equipment and hardware to construct the I-Net from the Node to each Demarcation Point, or from Demarcation Point to Demarcation Point, and any Separate I-Net Backbone constructed. Grantee will use the same procurement process for obtaining Separate I-Net Fiber Optics and related electronic components as it uses to acquire similar materials for its Subscriber Network, to provide the materials to the City and Qualified I-Net Users in the most cost-effective manner; and

(2) The allocated portion of any additional Fiber Optics and electronics installed on an Incremental I-Net Backbone; and

- (3) Payments made by Grantee to contractors specifically for I-Net construction; and
- (4) Wages and salaries of Grantee's employees performing construction of the I-Net, for such part of their time as is employed specifically on the I-Net; and
- (5) Other costs incurred on the relevant portion of the I-Net in the performance of the work if and to the extent approved in advance in writing by the City.

The City shall not be charged for any indirect costs, except that ten percent (10%) will added to the total of the costs specified in subsections 10.5 (A) (1)-(5) to cover the compensation of Grantee's employees and contractors who are involved in the design of the I-Net and other I-Net work whose time cannot be directly measured against the project, as well as to cover those miscellaneous expenses items which are not directly quantifiable. This ten percent (10%) figure shall be part of the "Base Construction Cost."

(B) Network Expenses. For portions of the I-Net which are constructed incrementally, and therefore are owned and maintained by the Grantee, "I-Net Network Expenses" shall be assumed to be \$500 per mile per year. For purposes of this subsection 10.5, I-Net Network Expenses include those expenses incurred by Grantee in maintaining the continuity of the I-Net connectivity over the incremental Fiber Optic backbone from the Headend, through the Hubs and Nodes to the Demarcation Points. I-Net Network Expenses include the incremental repair to damaged I-Net Fiber Optics, the cleaning of the incremental I-Net Fiber Optic connectors, testing of the incremental Fiber Optics separately from the Subscriber Network Fiber Optics, and the replacement of, at the Grantee's sole cost, any faulty or damaged common backbone electronics which are required to maintain the continuity of I-Net connectivity to the Demarcation Points.

In the event either party believes that these I-Net Network Expenses are substantially at variance with actual expenses, either party may initiate the modification procedures described in subsection 4.9 of this Franchise.

(C) If the Grantee qualifies for the term extension of the Franchise as specified in subsections 2.3 (A) and 12.1 (A), the Qualified I-Net Users shall pay the Grantee for years eleven (11) through (15) of this Franchise an I-Net Network Expense fee equal to the costs incurred by Grantee for maintaining the I-Net as described in subsection 10.5 (B) above, adjusted annually beginning in year eleven (11) of this Franchise term by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W, 1982-84=100). Notwithstanding the foregoing, Grantee shall be entitled to recover from the Qualified I-Net Users no less than the cost of the actual I-Net Network Expenses, for years eleven (11) through fifteen (15) of this Franchise.

(D) Total Costs. For purposes of this Section, "Total Costs" means those described in this subsection 10.5 (D). In addition to Base Construction Costs, Grantee shall be entitled to eight percent (8%) annual interest on the Base Construction Cost (as identified in subsection 10.5 (A) above), calculated from the Activation Date (as defined in subsection 10.6 (D) below) of each I-Net site or I-Net component through December 31, 2009. Grantee shall also be entitled to a fifteen percent (15%) return on investment for each I-Net component constructed that it will own and maintain (where the investment is the Base Construction Cost plus I-Net Network Expenses, as defined above). In the alternative, Grantee shall be

entitled to a twenty percent (20%) return on investment for each I-Net component constructed that will be owned, operated and maintained by the City (where the investment is only the Base Construction Cost). The City or any Qualified I-Net User has the option to prepay any portion of the Total Cost in order to reduce the interest payments.

10.6 Initial I-Net Construction

(A) Grantee shall, in consultation with the City, incorporate the I-Net requirements provided by the City pursuant to subsection 10.4 into its Upgrade design. As each phase of the design is completed, Grantee shall provide the City with preliminary Total Cost estimates pursuant to subsection 10.5, and maps showing the proposed design and routing, for each City identified I-Net site or I-Net component. For purposes of this estimate, Grantee will calculate interest based on monthly payments. The City shall have thirty (30) days from receiving the preliminary Total Cost estimates and maps to give final approval thereof to Grantee (excluding permits and approvals required under applicable codes and ordinances), or the City may require Grantee to make such changes as may be required to ensure that the design is consistent with the City's requirements. If the City does not act within the thirty (30) day period, Grantee may proceed with the Upgrade of the Subscriber Network for that phase and shall not construct the I-Net design submitted. The City may later direct the Grantee to construct that portion of the I-Net in accordance with subsection 10.7. If the City orders changes to the design, the City shall have ten (10) days from receiving the modified Total Cost estimates and design to approve the same. If the City does not act within the ten (10) day period, Grantee may proceed with the Upgrade of the Subscriber Network for that phase and shall not construct the I-Net design submitted. The City may later direct the Grantee to construct that portion of the I-Net in accordance with subsection 10.7. The City shall act at all times in an expeditious manner so as not to delay the Upgrade to the Subscriber Network.

(B) The City may direct Grantee to construct or not construct any specific portions or segments of the I-Net, or change its equipment requirements, up to the point where Grantee begins construction of the Node area where such I-Net portion is located, and the parties agree that these changes will not delay the completion of the project or prevent Grantee from completing the I-Net initial construction as part of Grantee's Upgrade of its Subscriber Network. If the City wishes to add or delete sites or change its equipment requirements after construction has commenced, Grantee will make the changes and complete them as part of the construction of the Subscriber Network if the City agrees to (i) pay any additional costs caused by the change order, in addition to incremental costs; and (ii) provide appropriate extensions of time under subsection 10.6 (D) below in order to permit Grantee to make the change in an orderly fashion. After receiving a request for a change order, Grantee promptly will provide the City an estimate of the Total Costs including the requested changes, and any time extensions that would be required if the change were made. If the City then directs Grantee to proceed with the change, Grantee will make the change.

(C) If Grantee proceeds with the ordering of materials and Upgrade of its Subscriber Network in a particular phase without accommodating the City's I-Net requirements, then, to the extent that the City is not at fault, Grantee shall subsequently, upon a schedule determined by the City in consultation with Grantee, design and construct such improvements as are necessary to accommodate the City's I-Net requirements at a cost to the City no greater than what would have been the incremental cost of accommodating those requirements as a part of the Subscriber Network Upgrade. Under no circumstances will the City be considered at fault if it meets the deadlines established in this subsection.

(D) Activation. The initial construction of the I-Net shall be substantially completed concurrent with Grantee's completion of the Subscriber Network Upgrade. More particularly, as construction of the Upgraded Subscriber Network is completed in a geographic area served by a Node, I-Net work within that geographic area will also be completed and the I-Net Activated within six (6) months thereafter. For purposes of this subsection, I-Net Activation shall mean that all the necessary equipment to Activate the I-Net site or component has been installed and tested in accordance with subsection 10.6 (E) below by Grantee, excluding the installation and Activation of any end user equipment required to utilize the I-Net.

(E) Initial I-Net Fiber Optic Testing / Certification. All I-Net Fiber Optics installed either on an incremental build or separate build will have OTDR testing performed, and OTDR printouts will be included in the final documentation package to certify that an I-Net location is deemed Activated. Specifically, the I-Net Fiber Optics will be tested for end-to-end attenuation at both 1310nm and 1550nm, using an optical power source and optical power meter. Tests will be performed after the connectors have been installed and will be from the jumper side of the termination panel bulkhead connector, at the Fiber Optic origination point and through and to the jumper side of the bulkhead connectors at each I-Net location's Demarcation Point Fiber Optic termination panel. Maximum loss will not exceed manufacturers' passive cable system attenuation, adjusted for cable length, splice loss and connector loss. Minimum optical receive power will not fall below what is necessary for any particular I-Net service based on the manufacturers' minimum input specifications for the end user equipment. The maximum connector pair loss is assumed to be .5dB.

(F) Nothing in this Franchise shall be read to prevent the parties from agreeing to different procedures for I-Net construction as long as those procedures permit the I-Net to be constructed efficiently and cost-effectively. Consistent with this goal, it is the intent of the parties to cooperate to minimize any delay in the Subscriber Network Upgrade while providing sufficient time to permit the City to review and approve design plans and cost estimates.

10.7 Future I-Net Construction or Upgrades

Grantee and the City shall cooperate in investigating and considering options for upgrades to the I-Net. The City may direct Grantee to upgrade the I-Net or construct additional I-Net plant at any time, or to add, remove or replace I-Net equipment at any time throughout the initial term of this Franchise and any extension thereof. After receiving a request for additional I-Net work, Grantee promptly will provide the City an estimate of the Total Costs associated with the additional work. If the City then directs Grantee to perform the work, Grantee will perform it. After the completion of the initial I-Net construction, any such work shall be performed and completed within six (6) months after the City directs that the work be performed, unless the parties agree to a different completion date.

10.8 Warranties/Acceptance

The acceptance of any component of the I-Net, or reimbursement therefore, shall not waive any defect in the work or constitute acceptance of work or equipment not in compliance with the applicable design and specification requirements. Grantee shall provide in its contracts for warranties of the work and equipment satisfactory to the City and will provide for the enforcement of such warranties and for the correction of work or equipment

not provided in accordance with applicable design and specification requirements or which is otherwise defective.

10.9 Payment

(A) Form of Invoice. Following the Activation of each I-Net site or component of the I-Net, Grantee shall prepare and submit (i) a payment schedule for the Total Costs, including detail on the Base Construction Costs, I-Net Network Expenses and financing charges pursuant to subsection 10.5 and as may be reasonably required by the City; and (ii) a certificate that the work, materials and equipment for which payment is requested has been incorporated in the I-Net and Activated in accordance with subsection 10.6 (D). City shall have the option of paying on either a monthly or an annual basis.

(B) Payment. Payment for each component of the I-Net shall be made by the City or by Qualified I-Net Users, as determined by the City, unless prepaid in accordance with subsection 10.5. At its discretion, the City may use the capital grants specified in subsection 9.2 or the Capital Contributions specified in subsection 9.3 for payment of the I-Net costs.

(C) In satisfaction and final release by the City of all Grantee's I-Net requirements and obligations arising out of the June 14, 1984 franchise, as subsequently modified, Grantee shall provide a fund, in the amount of two hundred fifty thousand dollars (\$250,000), to be used by the City at its sole discretion for Franchise-related purposes.

10.10 I-Net Service and Performance Standards

Grantee shall only be responsible for meeting these service and performance standards on the portion of the I-Net which it owns and maintains.

(A) Signal Quality. The following standards presume that the I-Net will be constructed solely of Fiber Optics to the Demarcation Point at each Qualified I-Net User site, and that the I-Net will operate in an analog format up to 550 MHz, and in a digital format from 550-750 MHz. If the I-Net incorporates any coaxial cable or the bandwidth is used in a different manner than described above, the parties will negotiate in good faith to modify these standards as appropriate to the circumstances. The I-Net shall achieve performance standards listed below under worst-case conditions for communications occurring between one Demarcation Point and any other Demarcation Point.

(1) Noise – The I-Net will not add more than 4dB carrier-to-noise to transmissions, as measured from one Demarcation Point to another. Signal-to-noise or other interference measurements will be substituted for this standard where appropriate.

(2) Data Communications – For any data communications link on the I-Net, the bit error ratio (BER) shall be equal to or better than 1×10^{-9} .

(3) Availability – For each Qualified I-Net User on the I-Net, I-Net availability shall be equal to or better than 99.965% (no more than 184 minutes of I-Net downtime per Qualified I-Net User) as measured on an annual basis.

(4) The I-Net shall be defined as “unavailable” or as an “I-Net Outage” under the standards in this subsection for any given Qualified I-Net User when such Qualified I-Net User:

(a) Cannot, because of an I-Net Problem, measured by SNMP software or other appropriate software and associated hardware, or through a failure of a Grantee-provided Interconnect, transmit video, voice and/or data communications to, from, and/or on the I-Net;

(b) Experiences, due to an I-Net Problem, video, voice, and data transmissions that are below the standards set forth in this subsection; or

(c) Experiences, due to an I-Net Problem, a data communications packet loss of greater than ten percent (10%).

(5) For purposes of this subsection, an I-Net Problem is defined as those that result from the failure of any Grantee-provided I-Net component.

(6) For purposes of this subsection, I-Net Problems shall not include:

(a) Infrequent scheduled preventative maintenance as long as Qualified I-Net Users are notified in advance; or

(b) Those caused by force majeure, as set forth in subsection 4.12 of this Franchise.

(B) Service Response.

(1) Maintenance – Grantee shall be responsible for the ongoing maintenance and performance of the I-Net from the Demarcation Point within a facility through the I-Net, including the Headend. Routine and preventative maintenance shall be performed on the I-Net to ensure that it meets all performance criteria detailed herein. Qualified I-Net Users shall have at least ten (10) business days advance notice of routine and preventative maintenance activities that may affect operation of their I-Net circuits.

(2) Demand Maintenance/Service and Repair – Response to I-Net Problems shall occur at all hours (24 X 365). Appropriate Grantee technical support shall respond and actively begin working on I-Net Problems within one (1) hour of either:

(a) Grantee identifying such I-Net Problem, or
(b) Grantee receiving a call from a Qualified I-Net User reporting an I-Net Problem.

Grantee shall work continuously until the problem is resolved. If it is determined that the I-Net Problem is caused by the Qualified I-Net User's equipment or software, then the Qualified I-Net User shall correct the problem such that other Qualified I-Net Users are no longer affected. If the Qualified I-Net User does not correct the problem, then Grantee may disconnect the affected site from the I-Net until such time as the equipment or software is repaired.

(3) Staff Support – Grantee shall provide an appropriate complement of administrative, Headend and field personnel at all times to meet the performance criteria detailed herein.

(4) Service Call Processing and Tracking – Grantee will establish mechanisms and procedures for all Qualified I-Net Users to quickly and easily report I-Net Problems. All trouble or service calls will be documented, processed and completed in an expedient manner. The Grantee will provide in-house and/or contractor staff; spare and backup Headend and distribution equipment; test and maintenance equipment; and additional support as necessary to ensure that the I-Net performs reliably in accordance with all standards detailed herein.

(C) Performance Testing. Proof of performance testing will be conducted on the I-Net two times per year, no less frequently than every six months. A minimum of one (1) test point location per twenty (20) I-Net sites will be established for the I-Net which are representative of worst-case performance of the I-Net. A representative sampling of Activated Upstream and Downstream bandwidth shall be tested at each test point location. Testing shall be performed to ensure compliance with the I-Net performance specifications included in subsection 10.10 (A)(1) and (2). Tests shall be performed using standard test methodologies as incorporated in the most recent version of the NCTA's Recommended Practices for Measurement on a Cable Television System, or another test methodology as mutually agreed to by the City and Grantee. All tests will be documented and, upon request, filed with the City. At the City's request, all testing processes will be conducted under the observation of a representative from the City.

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

11.1 Right to Construct

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

11.2 Right-of-Way Meetings

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

11.3 Joint Trenching/Boring Meetings

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

11.4 General Standard

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

11.5 Permits Required for Construction

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

11.6 Emergency Permits

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

11.7 Compliance with Applicable Codes

(A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.

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

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

11.8 GIS Mapping

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

11.9 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

11.10 Prevent Injury/Safety

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

11.11 Hazardous Substances

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

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

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

11.12 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any City bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

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

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

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

11.13 Notice to Private Property Owners

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with Exhibit C: Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance.

11.14 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

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

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

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

Cable System. All poles of Grantee shall be located as designated by the proper City authorities.

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

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

11.15 Undergrounding of Multiple Dwelling Unit Drops

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

11.16 Burial Standards

(A) Depths. Unless otherwise required by law, Grantee shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities in the same portion of the Right-of-Way:

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.

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

11.17 Electrical Bonding

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

11.18 Prewiring

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

11.19 Repair and Restoration of Property

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

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after

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

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with Exhibit C: Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance.

11.20 Use of Conduits by the City

The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places, without charge to the City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its franchise fee payments or from other fees payable to the City.

11.21 Common Users

(A) For the purposes of this subsection:

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

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

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

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

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

(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable

Services in competition with Grantee, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

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

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

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

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

(3) Vacate the needed Ducts or Conduit; or

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

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

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

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

11.22 Acquisition of Facilities

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

11.23 Discontinuing Use/Abandonment of Cable System Facilities

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

11.24 Movement of Cable System Facilities For City Purposes

The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for

any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

11.25 Movement of Cable System Facilities for Other Franchise Holders

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

11.26 Temporary Changes for Other Permittees

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

11.27 Reservation of City Use of Right-of-Way

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

11.28 Tree Trimming

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

11.29 Inspection of Construction and Facilities

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

11.30 Stop Work

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

(B) The stop work order shall:

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

11.31 Work of Contractors and Subcontractors

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

SECTION 12. CABLE SYSTEM CONFIGURATION, TECHNICAL STANDARDS AND TESTING

12.1 Subscriber Network

(A) Grantee shall Activate the Cable System bandwidth to 750 MHz and provide Activated Two-Way capability throughout the Franchise Area, within four (4) years from the Effective Date of this Franchise. If the Cable System is Upgraded pursuant to this subsection within three (3) years of the Effective Date, the term of this Franchise shall be extended by five (5) years. The Grantee intends to deploy Fiber Optics to Nodes which serve no more than fifteen hundred (1500) Subscribers per Node, with amplifier cascades no longer than eight (8) amplifiers, as part of the Upgrade. Grantee may substitute another transmission material and/or modify its Upgrade design provided that the same technical benefits in reliability and picture quality are attained. The Cable System shall be capable of supporting video, audio, data transmission and Cable Internet Service. Upon completion of the Upgrade, the Cable

System shall deliver no less than one hundred ten (110) Channels of analog and/or digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

At such time as the Grantee has completed the Upgrade required above, Grantee shall send written notice to the City. The City shall have one (1) year from receipt of such notice to review the sweep analysis records kept by the Grantee which verify the completion of the Cable System bandwidth expansion, and to complete such technical inspections as may be reasonably necessary to verify that the other components of the Upgrade are complete. The Director may require the Grantee to provide additional facts and information, in his/her reasonably exercised discretion, necessary to verify the completion of the Upgrade. Upon its completion of this review and inspection, the City shall notify the Grantee in writing of the City's position concerning the completion of the Upgrade.

(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 (broadcast and Access) are retransmitted in those same formats. In the case of AM/FM radio transmission, the above specifications, where applicable, shall apply.

(C) Grantee shall submit to the City each phase of its Cable System Upgrade design, as completed, and before construction begins on each phase. If Grantee claims any portion of the information required is a business or trade secret or proprietary information and wishes to protect such information against disclosure, then Grantee may invoke the procedures provided for under subsection 7.2 of this Franchise.

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

(E) Grantee and City shall meet, at the City's request, to discuss the progress of the Upgrade design plan and construction.

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

(G) 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.

12.2 State of the Art

Grantee shall, every three (3) years following the Effective Date of this Franchise, provide detailed information to the City about Cable Services offered in "similarly situated" Cable Systems as the Cable System in the City. For purposes of this subsection, "similarly situated" Cable Systems shall mean the ten (10) largest Cable Systems, based upon the number of Subscribers within a single franchising area, owned and operated by Grantee or its Affiliates in the United States. If such Cable Services are not also being offered on Grantee's Cable System in the City, Grantee shall provide information on why such Cable Services are not being offered in the City and the cost to supply such Cable Services. If the identified

Cable Services are being offered to Subscribers by Grantee or its Affiliates in five (5) or more of the similarly-situated Cable Systems, the City may require that Grantee make available such Cable Services on the Cable System in the City. Should the City determine that Grantee shall commence provision of such Cable Services, the City and Grantee shall negotiate a schedule for deployment that takes into consideration the impact on Subscriber rates, the ability of Grantee to recover the cost of such increased capacity or Cable Services over the remaining life of the Franchise from the incremental revenue derived from such additional Cable Services and the financial condition of Grantee. In addition, the City shall not be restricted from holding any hearing at any time to review whether or not the Cable System and the Cable Services offered by the Grantee are meeting demonstrated community needs. The parties recognize that, as of the Effective Date, the City is not permitted to require the provision of specific video programming pursuant to this subsection.

12.3 Standby Power

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks, and rated for at least four (4) hours duration at all Nodes and at all Hubs. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

12.4 Emergency Alert Capability

(A) Grantee shall provide the City an operating Emergency Alert System (“EAS”) so that the City may use the Cable System to transmit an emergency alert signal, including the ability to override the audio and video on all Channels throughout the City from the City’s Emergency Operations Center or other location as may be designated by the City. Subject to federal and State laws and the City's EAS operational area plan, the City may initiate the operation of the EAS at any time, and the City may, at its option, elect to share this service with adjoining communities. Emergency alert capability, as required in this subsection, shall be operational immediately and throughout the term of the Franchise. Upon request, the City shall be permitted to test the EAS for periods of no more than thirty (30) seconds up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the City has the right to retest the EAS.

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

(C) Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in a manner consistent with sound operational practices for emergency systems. Grantee will advise the City of the testing schedule and the City may be present for the tests.

12.5 Technical Performance

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

12.6 Cable System Performance Testing

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

(1) All tests required by the FCC;

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

(3) All other tests as otherwise specified in this Franchise.

(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 City upon request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, 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 City upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate

in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.

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

12.7 Additional Tests

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

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 13. SERVICE EXTENSION, INTERCONNECTION AND SERVICE TO PUBLIC BUILDINGS

13.1 Service Availability

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

- (1) With no line extension charge except as specifically authorized elsewhere in this Franchise.
- (2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City;
- (3) At non-discriminatory monthly rates for Residential Subscribers.

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

(C) Customer Charges for Extensions of Service. No customer shall be refused service arbitrarily. However, for unusual circumstances, such as a customer's request to locate the cable drop underground, the existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to customers, or a density of less than twenty-five (25) residences per 5280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals twenty-five (25). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

13.2 Interconnection With Other Cable Systems

(A) The Cable System shall be Interconnected with other contiguous, GMTC area cable systems that are owned and operated by Grantee or an Affiliate, provided that such systems are served by the same Headend that serves the Franchise Area.

(B) Grantee shall, in accordance with this subsection, Interconnect the Access Channels of the Cable System with any other contiguous cable system not owned or operated by Grantee or an Affiliate of Grantee upon the directive of the City. Interconnection of Channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. The City shall not direct Interconnection except under circumstances where it can be accomplished without undue burden or excessive costs to the Subscribers.

(1) Upon receiving the directive of the City to Interconnect, Grantee shall immediately initiate negotiations with the other affected cable system or systems and shall report to the City the results of such negotiations no later than sixty (60) days after such initiation. All costs of Interconnection shall be shared on a pro rata basis among the cable companies for both construction and operation of the Interconnection link.

(2) Grantee may be granted reasonable extensions of time to Interconnect or the City may rescind its order to Interconnect upon petition by Grantee to the City. The City shall grant such request if it finds that Grantee is negotiating in good faith and has failed to obtain approval from the cable system or systems for the proposed Interconnection or that the cost of Interconnection would cause an unreasonable or unacceptable increase in Subscriber rates.

(C) Grantee shall explore with any public interconnection authority, regional interconnection authority or City, County, State or federal regulatory agency which may hereafter be established for the purpose of regulating, financing or otherwise providing for the Interconnection of cable systems beyond the boundaries of the City, the possibility of further Interconnects.

13.3 Connection of Public Facilities

Grantee shall, at no cost to the City, continue to provide one outlet of Basic Service and Expanded Basic Service to all City owned and occupied buildings, schools and public libraries where such service is provided as of the Effective Date of this Franchise. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. In addition, Grantee shall provide, at no cost to the City or other entity, one outlet of Basic and Expanded Basic Service to additional owned or leased and occupied City buildings, schools and libraries upon request if the drop line from the feeder cable to such building does not exceed one hundred fifty feet (150') or if the City or other entity agrees to pay the incremental cost of such drop line in excess of one hundred fifty feet (150'), including the cost of such excess labor and materials. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.*, golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes.

13.4 Universal Service

Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area. All Dwelling Units, Multiple Dwelling Units and commercial establishments in the Franchise Area shall have the same availability of Cable Services from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit. Notwithstanding the foregoing, Grantee may introduce new or expanded Cable Services on a geographically phased basis, where such services require an Upgrade of the Cable System. Grantee may also charge for line extensions and non-standard installations pursuant to subsection 13.1.

SECTION 14. FRANCHISE VIOLATIONS

14.1 Procedure for Remedying Franchise Violations

(A) If the Director believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the Director 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 Director, contesting the Director's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or

(2) cure the default; or

(3) notify the Director 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 Director in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Director 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 Director orders a meeting in accordance with subsection (A)(3), the Director shall set a meeting to investigate said issues or the existence of the alleged default. The Director 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 Director determines that a default exists, the Director shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Director shall determine. In the event Grantee does not cure within such time to the Director's reasonable satisfaction, the Director may:

(1) Withdraw an amount from the letter of credit as monetary damages;

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

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

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

14.2 Revocation

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

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City 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 or to practice-any fraud or deceit upon the City or Subscribers; or

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

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

(B) Prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a satisfactory response from Grantee, it may then seek a termination of the Franchise by the City Council in accordance with this subsection.

(C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

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

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

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

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

14.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

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

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

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

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

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

14.4 Purchase of Cable System

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

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

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

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

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

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

14.5 Receivership and Foreclosure

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

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

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

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

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

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

14.6 No Monetary Recourse Against the City

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

14.7 Alternative Remedies

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

14.8 Assessment of Monetary Damages

(A) City may assess against Grantee monetary damages up to two thousand dollars (\$2,000.00) per day for material Cable System Upgrade delays, up to five hundred dollars (\$500.00) per day for general construction delays, and up to two hundred fifty dollars (\$250.00) per day for any other material breaches or defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. To assess any amount from the letter of credit, City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit.

(B) The assessment does not constitute a waiver by City of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise.

14.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

14.10 What Constitutes Abandonment

The City shall be entitled to exercise its options in subsection 14.9 if:

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

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

SECTION 15. FRANCHISE RENEWAL AND TRANSFER

15.1 Renewal

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

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

15.2 Transfer of Ownership or Control

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

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

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

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

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

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

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

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

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

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

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

(G) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

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

SECTION 16. SEVERABILITY

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

SECTION 17. MISCELLANEOUS PROVISIONS

17.1 Preferential or Discriminatory Practices Prohibited

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

17.2 Local Employment Efforts

Grantee shall use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises certified by the City, whenever the Grantee employs contractors to perform work under this Franchise.

17.3 Scholarships

Grantee intends to continue its voluntary initiative of providing up to fifteen (15) scholarships per year of one thousand dollars (\$1,000) each to students studying the field of communications. The City encourages and supports Grantee's efforts in this area.

17.4 Notices

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

Grantee's address shall be:

Mile Hi Cable Partners, L.P.
1617 South Acoma
Denver, Colorado 80223
Attention: General Manager

With a copy to:

TCI Central Division
4700 S. Syracuse #1100
Denver, Colorado 80239
Attention: Legal Department

The City's address shall be:

Director - Office of Telecommunications
City and County of Denver
303 West Colfax Avenue, Suite 850
Denver, Colorado 80204

17.5 Descriptive Headings

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

17.6 Renewal, Modification, and Transfer Costs to be Borne by Grantee

(A) Costs to be borne by the Grantee shall include all costs of publication of this Franchise and its submission to a vote of the people, and any and all notices prior to any public meeting provided for pursuant to this Franchise.

(B) Grantee shall also pay for all costs and expenses involved with the modification or transfer of this Franchise, whether such costs and expenses result from accrued City in-house staff time, or out of pocket expenses or administrative costs, as well as expenses of retaining independent consultants or advisors, up to a maximum amount as mutually-agreed upon by the parties at the time of application for such modification or transfer.

17.7 Binding Effect

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

17.8 Jurisdiction

Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in Denver, Colorado.

17.9 Guarantee

The performance of the Grantee shall be guaranteed in all respects by TCI Central, Inc.. A signed guarantee, in a form acceptable to the City, shall be filed with the City contemporaneous with the Effective Date hereof. Any substitute guarantor is subject to approval by the City, such approval not to be unreasonably withheld.

17.10 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.

17.11 Waiver

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

17.12 Reasonableness of Consent or Approval

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

17.13 Entire Agreement

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

IN WITNESS WHEREOF, and pursuant to the vote of approval of the qualified and registered electors of the City and County of Denver, this Franchise is signed in the name of the City and County of Denver, this ____ day of _____, 1999.

ATTEST:

CITY AND COUNTY OF DENVER:

Clerk and Recorder,
Ex-Officio Clerk of the City and
County of Denver

Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

Assistant City Attorney

Director, Office of Telecommunications

REGISTERED AND COUNTERSIGNED:

City Auditor
Contract Control No. 9Y007

Accepted and approved this _____ day of _____, 1999.

ATTEST:

MILE HI CABLE PARTNERS, L.P.
BY TCI CABLE MANAGEMENT CORPORATION
AS AUTHORIZED AGENT FOR THE
PARTNERSHIP

Public Notary

Authorized Agent

EXHIBIT A:

MEMBERS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM

Adams County	City of Golden
Arapahoe County	Greenwood Village
City of Arvada	City of Idaho Springs
City of Aurora	City of Lafayette
City of Brighton	City of Lakewood
City of Castle Rock	City of Littleton
Cherry Hills Village	City of Northglenn
Commerce City	City of Parker
City and County of Denver	City of Sheridan
Douglas County	City of Thornton
City of Edgewater	City of Westminster
City of Englewood	City of Wheat Ridge
City of Glendale	

EXHIBIT B:

LIST OF STREETS, ALLEYS AND PUBLIC PLACES

REVIEWED BY: _____,
_____1994

CITY ATTORNEY

SPONSORED

BY

COUNCILMEMBER(S)

GREATER METRO CABLE CONSORTIUM CUSTOMER SERVICE STANDARDS

I. POLICY

The Cable Operator shall be permitted the option and autonomy to first resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority shall intervene. In addition, where a pattern of, or unremedied, noncompliance with the Standards is identified, the Franchising Authority shall prescribe a cure and establish a 30 day deadline for implementation of the cure. If the noncompliance is not cured within 30 days, monetary sanctions shall be imposed to encourage compliance.

These Standards are intended to be of general application; however, the Cable Operator shall be relieved of any obligations hereunder it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

II. DEFINITIONS

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Adoption" shall mean the process necessary to formally enact the Standards within the Franchising Authority's jurisdiction, or to approve the Model Franchise Agreement adopted by the TCI Renewal Group of the GMCC (the "MFA") incorporating the Standards, under applicable ordinances and laws.

"Cable Operator" shall mean any person granted a franchise to operate, or operating, a cable television, data transfer, or telecommunications system within any area of jurisdiction of the Franchising Authority, and, in the MFA, the Grantee, or such person's employees, agents, contractors, or subcontractors.

"City" (County) shall mean the City (County, or City and County) of Denver, Colorado.

"Customer" shall mean any person who receives service of any sort from the Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed by the Cable Operator to assist, or provide service to, customers, whether by answering public telephone lines, writing service or installation orders, answering customers' questions, receiving and processing payments, or performing other customer service-related tasks.

"Franchising Authority" shall mean the City (County or Town) and/or the Greater Metro Cable Consortium, and/or, in the MFA, the Grantor.

"Greater Metro Cable Consortium" or "GMCC" shall mean a Colorado agency formed by intergovernmental agreement between its Members, local governmental subdivisions of the State

of Colorado. The GMCC may be delegated the authority to enforce cable television franchises and cable system operations for its Member communities, and may administer any or all functions under these Standards.

"Town" shall mean the City of Denver, Colorado.

III. CUSTOMER SERVICE

A. Courtesy

All employees of the Cable Operator shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

B. Accessibility

1. Within sixty (60) days of the effective date of these Standards, the Cable Operator shall provide, at sites acceptable to the Franchising Authority, customer service centers/business offices ("service centers") such that no customer shall be located further than ten (10) miles away from a service center. Except as otherwise approved by the Franchising Authority, all service centers shall be open Monday through Friday from 8:00 a.m. to 6:00 p.m., and from 9:00 am to 1:00 p.m. Saturdays, and shall be fully staffed with customer service representatives offering the following services to customers who come to the service center: bill payment, equipment exchange, processing of change of service requests, and response to customer inquiries and requests. The Franchising Authority may approve alternatives for service centers offering lesser services at any site to which the public has general access. The Cable Operator shall post a sign at each service center advising customers of its hours of operation and of the addresses and telephone numbers at which to contact the Franchising Authority and the Cable Operator if the service center is not open at the times posted. The Cable Operator shall provide free exchanges of faulty converters at the customer's address.
2. The Cable Operator shall maintain local telephone access lines that shall be available 24 hours a day, seven days a week for service/repair requests and billing inquiries.
3. The Cable Operator shall have dispatchers and technicians on call 24 hours a day, 7 days a week, including legal holidays.
4. The Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to service/repair and billing inquiry lines are answered by a customer service representative within 30 seconds or less, and that any transfers are made within 30 seconds. These standards shall be met no less than 90 percent of the time measured monthly.
5. The total number of calls receiving busy signals shall not exceed 3% of the total telephone calls. This standard shall be met 90 percent or more of the time measured monthly.

C. Responsiveness

1. Guaranteed Seven-Day Residential Installation

- a. The Cable Operator shall complete all standard residential installations requested by customers within 7 business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to 125 feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.
- b. All underground cable drops from the curb to the home shall be buried at a depth of no less than twelve inches (12"), and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the customer.

2. Residential Installation and Service Appointments

- a. Customers requesting installation of cable service or service to an existing installation may choose any of the following blocks of time for the installation appointment: 8:00 a.m. to 12:00 a.m.; 12:00 Noon to 4:00 p.m.; 4:00 p.m. to 8:00 p.m.; or a four-hour block of time mutually agreed upon by the customer and the Cable Operator. The Cable Operator may not cancel an appointment with a customer after 5:00 p.m. on the day before the scheduled appointment, except for appointments scheduled within twelve (12) hours after the initial call.
- b. The Cable Operator shall contact by telephone, mail, or in person, every customer within 2 weeks after installation to assure the customer's satisfaction with the work completed. All responses shall be recorded, and retained by the Cable Operator, and made easily available to the Franchising Authority upon request.
- c. The Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

3. Residential Service Interruptions

- a. In the event of system outages (loss of reception on all channels) resulting from Cable Operator equipment failure affecting 5 or more customers, the Cable Operator shall correct such failure within 2 hours after the 3rd customer call is received.
- b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.
- c. The Cable Operator shall keep an accurate and comprehensive file of any and all complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the Cable Operator's actions in

response to those complaints. These files shall remain open to the Franchising Authority and the public during normal business hours. Grantee shall provide Grantor an executive summary monthly, which shall include information concerning customer complaints. A summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each month and submitted to the Franchising Authority by the tenth (10th) day of the succeeding month. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly.

- d. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within 36 hours, after the conditions beyond its control have been corrected.

4. TV Reception

- a. The Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). The Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).
- b. If a customer experiences poor video or audio reception attributable to the Cable Operator's equipment, the Cable Operator shall repair the problem no later than the day following the customer call. If an appointment is necessary, customer may choose the same blocks of time described in Section III.2.a. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer.

5. Problem Resolution

The Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service or any of the other credits listed in Schedule A, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within 4 hours and resolve the problem within 48 hours or within such other time frame as is acceptable to the customer and the Cable Operator.

6. Billing, Credits, and Refunds

- a. Cable Operator shall convert to the Anniversary Billed System or similar system of billing as set forth in the attached [Schedule A] no later than December 31, 1996. The Cable Operator shall submit reports to the Franchising Authority regarding its progress towards converting to said system at least quarterly. Should these reports indicate that the conversion can practicably take place prior to the above-mentioned date, Cable Operator shall so convert. On the date when the Cable Operator converts to the Anniversary Billing System, the following conditions shall apply: The Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. If the customer's service bill is not paid within forty-five (45) days of the

beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks notice to the customer that such disconnection may result.

- b. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the customer's entitlement to a credit or refund.

7. Treatment of Property

- a. The Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by the Cable Operator, any employee or agent during installation or construction shall be restored to their prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.
- b. The Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any property to as good condition as before the work causing such disturbance was initiated. The Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities.
- c. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. If damage is caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner 100% of the cost of the damage or replace the damaged property. For the installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail at least one week in advance. In the case of an emergency, the Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.
- d. The Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

D. Services for Customers with Disabilities

- 1. For any customer with a disability, the Cable Operator shall at no charge deliver and pick up converters at customers' homes. In the case of a malfunctioning converter, the technician shall provide another converter, hook it up and ensure that it is working properly, and shall return the defective converter to the Cable Operator.

2. The Cable Operator shall provide TDD service with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.
3. The Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with subsection 4, below) customers.
4. Any customer with a disability may request the special services described above by providing the Cable Operator with a letter from the customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

E. Customer Information

1. Upon installation, and at any time the customer may request, the Cable Operator shall provide the following information, in clear, concise written form:
 - a. Products and services offered by the Cable Operator, including its channel lineup;
 - b. The Cable Operator's complete range of service options and the prices for these services;
 - c. These Standards, with the attached Schedule A, and any other applicable customer service standards;
 - d. Instruction on the use of cable TV service and on standard VCR hookups;
 - e. The Cable Operator's billing, collection and disconnection policies;
 - f. Customer privacy requirements;
 - g. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, the FCC, and the Franchising Authority to whom the complaints should be addressed;
 - h. Use and availability of A/B switches;
 - i. Use and availability of parental control/lock out device;
 - j. Special services for customers with disabilities;
 - k. Days, times of operation, and locations of the service centers.
2. Copies of all notices provided to the customer shall be filed (by fax acceptable) concurrently with the Franchising Authority and the Consortium.
3. The Cable Operator shall provide customers with written notification of any change in rates, programming, or channel positions, at least 30 days before the effective date of change.
4. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with cable customers shall wear on their outer clothing identification cards bearing their name and photograph as approved by the Franchising Authority. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.

5. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed.

F. Customer Privacy

1. The Cable Operator shall not monitor cable television signals to determine the individual viewing patterns or practices of any customer without prior written consent from that customer, except as otherwise permitted by the applicable Franchise.
2. The Cable Operator shall not sell or otherwise make available customer lists or other personally identifiable customer information without prior written customer consent, except as otherwise permitted by the Franchise. The Cable Operator is permitted to disclose such information if such disclosure is necessary to render, or conduct, a legitimate business activity related to a cable service or other service provided by the Cable Operator to its customers.

G. Safety

The Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever the Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

H. Satisfaction Guaranteed

The Cable Operator shall guarantee customer satisfaction for every customer who requests new installation of cable service or adds any additional programming service to the customer's cable subscription. Any such customer who requests disconnection of such service within 30 days from its date of activation shall receive a credit to his/her account in the amount of one month's subscription charge for the service that has been disconnected.

IV. COMPLAINT PROCEDURE

A. Complaints to the Cable Operator.

1. The Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts in accordance with Schedule A: "Credits to Customers", which Schedule is incorporated herein by this reference, and as otherwise provided herein, without intervention by the Franchising Authority and shall publicize such procedures through printed documents at the Cable Operator's sole expense.
2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to the Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices.
3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than fifteen (15) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.

4. The Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.
5. The Cable Operator shall immediately report all customer complaints that it does not find valid to the Franchising Authority.
6. The Cable Operator's complaint procedures shall be filed with and approved by the Franchising Authority prior to implementation.

B. Security Fund

1. Within thirty (30) days of the effective date of these Standards or the effective date of any franchise granted by the Franchising Authority, whichever occurs first, the Cable Operator shall deposit with an escrow agent approved by the Franchising Authority \$100,000 (one hundred thousand dollars), or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Such amount may, with the approval of the Franchising Authority, be posted jointly for more than one member of the GMCC, and may be administered, and drawn upon, jointly by the GMCC or drawn upon individually by each member. The escrowed funds shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds shall be maintained by the Cable Operator at one hundred thousand dollars (\$100,000), or such lesser amount accepted by the Franchising Authority, even if amounts are withdrawn pursuant to any provision of these Standards.
2. At any time during the term of this agreement, the Franchising Authority may require the Cable Operator to increase the amount of the Security Fund, if it finds that new risk factors exist which necessitate such an increase.
3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by the Cable Operator of all its obligations under these Customer Service Standards.
4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

C. Complaints to the Franchising Authority.

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the fifteen (15) day period as required shall be entitled to have the complaint reviewed by the Franchising Authority.

2. The customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.
3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.
4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.
5. The Cable Operator and the customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.
6. The Franchising Authority shall issue a determination within fifteen (15) days after examining the materials submitted, setting forth its basis for the determination.
7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.
8. If the Franchising Authority determines that the customer's complaint is valid and that the Cable Operator did not provide the complaining customer with the proper solution and/or credit, the Franchising Authority may reverse any decision of the Cable Operator in the matter and/or require the Cable Operator to grant a specific solution as determined by the Franchising Authority in its sole discretion, and/or any credit provided for in these Standards; or the Franchising Authority may provide the customer with the amount of the credit (as set forth in the attached Schedule A) by means of a withdrawal from the Security Fund.

D. Verification of Compliance.

The Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

E. Overall Quality of Service

The Franchising Authority may evaluate the overall quality of customer service provided by the Cable Operator to customers:

- a. In conjunction with any performance review provided for in the franchise agreement; and
- b. At any other time, at its sole discretion, based on the number of customer complaints received by the Cable Operator and the Franchising Authority, and the Cable Operator's response to those complaints.

F. Non-Compliance with Customer Service Standards.

Non-compliance with any provision of these Standards is a violation of these Standards.

G. Procedure for Remedying Violations.

1. If the Franchising Authority has reason to believe that the Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may demand in writing that the Cable Operator remedy the alleged noncompliance. If the alleged noncompliance is denied or not remedied to the satisfaction of the Franchising Authority, the Franchising Authority may opt to follow the following procedure.
2. An informal meeting may be held to review the alleged noncompliance. If this meeting does not result in a resolution satisfactory to the Franchising Authority, the Cable Operator may request or the Franchising Authority may require an administrative hearing to determine if the noncompliance occurred. The Cable Operator shall be provided with ten (10) days written notice of the time and the place of the hearing, the allegations of noncompliance and the possible consequences of the noncompliance if substantiated.
3. After the administrative hearing, the Franchising Authority shall determine whether the noncompliance has been substantiated. If the noncompliance is substantiated, the Franchising Authority may order the Cable Operator to correct or remedy the noncompliance within thirty (30) days (except where the noncompliance constitutes a material safety hazard) and in the manner and on the terms and conditions that the Franchising Authority establishes, or, in its sole discretion, the Franchising Authority may find a material violation of these Standards.
4. If the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, the Franchising Authority may:
 - a. Impose assessments of one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or
 - b. Order, after further hearing, such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or
 - c. In its sole discretion, declare a violation of the franchise agreement, and in such case, the noncompliance shall be a violation of the franchise agreement for the purposes of the franchise agreement, triggering all available obligations and remedies under the franchise agreement; and/or
 - d. Withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law; and/or
 - e. Pursue any other legal or equitable remedy available under any applicable franchise agreement or law.
 - f. Any assessment or remedy shall not constitute a waiver by the Franchising Authority of any other right or remedy it may have under any applicable franchise

agreement or law including any right to recover from the Cable Operator any additional damages, losses, costs, and expenses, including actual attorney's fees that are incurred by the Franchising Authority by reason of, or arise out of noncompliance with these Standards.

V. MISCELLANEOUS

A. Severability.

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

B. Non-Waiver.

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of the Cable Operator under said provision, or any other provision of these Standards.

SCHEDULE A – CREDITS TO CUSTOMERS

STANDARDS OF CUSTOMER SERVICE	MINIMUM COMPENSATION
A. <u>COURTESY</u>	
1. All employees of TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P. shall be friendly, knowledgeable and helpful in their services.	\$5.00 credit to their account.
B. <u>ACCESSIBILITY</u>	
1. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P. shall provide one customer service center for every 25,000 subscribers, with no subscriber further than 10 miles from one.	\$5.00 credit to their account.
2. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P. shall have local telephone access lines that are available 24 hours a day, 7 days a week.	\$5.00 credit to their account.
3. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P. will have dispatchers and technicians on call 24 hours a day, days a week.	\$5.00 credit to their account.
4. TCI OF COLORADO/MILE HI PARTNERS, L.P. shall have sufficient customer service representatives and telephone line capacity to ensure that calls are answered in 30 seconds or less.	\$5.00 credit to their account.
5. Calls receiving busy signals shall not exceed 3% of the total telephone calls.	\$5.00 credit to their account.
C. <u>RESPONSIVENESS</u>	
1. Guaranteed 7-Day Residential Installation	
a. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P. shall complete installations requested by a customer within 7 business days after order has been placed.	Free installation, or 1 month's basic service, if the fee has been waived for promotional reasons.
b. All underground cable drops will be buried no less than 8 inches deep and work will be completed in no more than 3 working days from the installation.	
2. Residential Installation Appointments	
a. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., customers wanting installation of cable may choose any 2-hour time-block for installation.	\$5.00 credit to their account.
b. If running late, TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., shall contact the customer before the end of the scheduled appointment and reschedule at the convenience of the customer.	\$5.00 credit to their account.
c. Every TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., customer shall be contacted within 2	\$5.00 credit to their account.

weeks after installation to assure customer satisfaction.

- d. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will deem to have responded to a service request when the technician arrives within the agreed upon time and the customer is home. \$5.00 credit to their account.

3. Residential Service Interruptions

- a. System outages resulting from TCI OF COLORADO/ MILE HI CABLE PARTNERS, L.P., equipment failure affecting 5 or more customers shall be corrected within 2 hours after the 5th customer call is received. One day's free service for each 24-hour delay.
- b. All other interruptions resulting from TCI OF COLORADO/ MILE HI CABLE PARTNERS, L.P., equipment failure shall be corrected within 24 hours. One day's free service for each 24-hour delay.
- c. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., shall keep a log, written or in computer memory, for all service interruptions and requests for service that result in a service call. One day's free service for each 24-hour delay.
- d. All service outages or interruptions beyond the control of TCI OF COMORADO/MILE HI CABLE PARTNERS, L.P., shall be corrected within 36 hours. One day's free service for each 24-hour delay.

4. TV Reception Difficulties

- a. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will provide clear television reception and shall make repairs promptly, and interrupt service only for good cause and for the shortest time possible. One day's free service for each 24-hour delay.
- b. If a customer experiences poor video or audio reception due to TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., equipment, Mile Hi Cable Partners, L.P., will repair the problem no later than the next day. One day's free service for each 24-hour delay.

5. Problem Resolution

- a. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., Customer Service Representatives will be able to provide credit, waive fees, schedule appointments and change billing cycles. Any difficulties that cannot be resolved by the customer service representatives will be referred to a supervisor who will contact the customer within 24 hours and offer a solution to the problem that will take place within 48 hours. \$5.00 credit to their account.

6. Billing, Credits and Refunds

- a. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., customers will receive a clear and concise bill monthly. Mile Hi Cable Partners, L.P., shall respond to a customer's billing inquiry made by telephone within 48 hours, and to a written billing inquiry within 2 weeks after receiving it. \$5.00 credit to their account.

- b. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will allow 30 days from the date of the bill payment. If not paid within 45 days of the date, Mile Hi Cable Partners, L.P., may apply a \$5.00 fee. If not paid within 60 days of the date, Mile Hi Cable Partners, L.P., may disconnect service. \$5.00 credit to their account.
- c. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., shall issue a credit or refund within 30 days after determining the customer is entitled to one. \$5.00 credit to their account.
- d. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., shall revert any customer's service to Basic when requested, in writing one month in advance, provided that the change in service is for a period of more than one week. \$5.00 credit to their account.

7. Respectful Treatment of Customer's Property

- a. TCI OF COLORADO/MILE HI PARTNERS, L.P., shall replace trees or shrubs damaged during installation. \$10.00 credit plus any additional repairs.
- b. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will restore any damaged property to the same condition it was before damage occurred. \$10.00 credit plus any additional repairs.
- c. TCI OF COLORADO/MILE HI PARTNERS, L.P., will give notice to property owners before entering premises, specifying the work to be done. \$10.00 credit plus any additional repairs.
- d. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., personnel shall clean up the area surrounding a work site and properly dispose cable materials. \$10.00 credit plus any additional repairs.

D. SERVICES FOR CUSTOMERS WITH DISABILITIES

1. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., shall provide the following services for customers with disabilities at no additional charge.

- a. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will deliver and pick up converters at the home of customers with disabilities. In the case of a malfunctioning converter, the technician shall replace it with a new one. \$5.00 credit to their account.
- b. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will waive the installation fee for FM service for an FM outlet installed in the same room as the primary cable outlet. \$5.00 credit to their account.
- c. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will waive the monthly charge for FM service. \$5.00 credit to their account.

- 2. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will provide the following services for the hearing-impaired at no additional charge.**
- a. TCI OF COLORADO/MILE HI PARTNERS, L.P., will provide TDD service with trained operators who can provide any assistance available from Mile Hi Cable Partners, L.P. \$5.00 credit to their account.
 - b. TCI OF COLORADO/MILE HI PARTNERS, L.P., will install, at no charge, any closed captioning device purchased by a hearing-impaired customer. \$5.00 credit to their account.
3. TCI OF COLORADO/MILE HI PARTNERS, L.P., shall provide free use of a remote control unit to mobility-impaired customers. \$5.00 credit to their account
4. A customer with a disability may request the above services by account \$5.00 credit to their account
 providing TCI OF COLORADO/MILE HI PARTNERS, L.P., with a letter from a physician stating their condition, or by making the request to TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P.'s, installer or service technician in person.

E. CUSTOMER INFORMATION

1. Upon installation, or at a customers request, TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will provide the following information: Provide customer with the requested information and credit.
- a. Products and services offered.
 - b. Complete range of service options and prices.
 - c. Customer service standards;
 - d. Instruction on use of cable TV service and on standard VCR hookups;
 - e. Billing, collection and disconnect policies;
 - f. Customer privacy requirements;
 - g. Complaint procedure, containing the City or the designated agency to whom the complaints should be addressed;
 - h. Use and availability of A/B switch;
 - i. Use and availability of parental control/lock out device;
 - j. Special services for customers with visual, hearing or mobility disabilities.
 - k. Days, times of operation, and locations of the services centers.
2. TCI OF COLORADO/MILE HI PARTNERS, L.P., will provide customers with written notification of any change in rates, programming, or channels at least 30 days before the date of change. \$5.00 credit to their account.
3. Every employee of TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., in contact with customers will wear an Identification card with their name and photograph. Every vehicle of MILE HI CABLE PARTNERS, L.P., or subcontractor will \$5.00 credit to their account.

be visually identified as working for TCI/MILE HI CABLE PARTNERS, L.P.

F. CUSTOMER PRIVACY

1. TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will not monitor the cable television signals to determine viewing patterns of a customer without prior written customer consent.
2. TCI OF COLORADO/MILE HI PARTNERS, L.P., will not sell or make available customer lists or other personally identifiable customer information without prior written customer consent.

The customer has the choice of either a check for at least \$100.00, or a credit to their account in the same amount.

G. SAFETY

1. TCI OF COLORADO/MILE HI PARTNERS, L.P., will install and locate its equipment in compliance in responding, plus with all federal, state, local, and company safety standards, causes of and in such a manner that will not interfere with our endanger persons or property.

At least \$25.00 a day for each 24 hour delay in additional rights or action available to the customer.

H. SATISFACTION GUARANTEED

TCI OF COLORADO/MILE HI CABLE PARTNERS, L.P., will guarantee customer satisfaction for every customer who requests new installation of cable service or adds any additional programming service to his/her cable subscription.

98 **Section 5.** The proper officials of the City and County of Denver as are charged
99 with duties relating to the election shall, before the election, issue such calls, make such
100 certifications and publications, give such notices, make such appointments, and do all such
101 other acts and things in connection with the submission of this question to the qualified and
102 registered electors of the City and County of Denver at the election as are required by the
103 Constitution and laws of the State of Colorado and the Charter and ordinances of the City
104 and County of Denver.

105 **Section 6.** The ballots cast at such election shall be canvassed and the results
106 ascertained, determined, and certified in accordance with the requirements of the
107 Constitution and laws of the State of Colorado and the Charter and ordinances of the City
108 and County of Denver.

109 **Section 7.** The proposed Cable Franchise Agreement between the City and
110 County of Denver and Mile Hi Cable Partners, L.P., in the words and figures contained and
111 set forth in that form of Agreement and filed in the Office of the Clerk and Recorder, Ex-
112 Officio Clerk of the City and County of Denver, on the 8th day of July, 1999, City Clerk's
113 Filing No. 99-576, shall be executed and delivered according to its proposed terms, if the
114 result of such vote of the qualified and registered voters at such election shall have been
115 determined to have been affirmative for the renewal of said franchise.

116 **Section 8.** If any section, paragraph, clause, or other portion of this ordinance is for
117 any reason held to be invalid or unenforceable, the invalidity or unenforceability shall not
118 affect any of the remaining portions of this ordinance.

119 PASSED BY THE COUNCIL _____, 1999

120 _____ - PRESIDENT

121 APPROVED: _____ - MAYOR _____, 1999

122 ATTEST: _____ - CLERK AND RECORDER
123 EX-OFFICIO CLERK OF THE
124 CITY AND COUNTY OF DENVER

125 PUBLISHED IN THE DENVER ROCKY MOUNTAIN NEWS:

126 _____, 1999

127 PREPARED BY: Andrew L. Weber - ASSISTANT CITY ATTORNEY
128 July 8, 1999

129 Dean R. Smits - DIRECTOR,
130 OFFICE OF TELECOMMUNICATIONS
131 July 8, 1999

132 REVIEWED BY: _____ - DEPUTY CITY ATTORNEY _____, 1999

133 SPONSORED BY COUNCIL MEMBER(S) _____