

ORDINANCE 2020-05_

AN ORDINANCE TO ENTER INTO A CABLE FRANCHISE AGREEMENT WITH TRI COUNTY TELEPHONE ASSOCIATION, INC., TCT WEST, INC., AND TRI TEL, INC.

This Cable Franchise Agreement (“Franchise”) is between the City of Cody, Wyoming, a municipal corporation organized under the laws of the State of Wyoming (“City” or “Franchising Authority”), and Tri County Telephone Association, Inc., TCT WEST, INC., and TRI TEL, INC. (all hereinafter “Grantee”).

The Franchising Authority, having determined that the financial, legal and technical ability of the Grantee is reasonably sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a Cable System on the following terms.

SECTION 1
Definitions

1.1 Definitions. For the purpose of this Franchise, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. “Access” means the distribution of noncommercial video services and other services and signals as permitted under applicable law by the City and schools in the community using the Access Channel including, but not limited to:

1. “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.

2. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

B. “Access Channel” means a downstream signaling path provided on the Cable System to transmit Access programming or services to Subscribers.

C. “Affiliate” when used in relation to Grantee means another person who owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

D. “Basic Cable Service” means the lowest Tier of Cable Service that includes, at a minimum, the retransmission of local television broadcast signals and Access programming.

E. “Cable Act” collectively 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 any amendments thereto.

F. “Cable Operator” means any person or group of persons who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in a Cable System, or who otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.

G. “Cable Service” means (1) the one-way transmission to Subscribers of (a) video programming service or, (b) other programming services and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

H. “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide Cable Service, including video programming, and which is provided to multiple Subscribers within a community. Cable System does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that the facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent it 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; (4) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934; or (5) any facilities of any electric utility used solely for operating its electric utility system.

I. “City Council” means the City Council, the governing body of the City, or its successors.

J. “Expanded Basic Service” means cable programming services not included in the Basic Service and excluding, for example, premium or pay-per-view services.

K. “FCC” means the Federal Communications Commission, or successor governmental entity.

L. “Franchise” means this document, a contractual agreement, and any amendments and modifications thereto executed between the Franchising Authority and Grantee, containing the specific provisions of the authorization granted to operate a Cable System in the City.

M. “Franchise Area” means the area within the jurisdictional boundaries of the City.

N. “Gross Revenues” means any and all revenue in whatever form, from any source, directly received by the Grantee or Affiliate of the Grantee that would constitute a Cable

Operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Services in any manner that requires use of the Public Ways in the Service Area. Gross Revenues include, but are not limited to, basic, expanded basic and pay service revenues, revenues from installation, rental of converters, franchise fees, the applicable percentage of the sale of local, regional or national advertising time on video programming channels, and any leased access revenues. Advertising commissions paid to third parties shall not be netted against advertising revenues included in Gross Revenues.

Gross Revenues do not include any taxes which are imposed directly or indirectly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency. Franchise fees are not such a tax and are therefore included in Gross Revenues. Gross Revenues do not include revenue which cannot be collected by the Grantee and are identified as bad debt; provided that if revenue previously representing bad debt is collected, this revenue shall be included in Gross Revenues for the collection period. Gross Revenues also do not include (i) refunds, rebates or discounts made to Subscribers or other third parties; (ii) any revenues classified as non-Cable Services revenue under federal or State law; (iii) revenues from the sale of capital assets or sales of surplus equipment or program launch fees, i.e., reimbursement by programmers to Grantee of marketing costs incurred by Grantee for the introduction of new programming; or (iv) directory or Internet advertising revenues including, but not limited to, Yellow Page, White Page, banner advertisement and electronic publishing.

O. “Institutional Network” means a communication network which is constructed or operated by the Cable Operator and which is generally available only to the City.

P. “Normal Business Hours” means hours during which most similar businesses in the community are open to serve Subscribers. In all cases, Normal Business Hours shall include some evening hours at least one night per week and/or some weekend hours. The Grantee will notify its Subscribers and the Franchising Authority of its Normal Business Hours.

Q. “Normal Operating Conditions” means service conditions which are within the control of the Grantee. Conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages (unless caused by Grantee or its affiliates), utility company work on poles, severing of cable system plant by third persons, labor strikes, vandalism, accidents and severe or unusual weather conditions. Conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

R. “Person” means an individual, partnership, association, joint stock company, trust, corporation, governmental entity (but shall not mean the Franchising Authority) or other entity.

S. “Public Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, lane, drive, or circle, and including, but not limited to, public utility easements, dedicated utility strips

or rights-of-way dedicated for compatible uses which shall entitle the Grantee to install, operate, repair and maintain the Cable System.

T. “Service Area” means the present municipal boundaries of the Franchising Authority, and includes any additions thereto by annexation or other legal means.

U. “Service Interruption” means the loss of picture or sound on one or more channels.

V. “State” means the State of Wyoming.

W. “Subscriber” means a person who lawfully receives cable services of the Cable System with the Grantee’s express permission.

X. “Tier” means a group of channels for which a periodic subscription fee is charged.

SECTION 2 **Grant of Franchise**

2.1 Grant. The Franchising Authority grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to make reasonable and lawful use of the Public Way in the City to construct, operate, maintain, reconstruct, rebuild and upgrade a Cable System for the purpose of providing cable service and any electronic or optical signal permitted by law subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreement entered into concerning individual property.

A. Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinances existing as of the effective date of this Franchise.

B. Each and every term, provision or condition herein is subject to the provisions of state law, federal law, the City Code, and ordinances and regulations. The City Code and all subsequent amendments are expressly incorporated in this Franchise. However, the Franchising Authority may not unilaterally alter the material rights and obligations of Grantee under this Franchise. Notwithstanding the foregoing, neither party waives its rights to avail itself of federal or State preemption regarding the provisions of this Franchise.

C. 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 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.

D. The 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 Service Area, or directly involved in the management or operation of the

Cable System in the Service Area, will also comply with the terms and conditions of this Franchise.

E. This Franchise shall not include or be a substitute for:

1. Any 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 Franchising Authority for Public Way users generally in connection with operations on or in the Public Way or public property including, by way of example and not limitation, street cut or construction permits; or

3. Any permits or agreements for occupying any other property of the Franchising Authority 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.

2.2 Term.

A. The Franchise shall be for a term of ten (10) years commencing on the effective date of the Franchise as set forth below, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

B. This Franchise and the rights, privileges and authority granted hereunder shall take effect on _____, and shall terminate on _____, unless terminated sooner.

2.3 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinances, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Grantee reserves the right to challenge provisions of any ordinance which conflict with its contractual rights, either now or in the future. The Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

2.4 Use of Public Way.

A. Subject to the Franchising Authority's supervision and control, Grantee may erect, install, construct, operate, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Way within the City such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary or useful and appurtenant to the operation of a Cable System within the City for the origination and distribution of television and radio signals and any electronic or optical signal permitted by law. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the Franchising Authority's Public Way in compliance

with all applicable City construction codes and procedures. As trustee for the public, the Franchising Authority is entitled to fair compensation to be paid for these valuable rights throughout the term of the Franchise, as outlined herein.

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

C. Grantee agrees to use and subscribe to the same underground utility locator service as the majority of utility providers within the Service Area, if these services are made available at a charge deemed reasonable by Grantee.

2.5 Police Powers.

A. Grantee's rights are subject to the police powers of the Franchising Authority 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 Franchising Authority or any other legally constituted governmental unit having lawful jurisdiction over the subject matter. The Franchising Authority shall have the right to adopt, from time to time, ordinances as may be deemed necessary in the exercise of its police power.

B. The right is hereby reserved to the Franchising Authority to adopt, in addition to the provisions contained herein, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulation, by ordinance or otherwise, shall be reasonable and not in conflict with the rights and obligations herein granted.

2.6 Franchise Nonexclusive. This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, permits or licenses granted by the Franchising Authority to any Person to use any property for any purpose whatsoever, including the right of the Franchising Authority to use the same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Franchising Authority may at any time grant authorization to use the Public Ways for any purpose not incompatible with Grantee's authority under this

Franchise and for such additional franchises for cable systems as the Franchising Authority deems appropriate.

2.7 Effect of Acceptance. By accepting the Franchise, the Grantee:

A. Acknowledges and accepts the Franchising Authority's legal right to issue and enforce the Franchise;

B. Accepts and agrees to comply with each provision of this Franchise subject to applicable law; and

C. 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.

2.8 Permits Required for Construction. Prior to doing any work in the Public Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the Franchising Authority. As part of the permitting process, the Franchising Authority may impose any conditions and regulations as are necessary for the purpose of protecting any structures in such Public Way, proper restoration of Public Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic and explore with Grantee opportunities for joint trenching and placement of the Franchising Authority's conduit and fiber optic cable. Conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Public Way. Grantee shall pay all non-discriminatory and generally applicable fees for the requisite Franchising Authority permits received by the Grantee.

2.9 Maps Required. Grantee shall at all times maintain a complete set of GIS and as-built 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. Upon advance written notice to Grantee, the City's authorized representative(s) or agent(s) shall have the right to inspect such maps at Grantee's local office at a time mutually agreeable to the City and Grantee. Due to confidentiality and safety concerns, the City shall not be allowed to make copies of or take possession of any of Grantee's maps.

2.10 Compliance with Applicable Codes.

A. Franchising Authority Construction Codes. Grantee shall comply with all applicable Franchising Authority construction codes, including, without limitation, building codes and zoning codes and regulations.

B. Tower Specifications. Antenna supporting structures or towers shall be designed for the proper loading as specified by a licensed engineer in Wyoming. Antenna supporting structures or 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 local 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 Electrical Code, National Electrical Safety Code and Occupational Safety and Health Administration standards.

2.11 Minimal Interference. Work in the Public 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 Franchising Authority, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Public 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 Franchising Authority may deem proper to make or to unnecessarily hinder or obstruct the free use of the Public 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 interference, the Franchising Authority may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances at Grantee's expense. Grantee shall notify affected and/or adjoining property owners, in advance, by written notice and/or personal contact, of Grantee's presence and construction, repair, operation or removal prior to beginning any such work.

SECTION 3 **Standards of Service**

3.1 Construction Standards and Requirements. The Cable System shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices performed by experienced maintenance and construction personnel.

3.2 General Conditions. Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee is able to access existing poles, conduits, or other facilities on commercially reasonable terms and conditions acceptable to Grantee.

3.3 Discontinuing Use.

A. Whenever Grantee intends to abandon a material above-ground facility or portion of the Cable System within the Public 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 reasonable 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 Public 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 is not willing to comply with the foregoing requirements, the City may remove or require removal of the facility at issue and charge Grantee for all the reasonable costs and attorneys' fees associated with such removal.

B. Grantee shall not have any obligation to comply with subsection 3.3 A. unless it is a generally applicable and non-discriminatory requirement of the City for other users of the Public Way.

C. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

3.4 Inspection of Construction and Facilities. The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least forty-eight (48) hours' notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees for necessary inspections.

3.5 Work of Contractors and Subcontractors. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's generally applicable ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors.

3.6 Restoration of Public Ways. If during the course of the Grantee's construction, operation or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, it shall, at its expense, replace and restore the Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.7 Relocation at Request of the Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than thirty (30) days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority. The Grantee shall have the right to abandon its underground property, but not its aboveground property without first removing same,

if requested by the Franchising Authority. If funds are generally available to users of the Public Way for such relocation, Grantee shall be entitled to its *pro rata* share of such funds.

3.8 Relocation at Request of Third Party. The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (A) the expense of temporary raising or lowering of wires is paid by the permit holder, including, if required by the Grantee, making payment in advance; and (B) the Grantee is given not less than ten (10) business days advance written notice to arrange for temporary wire changes.

3.9 Trimming of Trees and Shrubbery. The Grantee may trim trees or other natural growth overhanging any of its Cable System in the Service Area to prevent branches from coming in contact with the Grantee's wires, cables or other equipment. The Grantee shall reasonably compensate the Franchising Authority or private property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the Cable System undertaken by the Grantee. Replacement shall satisfy any and all obligations the Grantee may have to the Franchising Authority pursuant to the terms of this section.

3.10 Safety Requirements. Construction, installation and maintenance of the Cable System must be performed in an orderly and workmanlike manner. All work must be performed in accordance with applicable FCC or other federal, state and local regulations. The Cable System shall not endanger or interfere with the safety of persons or property in the Service Area.

3.11 Technical Standards. The Grantee is responsible for ensuring that the Cable System is designed, installed and operated in a manner that fully complies with federal regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules.

3.12 Aerial and Underground Construction. In the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services and cable and other communications services plant are already underground, the Grantee shall construct, operate, and maintain all of its transmission and distribution facilities underground to the extent that existing technology reasonably enables Grantee to do so. In areas where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services or cable and other communications services plant are both aerial and underground, the Grantee and Franchising Authority shall mutually agree as to the placement of Grantee's transmission or distribution facilities, or any part, aerially or underground. Nothing contained in this section will require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric

services and cable and other communications services plant are placed underground after the effective date of this Franchise, the Grantee shall be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given not less than one hundred and twenty (120) days notice and access to the public utilities' facilities at the time that they are placed underground, to the extent that existing technology reasonably enables Grantee to do so. In the event that discussions between the City and any company concerning placing facilities underground commence, the City shall promptly inform the Grantee of those discussions and invite the Grantee to participate in them.

A. New Developments. The Franchising Authority shall use reasonable diligence to provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring undergrounding of cable facilities.

B. Local Improvement District. If an ordinance is passed creating a local improvement district which involves placing certain utilities underground including those of the Grantee which are located overhead, the Grantee will participate in the underground project after reasonable notice from the City and shall remove poles, cables and wires from the surface of the streets within the district and shall place them underground in conformity with the requirements of the Franchising Authority to the extent that existing technology reasonably enables Grantee to do so and within a reasonable amount of time. The Grantee may include its costs of relocating facilities associated with the undergrounding project in a local improvement district if allowed under applicable law.

3.13 Required Extensions of Service. Unless cable service is already available from another cable system operator, whenever Grantee's Cable System passes at least twenty-five (25) residences within 5,280 cable-bearing strand feet (one cable mile) of its trunk or distribution cable, and such residences are within 1,320 cable-bearing strand feet (one-quarter cable mile) of its active trunk or feeder line, it will extend its Cable System to Subscribers at no cost, other than the usual connection fees for all Subscribers. If, as a result of new construction, an area within the City meets the requirements of this Section, Grantee shall provide Cable Service to such area within twelve (12) months of receiving notice from the City that such requirements have been met.

3.14 Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet from distribution cable to connection of service to Subscribers, or a density of less than twenty-five (25) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available at a connection charge not to exceed that permitted by applicable law.

3.15 Annexation. The City shall promptly provide written notice to Grantee of its annexation of any territory which is being provided Cable Service by Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the City, subject to the conditions set forth below. The City shall also notify Grantee in writing

of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the City franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the City if the City has provided a written annexation notice that includes the addresses that will be moved into the Franchise Area in an Excel format or in a format that will allow Grantee to add the addresses to its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this subsection.

3.16 Service to Public Buildings. The Grantee shall, upon request of the Franchising Authority, provide one (1) outlet of Basic and Expanded Basic Cable Services (and, if necessary the equipment required to receive the cable signals) to the Franchising Authority offices and facilities including fire station(s) and police station(s), libraries, Access facilities and public school building(s) that are passed by its Cable System. The outlets of Basic and Expanded Basic Service shall not be used to sell services. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use or any loss or damage to the Cable System. Users of outlets agree to hold the Grantee harmless from any and all liability or claims arising out of their use of outlets, including, but not limited to, those arising from copyright violation, provided that Grantee is in compliance with all of its programming agreements. The Grantee shall not be required to provide an outlet to previously unserved buildings where the drop line from the feeder cable to the buildings or premises exceeds or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred fifty (150) cable feet. If additional outlets of Basic or Expanded Basic Cable Service are provided to any buildings, the building owner must pay the usual installation fees, including, but not limited to, labor and materials.

3.17 Emergency Use.

A. In accordance with and at the time required by the provisions of federal laws and regulations, the Grantee shall install and maintain an Emergency Alert System (EAS).

B. The Franchising Authority shall permit only appropriately trained and authorized persons to use the EAS equipment and take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

3.18 Customer Service Standards. The following Customer Service standards shall only apply to the provision of Cable Service in the Service Area.

A. Cable System office hours and telephone availability.

1. The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

a. Trained representatives of the Grantee will be available to respond to Subscriber telephone inquiries during Normal Business Hours.

b. After Normal Business Hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.

2. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, will not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds. These standards will be met no less than ninety percent (90%) of the time under Normal Operating Conditions, as measured on a quarterly basis.

3. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless a historical record of complaints indicates a clear failure to comply with the standards.

4. Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.

5. Customer service center and bill payment locations, if any, will be open during Normal Business Hours and will be conveniently located.

B. Installations and service calls. Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time, as measured on a quarterly basis:

1. Standard installations will be performed within seven (7) business days after an order has been placed unless scheduled at a later time by customer request. Standard installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.

2. Excluding conditions beyond its control, the Grantee will begin working on Service Interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.

3. The Grantee will provide “appointment window” alternatives for installations, service calls and other installation activities, which will be either a specific time, or at a maximum, a four-hour time block during Normal Business Hours. (The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.)

4. The Grantee shall not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

If a representative of the Grantee is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

C. Communications between the Grantee and Subscribers.

1. Notifications to Subscribers:

a. The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:

- i. Products and services offered;
- ii. Prices and options for services and conditions of subscription to programming and other services;
- iii. Installation and service maintenance policies;
- iv. Instructions on how to use the service;
- v. Channel positions of programming carried on the Cable System; and
- vi. Billing and complaint procedures, including the address and telephone number of the local Franchising Authority’s office.

b. Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the Cable System or otherwise as required or permitted by the FCC. Notice will be given to Subscribers a minimum of thirty (30) days in advance if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

a. Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly describe all activity during the billing period, including optional charges, rebates and credits.

b. In case of a billing dispute, the Grantee will respond to a written complaint from a Subscriber within thirty days from receipt of the complaint.

3. Refund checks will be issued promptly, but no later than either (a) the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (b) the return of the equipment supplied by the Grantee if service is terminated.

4. Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

3.19 Educational and Government Access Channel(s).

A. The Grantee shall make available one channel to be used for educational and governmental cablecast programming. When first-run programming on the first access channel occupies fifty percent (50%) of the hours between 11:00 a.m. and 11:00 p.m., for any twelve (12) consecutive weeks, the Franchising Authority may request the use of one (1) additional channel for the same purpose. The additional channel must maintain programming twenty-five percent (25%) of the hours between 11:00 a.m. and 11:00 p.m. for twelve (12) consecutive weeks. If this level of programming is not maintained, the channel will return to the Grantee for its use. The Grantee also reserves the right to program the designated educational and governmental channels during the hours not used by the Franchising Authority or other governmental entities.

B. When all of the following conditions are satisfied, and upon written request by the City, Grantee shall convert the Access Channel(s) into high definition format ("HD") no more than six (6) months following Grantee's receipt of such request from the City which shall include the City's written commitment to the following ("HD Upgrade"):

1. Grantee utilizes switched digital video to provide Cable Service in the Franchise Area;

2. The City has the ability to produce substantially all of its Access programming in HD, commits to produce, and upon the availability of an HD Access Channel does produce, at least five (5) hours per week of Access programming in HD for such Access Channel. The calculation of at least five (5) hours per week may include an original showing of any Access program plus one repeat per week. All equipment necessary to produce and transmit any Access Channel programming from inside City Hall in HD to Subscribers shall be at the City's cost.

3. Grantee agrees to work cooperatively with the City to ensure the necessary Access transport equipment complies with Grantee's Cable System requirements. The City shall be responsible for the costs, of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required for Grantee to receive and distribute the City's HD Access Channel signal, including any resulting upgrades to any return line.

4. The HD Access Channel provided under this subsection will replace the existing Access Channel.

C. The Access Channel shall be placed on Basic Service if in standard definition format, and on the lowest Tier of Cable Service available to Subscribers in HD if the Access Channel is converted to an HD Access Channel under subsection B.

3.20 Relocation of the Access Channel. Grantee shall provide the City and all Subscribers with as much prior written notice of any relocation of the Access Channel as reasonably possible, but in no event less than thirty (30) days.

3.21 Return Line. Grantee shall maintain a Cable System return line from City Hall to the Cable System headend (the "Return Line"). Grantee shall select the materials and technology to be used for the Return Line, provided that the Return Line shall be able to send video programming signals from City Hall to the Cable System headend in the same format in which such signals are uploaded to the Return Line and that such Return Line is in compliance with all applicable FCC regulations.

3.22 Technical Quality. Grantee shall maintain the Access Channel and Return Line in compliance with FCC regulations regarding signal quality. With respect to signal quality, Grantee shall not be required to carry the Access Channel in a higher quality format than that delivered to Grantee, but Grantee shall distribute the Access Channel in accordance with FCC technical standards.

3.23 Institutional Network. Upon written request of the Franchising Authority, the Grantee agrees to assist the Franchising Authority in the evaluation of the creation of an Institutional Network that would interconnect public buildings for the transmission and receipt of communications between specific points in the network within the Service Area.

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee. As compensation for the use of valuable Public Ways, Grantee shall pay the Franchising Authority five percent (5%) of Grantee's Gross Revenues except that the Franchising Authority may, from time-to-time authorize the Grantee by resolution, to pay a lower amount for a specified period. If the Franchising Authority so reduces the franchise fee percentage, the reduction shall be passed-through to Subscribers. Prior to any reduction or

implementation of any increase in the franchise fee percentage, the Grantee may request, and will be granted a public hearing by the Franchising Authority to discuss the proposed change.

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

4.3 Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord and satisfaction by the Franchising Authority 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 Franchising Authority may have for further or additional sums payable or for the performance of any other obligation of Grantee.

4.4 Quarterly Franchise Fee Reports. Each payment shall be accompanied by a written report to the Franchising Authority, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in reasonable and customary detail, of the Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

4.5 Annual Franchise Fee Reports. Grantee shall, within sixty (60) days after the end of each year, furnish to the Franchising Authority a statement of the total amount of Gross Revenues for the year and all payments, deductions and computations for the period. The 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 Franchising Authority.

4.6 Audits. On an annual basis, upon thirty (30) days prior written notice, the Franchising Authority shall have the right to conduct an independent audit of the Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP, and conducted by an independent certified public accounting firm of national or regional reputation. The complete audit report, including the results of such audit, shall be shared with the Grantee promptly after the audit results are provided to the Franchising Authority (the "Audit Information") and the Grantee shall be provided with an opportunity to discuss the auditor's finding with the auditor and to dispute the audit results. Any undisputed amounts due to the Franchising Authority as a result of the audit shall be paid within sixty (60) days following the later of the delivery of the written notice to the Grantee by the Franchising Authority, or the delivery to the Grantee of the Audit Information. If the audit shows that franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit, such cost not to exceed seven thousand five hundred dollars (\$7,500) for each year of the audit period during the first five (5) years of this Franchise and ten thousand dollars (\$10,000) for each year of the audit period during the next five (5) years of this Franchise. The Franchising Authority's right to audit and the Grantee's obligation to retain records related to a franchise fee audit for any year shall expire three (3) years after the end of that year.

4.7 Late Payments. In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, the Grantee shall pay, in addition to the amount due, interest on the amount due, at the rate of one percent (1%) per month, compounded daily, calculated from the date the payment was originally due until the date the Franchising Authority receives the payment. Notwithstanding anything herein to the contrary, the requirements of this subsection do not apply to amounts incorrectly omitted from a timely made payment, which were subsequently corrected and submitted to the Franchising Authority.

4.8 Equivalent Franchise Fee Obligation. The City shall impose an equivalent Franchise Fee obligation to the obligations contained in this Section on all new and renewed providers of Cable Service in the City. In the event any new or renewed franchise agreement contains Franchise Fee obligations that are lesser in percentage amount than the obligations imposed in this Section, Grantee's obligations under this Section shall thereafter be automatically reduced to an equivalent percentage amount.

4.9 Underpayments. If a franchise fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest on the amount due at the rate of one percent (1%) per month calculated from the date the underpayment was originally due until the date the Franchising Authority receives the payment.

4.10 Tax Liability. The franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or will be required to be paid by the Franchising Authority, the State or the United States including, without limitation, sales, use or other taxes, business license fees or other payments. Payment of the franchise fees under this Franchise will not exempt the Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of the Grantee that may be lawfully imposed.

4.11 Alternative Compensation. In the event the obligation of Grantee to compensate the City through franchise fees is eliminated by State or federal law, and provided that such change in law contemplates that the City may be lawfully compensated by a Cable Operator for use of the Rights-of-Way in some other manner, then the Grantee shall provide such alternative compensation to the City, provided that in any event such alternative compensation does not exceed five percent (5%) of Grantee's Gross Revenues.

4.12 Financial Records. The Grantee agrees to meet with a representative of the Franchising Authority upon request to review the Grantee's methodology of record-keeping, financial reporting, the computing of franchise fee obligations and other procedures, the understanding of which the Franchising Authority deems necessary for reviewing reports and records relevant to the enforcement of this Franchise.

4.13 Filing on Termination. If this Franchise terminates for any reason, the Grantee shall file with the Franchising Authority, 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.

4.14 Authority and Changes in the Law. The Franchising Authority shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted under law, to any agent in the sole discretion of the Franchising Authority. The Grantee and Franchising Authority shall be entitled to all rights and be bound by all changes in local, State and federal law that occur subsequent to the effective date of this Franchise. The Grantee and Franchising Authority acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes.

4.15 Rates and Charges. All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Franchising Authority to the full extent authorized by applicable federal and State laws.

4.16 Renewal of Franchise.

A. The Franchising Authority and Grantee agree that renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections have been preempted and superseded by the provisions of any subsequent provision of federal, state or local law.

B. In addition to the procedures set forth in Section 626(a) of the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of the Grantee under the current Franchise term. The Franchising Authority further agrees that preliminary assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and seek renewal of the Franchise prior to expiration of its term. Notwithstanding anything to the contrary set forth in this section, the Grantee and Franchising Authority agree that at any time during the term of the current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the current Franchise and the Franchising Authority may grant a renewal. The Grantee and Franchising Authority consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

4.17 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be pursuant to the provisions set forth in Section 627 of the Cable Act.

4.18 Transfer of Franchise. The Grantee's right, title or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the Grantee, without the prior written consent of the Franchising Authority, such consent not to be unreasonably withheld, conditioned or delayed.

However, no consent shall be required for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any right, title or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. The Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request and all required documents, consent shall be deemed granted by the Franchising Authority.

SECTION 5 **Books and Records**

The Grantee agrees that the Franchising Authority, upon reasonable notice to the Grantee, may review its books and records at the Grantee's business office, during Normal Business Hours and on a nondisruptive basis, to ensure compliance with the terms of this Franchise. Grantee agrees to provide to the Franchising Authority, for its review of Grantee's books and records, adequate space within which to conduct said review in a nondisruptive, clean and reasonably comfortable location. Notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Records include, but are not limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth in this Franchise, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents that have a need to know, or in order to enforce the provisions hereof subject to public disclosure requirements. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

SECTION 6 **Insurance and Indemnification**

6.1 Insurance Requirements.

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 two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) general aggregate. Such insurance shall name the City as an additional insured.
2. Commercial Automobile Liability insurance with minimum combined single limits of two million dollars (\$2,000,000) each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System.

3. Umbrella liability insurance in the amount of five million dollars (\$5,000,000).

B. The Grantee shall provide a Certificate of Insurance designating the Franchising Authority as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority.

C. Deductibles / Endorsements

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

2. Endorsements. All policies shall contain, or shall be endorsed so that:

a. Grantee's insurance coverage shall be primary insurance with respect to the City. Any insurance or self-insurance maintained by the City shall be in excess of Grantee's insurance and shall not contribute to it; and

b. 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.

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

6.2 Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, City Council, boards, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees and 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, relocation, repair or removal or any other act done under this Franchise by or for Grantee (including by its agents or its employees), or by reason of any neglect or omission of Grantee, its agents or employees. Grantee shall consult and cooperate with the City while conducting its defense of the City.

SECTION 7 **Performance Bond**

As a condition of the Franchise being awarded, and throughout the term of the Franchise, if Grantee fails to perform a material obligation of this Franchise and does not cure the non-performance within thirty (30) days after written notice by the City, Grantee shall provide and maintain a performance bond in the amount of twenty thousand dollars (\$20,000). The performance bond may be drawn upon by the Franchising Authority to ensure the Grantee's faithful performance of each term and condition of the Franchise. The Franchising Authority

agrees to either return the original bond or sign the necessary documentation to release the bond promptly upon transfer of the Franchise.

SECTION 8 **Enforcement and Termination of Franchise**

8.1 Notice of Violation. In the event the Franchising Authority believes that Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

8.2 Grantee's Right to Cure or Respond. The Grantee has thirty (30) days from receipt of the notice described in Section 8.1:

A. To respond to the Franchising Authority, contesting the assertion of noncompliance, or requesting further information to evaluate the alleged violation;

B. To cure such default; or

C. In the event that default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default as expeditiously as reasonably possible and notify the Franchising Authority of the steps being taken and the projected date that the default will be cured.

8.3 No Monetary Recourse Against the City. Grantee shall not have any monetary recourse against the City or its officers, officials, City Council, boards, 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.

8.4 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 enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

8.5 Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 8.1 pursuant to the procedures set forth in subsection 8.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to subsection 8.2 C. above, the Franchising Authority shall schedule a public hearing to investigate the default. The public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard. Written notice will be provided at least five (5) business days in advance of the hearing.

8.6 Enforcement. Subject to applicable federal, state and local law, in the event the Franchising Authority, after such meeting, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may seek any or all of the following remedies:

A. Seek specific performance of any provision, which reasonably lends itself to that remedy, as an alternative to damages or seek other equitable relief;

B. Commence an action at law for monetary damages; or

C. In the case of a substantial default of a material provision of the Franchise, declare the Franchise to be revoked, subject to the provisions of subsection 8.7 below.

8.7 Revocation.

A. If the Franchising Authority seeks to revoke the Franchise after following the procedures set forth above, the Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee has thirty (30) days from the notice to object in writing and to state its reasons for the objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may seek termination of the Franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to a public meeting, a written notice specifying the time and place of the meeting and stating its intent to request the termination.

B. At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, introduce evidence and examine and cross-examine witnesses, after which the Franchising Authority shall determine whether or not the Franchise shall be revoked. Revocation shall require a written and published decision which explains the reasons for revocation and adequately addresses the Grantee's defenses and reasons raised against revocation. The Grantee may appeal such determination to an appropriate court, which has the power to review the decision of the Franchising Authority as provided by law.

C. In the event of said revocation the Grantee shall have one year from the date on which it ceases operations to remove, at its own expense, all portions of its Cable System from all streets within the City, and shall restore said streets to a condition reasonably satisfactory to the City within such period of time.

D. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

8.8 Assessment of Liquidated Damages.

A. Because it may be difficult to calculate the harm to the Franchising Authority in the event of a breach of this Franchise by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Franchise, such damages shall be the Franchising Authority's sole and exclusive remedy for such breach or violation and shall not exceed a time period of one hundred eighty (180) days. Nothing in this subsection is intended to preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach.

B. Prior to assessing any liquidated damages, the Franchising Authority shall follow the enforcement procedures of this Franchise that provide the Grantee proper written notice, a right to be heard and a right to cure.

C. The first day for which liquidated damages may be assessed, if there has been no cure, shall be the day of the Franchising Authority's written notice to Grantee, as such notice is required by subsection 8.1.

D. Grantee may appeal (by pursuing judicial relief) any assessment of liquidated damages within thirty (30) days of paying the assessment.

E. Liquidated damages shall not exceed the following amounts: fifty dollars (\$50.00) per day for material departure from the FCC technical performance standards; fifty dollars (\$50.00) per day for failure to provide the Access Channel(s); fifty dollars (\$50.00) per day for each material violation of the Customer Service Standards; and fifty dollars (\$50.00) per day for any material breaches or defaults not previously listed.

8.9 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement, damages or fine relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, unusually severe rain or snow storm, tornado or other catastrophic act of nature, labor disputes or other event that is reasonably beyond the Grantee's ability to anticipate and control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable and equipment are attached, as well as unavailability of materials or qualified labor to perform the work necessary that is reasonably beyond the Grantee's ability to anticipate and control.

8.10 Technical Violations. The parties agree that it is not the Franchising Authority's intention to subject the Grantee to fines, forfeitures or revocation of the Franchise for so-called "technical" breaches or violations of the Franchise, which shall include, but are not limited to, the following:

A. In instances or for matters where a violation or a breach by the Grantee of the Franchise was a good faith error that resulted in no or minimal negative impact on the customers within the Service Area; or

B. Where circumstances reasonably beyond the control of the Grantee precipitated a violation by the Grantee of the Franchise or prevented the Grantee from complying with a term or condition of the Franchise.

8.11 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 the Grantee to all remedies, legal or equitable, which are available to the Franchising Authority under this Franchise.

SECTION 9

Miscellaneous Provisions

9.1 Actions of Parties. In any action, by the Franchising Authority or Grantee that is mandated or permitted under the terms of this Franchise, the party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, approval or consent shall not be unreasonably withheld.

9.2 Uniform Treatment. If during the term of this Franchise or any extension, the Franchising Authority grants a materially similar franchise or right to another Cable Operator containing a term or terms more favorable or less burdensome than those granted to the Grantee in this Franchise, this Franchise shall be deemed modified to incorporate the more favorable or less burdensome terms at the written request of the Grantee.

9.3 Notices. Every notice or response required by this Franchise to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party when hand delivered or five (5) business days after having been posted in a properly sealed and correctly addressed envelope when sent by certified or registered mail, postage prepaid.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Cody
P.O. Box 2200
1338 Rumsey Avenue
Cody, Wyoming 82414
Attention: City Administrator

The notices or responses to the Grantee shall be addressed as follows:

Tri County Telephone Association, Inc., TCT West, Inc., and TRI TEL, INC.
405 S. 4th Street

Basin, WY 82410
Attention: General Manager

The Franchising Authority and the Grantee may designate another address or addresses from time to time by giving notice to the other.

9.4 Descriptive Headings. The captions to sections are intended solely to facilitate the reading thereof. They shall not affect the meaning or interpretation of the text herein.

9.5 Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and Franchising Authority relating to the subject matter hereof and supersedes all prior oral and written negotiations between the parties.

9.6 Amendments. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the City and Grantee.

9.7 De Novo Review. Any determination by the City regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

9.8 No Third Party Beneficiaries. Nothing in this Franchise is intended to confer third-party beneficiary status on any person to enforce the terms of this Franchise.

9.9 Severability. If any section, subsection, sentence, paragraph or provision hereof 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, sentence, paragraph or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

9.10 Publication Costs. Grantee shall pay the City for the cost incurred by the City for publication of this ordinance.

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

9.12 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.

9.13 Waiver. The failure of the City at any time to require performance by 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.

9.14 Venue and Governing Law. Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in the District Court, Park County, Wyoming, or in the United States District Court for the District of Wyoming in Casper. This Franchise shall be governed, construed and enforced in accordance with local, State and federal law.

9.15: Wyoming Government Immunity: The Franchising Authority does not waive its governmental immunity and its defenses as provided by the Wyoming Constitution and the Wyoming Governmental Claims Act.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CODY, WYOMING:

That this Franchise shall become effective upon final passage and publication in the Cody Enterprise and signature by the Mayor of the City of Cody.

PASSED ON FIRST READING: 5/19/2020

PASSED ON SECOND READING: 6/2/2020

PASSED, ADOPTED AND APPROVED ON
THIRD AND FINAL READING: 6/9/2020

Mayor

ATTEST:

City Clerk

IN WITNESS WHEREOF, the parties hereto have entered into this Franchise on the _____ day of _____, 2020.

CITY OF CODY

Mayor

(SEAL)

Attest:

City Clerk

INC.

TRI COUNTY TELEPHONE ASSOCIATION,

Title: _____

Attest:

Secretary

TCT WEST, INC.

Title: _____

Attest:

Secretary

TRI TEL, INC.

Title: _____

Attest:

Secretary