TOWN OF TIMNATH
ORDINANCE NO. 13-2007

AN ORDINANCE APPROVING A FRANCHISE AGREEMENT
WITH COMCAST OF CALIFORNIA/ COLORADO, LLC

WHEREAS, the Town Council of the Town Timnath has power to approve and enter into franchise agreements; and

WHEREAS, the Town has negotiated a franchise agreement with Comcast of California/Colorado, LLC for cable television service within the Town according to the terms and conditions contained therein; and

WHEREAS, the Town Council believes that approval of the franchise agreement is in the best interest of the Town and its residents.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Timnath, Colorado, that:

Section 1. The Franchise Agreement with Comcast of California/Colorado, LLC is hereby approved by the Town Council, and the Mayor and Town Clerk are authorized and directed to execute the same. A true and correct copy of said Agreement shall be maintained in the office of the Town Clerk for public inspection and copying.

Section 2. Effective Date. This ordinance shall be effective upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

Section 3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or parts be declared unconstitutional or invalid.

Section 4. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.


RECEPTION #: 20080037146, 06/10/2008 at 12:10:45 PM.
1 OF 2 R $11.00 TD Pgs: 0
Scott Doyle, Larimer County, CO

Town of Timnath
Town Clerk
4800 Goodman Street
Timnath, CO 80547
MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING
FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON Aug 8,
2007.

TOWN OF TIMNATH, COLORADO

Donna Benson, Mayor

ATTEST:

Linda Griess, Acting Town Clerk
FRANCHISE AGREEMENT

BETWEEN

THE TOWN OF TIMNATH, COLORADO

&

COMCAST OF CALIFORNIA/COLORADO LLC
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THIS FRANCHISE AGREEMENT is made and entered into this 8th day of
AUGUST 2007, by and between Comcast California/Colorado, LLC (hereinafter referred
to, together with any lawful successor, transferee, or assignee, as the "Grantee") and the Town of
Timnath, Colorado (the "Town"). The Town, having determined that the Grantee has the
reasonably sufficient financial, legal, and technical ability 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
Agreement with the Grantee for the construction and operation of a cable system on the terms set
forth herein.

SECTION 1. DEFINITIONS

For the purposes of this Franchise and all Exhibits attached hereto the following terms,
phrases, words and their derivations shall have the meanings 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" includes Educational Access, Governmental Access and Public Access,
collectively, and means the availability for noncommercial use by various governmental and
educational agencies, institutions, organizations, groups and individuals in the community,
including the Town and its designees, of particular channels on the Cable System to receive and
distribute video programming, as permitted under applicable law, including, but not limited to:

(A) "Educational Access" means Access where Schools are the primary users having
editorial control over programming and services.

(B) "Governmental Access" means Access where governmental institutions or their
designees are the primary users having editorial control over programming and services; and

(C) "Public Access" means Access where the public is the primary user.

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

1.3 "Access Capital Contribution" means the capital contribution paid to the Town by the
Grantee in accordance with Section 9.

1.4 "Activation" or "Activated" means the status of any capacity on or part of the Cable
System wherein the use of that capacity or part thereof may be made available without further
installation of system equipment other than Subscriber premise equipment, whether hardware or
software.

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

1.6  "Bad Debt" means amounts lawfully owed by a Subscriber and accrued as revenues on the books of the Grantee but not collected after reasonable efforts by the Grantee.

1.7  "Basic Cable Service" means the lowest service Tier that includes the retransmission of local television broadcast signals and Access Channels.


1.9  "Cable Operator" means any Person or group of Persons, including the Grantee, who provides Cable Service over the Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise controls or are responsible for, through any arrangement, any of the management and/or operation of the Cable System.

1.10  "Cable Service" means the one-way transmission to Subscribers of Video Programming, or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

1.11  "Cable System" means the Grantee’s facility, consisting of a set of closed transmission 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 shall 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 public 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 Communications Act of 1934 (47 U.S.C., 201 et seq.), except that such facility shall be considered a Cable Communication 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; or (D) An open video system that complies with Section 653 of the Cable Act.

When used herein, the term “Cable System” shall mean Grantee’s Cable System in the Franchise Area.

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

1.13  "Designated Access Provider" means the entity or entities designated by the Town to manage or co-manage any Access Channels and facilities. The Town may be a Designated Access Provider.
1.14 "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.

1.15 "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.

1.16 "Franchise" means this non-exclusive right and authority to construct, maintain, and operate a Cable System through use of the public streets, dedications, public utility easements, or other public ways in the Franchise Area, and is a binding contractual agreement executed by the Town and the Grantee.

1.17 "Franchise Area" means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise.

1.18 "Franchise Fee" means that fee payable to the Town as described in Section 3.1(A). The term Franchise Fee does not include:

   (A) Any tax, fee or assessment of general applicability;

   (B) Capital costs which are required by the Franchisee to be incurred by the Grantee for Public, Educational or Governmental Access facilities and equipment, including the support required in Section 9;

   (C) Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

   (D) Any fee imposed under Title 17, United States Code.

1.19 "GAAP" means generally accepted accounting principles.

1.20 "Grantee" means Comcast of California/Colorado, LLC, or its lawful successor, transferee or assignee.

1.21 "Gross Revenues" means all revenues derived by the Grantee as determined in accordance with GAAP from the operation of the Cable System used to provide Cable Services within the Franchise Area. By way of example, and not by limitation, Gross Revenues include monthly fees collected from Subscribers for any basic, optional, premium, per-channel, per-program service, or Video Programming Service, installation, disconnection, reconnection, and change-in-service fees; revenues from rentals or sales of converters or other equipment; fees from third party unaffiliated programmers for leased access programming; advertising revenues net of agency commissions paid to any entity that is not an Affiliate of Grantee; late fees and
administrative fees; revenues from the sale or carriage of other Cable Services; revenues from program guides; and revenues from home shopping 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) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any Access Capital Contributions or Replacement Capital Contributions as defined by this Franchise and any recovery of such Contributions from Subscribers through the pass through mechanism; or (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber by the State, Town 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.

1.22 "Headend" means any facility for signal reception and dissemination on the Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, equipment for the interconnection of the System with adjacent Systems and interconnection of any networks which are part of the System, and all other related equipment and facilities.

1.23 "Incremental Costs" means the direct and actual material and labor cost (excluding profit) of constructing, relocating or placing additional ducts, conduit or related structures by the Grantee for the Town excluding the costs of design, trenching, boring, pipe bedding, backfilling, compacting, restoring the surface, installation and other charges, costs or expenses that the Grantee would otherwise incur to construct, relocate or place ducts, conduit or related structures for the Grantee.

1.24 "Institutional Network" or "I-Net" means that part of the Cable System facilities or capacity designed for non-commercial voice, video and data communications to, from and among government agencies, schools and libraries within the Franchise Area.

1.25 "Interconnect" or "Interconnection:" means the actual physical linking of the Cable System's Access Channels with the Access Channels of another geographically contiguous cable system, 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 Access programming between the Cable System and other cable systems.

1.26 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.
1.27 "Non-Commercial" means, in the context of Access Channels, that particular products and services are not promoted or sold in order to generate profit for the Town or any Designated Access Provider. This term shall not be interpreted to prohibit an Access Channel operator or programmer from soliciting and receiving financial support to produce and transmit video programming on an Access Channel, or from promoting a contributor's business or entity, so long as the revenue received does not exceed the costs of Access Channel operations. In the context of an Institutional Network, Non-Commercial shall mean private network communications from and among government agencies, schools, libraries and other public agencies and excludes any other actions, such as the leasing or reselling Institutional Network capacity to a third party for any purpose whatsoever.

1.28 "Normal Business Hours" means those hours during which most businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some hours on Saturday.

1.29 "Normal Operating Conditions" means those service conditions that are within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, labor strikes or slowdowns, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of the Grantee include, but are not limited to, special promotions, rate increases, regular or reasonably anticipatable peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

1.30 "Person" means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

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

1.32 "Right-of-Way" means land acquired or dedicated to the public, and maintained under public authority or by others, including but not limited to public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property located within the Franchise Area.

1.33 "School" means any State accredited K-12 public or private educational institution in the Town, and excluding home schools and residential facilities.

1.34 "Street" means Rights-of-Way.

1.35 "Subscriber" or "Customer" means any Person(s) who lawfully elects to receive Cable Services provided by the Grantee by means of the Cable System.
1.36 "Tier" means a category of Cable Services provided by the Grantee for which a separate rate is charged.

1.37 "Town" means the Town of Timnath, Colorado, a body politic and corporate under the laws of the State of Colorado, and all of the area within its boundaries, as such may change from time to time, and any of its legally established enterprises.

1.38 "Town Council" means the Timnath Town Council, or its successor, the governing body of the Town of Timnath, Colorado.

1.39 "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The Town hereby grants to the Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair and upgrade a Cable System for the purpose of providing Cable Services. Such grant is subject to the terms and conditions set forth in this Franchise. This Franchise shall constitute both a right and an obligation to provide Cable Services and to fulfill the obligations set forth in the provisions of this Franchise.

(B) Subject to express federal and state preemption, the provisions of this franchise constitute a valid and enforceable contract between the parties. The material terms and conditions contained in this Franchise may not be unilaterally altered by the Town except through the lawful exercise of the Town's police power. Each party reserves the right to challenge provisions of any statute, ordinance, rule, regulation, resolution or other enactment that conflicts with the rights granted by this Franchise, either now or in the future.

(C) This Franchise shall not be interpreted to prevent the Town from imposing other conditions, to the extent permitted by law, should the Grantee provide service(s) other than Cable Service.

(D) No rights shall pass to the 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 Town that may be required by the ordinances and laws of the Town.

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

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

(F) This Franchise is not a bar to the imposition of any lawful conditions on the
Grantee with respect to Grantee’s delivery of non-cable services, telecommunications services or
information services, whether similar, different or the same as the conditions specified herein.
This Franchise does not relieve the Grantee of any obligation it may have to obtain from the
Town any such authorization that may be lawfully required in order to provide non-cable
services, telecommunications services or information services or relieve the Grantee of its
obligation to comply with any such authorization(s). However, this Franchise shall not be read as
a concession by the Grantee that it needs authorization to provide non-cable services,
telecommunications services or information services, nor does it prohibit or condition Grantee’s
provision of such services.

2.2 Duration

The term of this Franchise and all rights, privileges, obligations and restrictions
pertaining thereto shall be ten (10) years from the effective date of this Franchise, unless
terminated sooner as provided herein.

2.3 Effective Date

This Franchise and the rights, privileges and authority granted hereunder shall take effect
and be in force from and after the effective date of this Franchise. The effective date of this
Franchise shall be August 8, 2007.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements
or licenses granted by the Town or its predecessors to any Person to use any property, Right-of-
Way, easement, right, interest or license for any purpose whatsoever, including the right of the
Town to use same for any purpose it deems fit, including the same or similar uses allowed the
Grantee hereunder. The Town may at any time grant authorization to use the Right-of-Way for
any Purpose not incompatible with the Grantee’s authority under this Franchise and for such
additional franchises for other cable systems as the Town deems appropriate.
Notwithstanding any provision in this Agreement to the contrary, the Town shall not be precluded from providing and may provide services to its residents, which Grantee might otherwise provide hereunder. Provision of such services by the Town may be subject to the obligation to obtain approvals in accordance with §29-27-102, CRS. The Town specifically may provide services including but not limited to cable television services, telecommunications services or advanced services.

2.5 Competitive Equity

(A) The Grantee acknowledges and agrees that the Town reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Town; provided, the Town agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of the Grantee’s request, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. “Material terms and conditions” include, but are not limited to: Franchise Fees; insurance; System build-out requirements; security instruments; Public, Education and Government access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) Notwithstanding any provision to the contrary, at any time prior to the commencement of the Grantee’s thirty-six (36) month renewal window provided by Section 626 of the Cable Act, that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the Town, then the term of Grantee’s Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date thirty six (36) months from the first day of the month following the date of Grantee’s notice. Grantee shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the Town required. The Town and Grantee shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The Town and Grantee shall have all rights and obligations provided under said Section 626.

(C) Notwithstanding any provision to the contrary, should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a franchise granted by the Town, then Grantee may assert, at Grantee’s option, that this Franchise is rendered “commercially impracticable,” and invoke the modification procedures set forth in Section 625 of the Cable Act.
2.6 Familiarity with Franchise

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

2.7 Effect of Acceptance

By accepting the Franchise, the Grantee: acknowledges and accepts the Town's legal right to issue and enforce the Franchise; accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

2.8 Police Powers

Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to comply with all laws, ordinances and regulations of general applicability enacted pursuant to the police powers of the Town, or hereafter enacted, by the Town or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, resolution or other enactment of the Town that conflicts with the rights granted by this Franchise, either now or in the future.

2.9 Franchise Area

Grantee shall provide Cable Service within the Franchise Area, subject to the terms of this Franchise.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee

(A) Grantee shall pay as a Franchise Fee to the Town 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.

(B) The Town recognizes that Grantee, at its sole discretion, may allocate revenue between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the Franchise Fee but may be subject to other fees and/or taxes) on bundled
packages of services. No allocation shall violate this Franchise or have the effect of remitting an unfair or unlawfully disproportionate payment of Franchise Fees to the Town.

In the event that the Town believes that Grantee’s allocation methodology violates the preceding section, the Town and Grantee shall meet upon advance notice from the Town to discuss and resolve the Town’s concerns. If the Town and Grantee cannot agree on the matter within a reasonable period of time, the Town and Grantee shall submit the matter to a mutually agreeable third party for mediation. The cost of the mediation shall be shared equally between the Town and Grantee. If the Town and Grantee are unable to mutually agree on a mediator, then either the Town or Grantee can bring the matter to a court of competent jurisdiction, or pursue any other remedies available to them in this Franchise or by law.

3.2 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time during the term of this Franchise, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, it may do so with ninety (90) days written notice to the Grantee, provided that all other franchised Cable Operators in the Franchise Area over which the Town has jurisdiction are treated in an equivalent manner.

3.3 Payments

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

3.4 Acceptance of Payment

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

3.5 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the Town, verified by an authorized representative of Grantee, stating that it accurately reflects the Gross Revenues of the Grantee, which contains an accurate statement in summarized form, as well as in 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.
3.6 Audits

On a maximum annual basis, upon thirty (30) days' prior written notice, the Town shall have the right to conduct an audit of the Grantee's records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided the Grantee cooperates in making all relevant records available upon request, the Town will in good faith attempt to complete each audit within six (6) months. The audit period shall not be any greater than the previous three (3) years. Any undisputed additional amounts due to the Town as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the Town, which notice shall include a copy of the audit findings, and the Grantee's agreement that the audit findings are correct. If the audit shows that Franchise Fees have been a material underpayment by three percent (3%) or more in a calendar year, then the Grantee shall pay the cost of the audit, such cost not to exceed Five Thousand Dollars ($5,000).

3.7 Financial Records

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

3.8 Interest on Late Payments

In the event that any Franchise Fee payment is not received by the Town by the date due, interest shall be charged from such date calculated at the prime rate as listed in the Wall Street Journal on the date the payment was due until the date the Town receives the payment.

3.9 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect the 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 the Grantee's Gross Revenues in any twelve (12) month period, the Grantee agrees that the additional commitments including Access Capital Contribution, Access Channels and the I-Net are excluded from the definition of Franchise Fees herein and are not Franchise Fees. Such additional commitments will not be offset or credited against any Franchise Fee payments due to the Town, nor do they represent an increase in Franchise Fees to be passed through to Subscribers pursuant to any federal law; provided, however, that Grantee reserves all rights under applicable law to pass through to Subscribers these additional commitments.

3.10 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the Town within one hundred twenty (120) 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. Within forty-five (45) days of the filing of the certified statement with the Town, the Grantee shall pay any owed unpaid amounts as indicated. If the Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the Town may do so by utilizing the funds available in any security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 General Provisions

(A) The Town 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 of administration, or any part thereof, to the extent permitted under federal, State and local law, to any agent, in the sole discretion of the Town.

(B) If the preemptive effects of any changes in federal or State law substantially reduce Franchise Fees, the I-Net, or Access support of this Franchise, the Town and Grantee agree to enter into good faith negotiations for a six (6) month period, at the request of either party, to resolve the issues. If resolution is not reached within the six (6) month period, and the period has not been extended by mutual agreement, the term of this Franchise shall be reduced to three (3) years, and the parties shall commence the renewal process in accordance with the Cable Act.

4.2 Rates and Charges

All Grantee rates and charges for Cable Services shall be subject to regulation by Town to the full extent authorized by applicable federal, State and local laws.

4.3 No Rate Discrimination

Grantee’s rates and charges shall be non-discriminatory. 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 rational origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability. Grantee shall offer rates to Multiple Dwelling Unit Subscribers as authorized by FCC rules. Nothing herein shall be construed to prohibit:

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

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;
(C) The offering of bulk discounts for Multiple Dwelling Units; or

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

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, the Grantee shall maintain on file with the Town a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than twelve (12) consecutive months (or such other period as may be approved by the Town) to purchase Cable Services at such rate or charge.

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

4.5 Late Fees

If the Grantee assesses any kind of fee for late payment, such fee shall comply with applicable law.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. The Grantee shall indemnify, defend and hold the Town, its officers, officials, boards, commissions, authorized 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 and expenses, arising from any casualty or accident to Person or property, 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 the Grantee, its authorized agents, or its employees, or by reason of any neglect or omission of the Grantee, its authorized agents or its employees. The Grantee shall consult and cooperate with the Town while conducting its defense of the Town.

(B) Indemnification for Relocation. The Grantee shall indemnify the Town for any damages, claims, additional costs or expenses assessed against, or payable by, the Town related to, arising solely out of, or resulting solely from the 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 Town pursuant to applicable law.

(C) **Additional Circumstances.** The Grantee shall also indemnify, defend and hold the Town 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 any failure by the Grantee to secure consents from owners or authorized distributors or licensees/licensors of programs to be delivered by the Cable System.

(D) **Procedures and Defense.** If a claim or action arises, the Town or any other indemnified party shall tender the defense of the claim or action to the Grantee, which defense shall be at the Grantee’s expense. The Town may participate in the defense of a claim at its own cost. The Grantee may not agree to any settlement of claims financially affecting the Town without the Town’s written approval, which shall not be unreasonably withheld.

(E) **Duty of Defense.** The fact that the Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to the Grantee’s duty of defense and indemnification under this Section.

(F) **Duty to Give Notice.** The Town shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by this Section.

(G) **Separate Representation.** If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the Town and the counsel selected by the Grantee to represent the Town, the Grantee shall pay all expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by the Grantee. The Town’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 Town Attorney or his/her assistants or any employees of the Town or its agents but shall not include outside attorneys’ fees for services that are unnecessarily duplicative of services provided the Town by the Grantee.

5.2 **Insurance Requirements**

(A) **General Requirement.** The Grantee must have adequate insurance during the entire term of this Franchise to protect the Town against claims for injuries to Persons or damages to property which in any way relate to, arise from or are connected with this Franchise, or involve the Grantee, its agents, representatives, contractors, subcontractors and their employees.

(B) **Initial Insurance Limits.** The Grantee must maintain during the Franchise term and for a period of twelve (12) months after expiration, termination or non-renewal thereof, insurance in effect in accordance with the minimum insurance limits herein set forth by the Town from time to time. The Grantee shall obtain policies or provide evidence of self insurance for the following initial minimum insurance limits:
(1) Commercial General Liability: Two million dollars ($2,000,000) per occurrence for bodily injury, personal injury or death of a person and/or property damage;

(2) Automobile Liability: One million dollars ($1,000,000) per person property damage; and

(3) Employer's Liability: Two million dollars ($2,000,000).

(4) Workers Compensation Insurance in accordance with state law requirements.

(5) The amounts listed above are the minimum deemed necessary by the Town to protect the Town's interests in this matter. The Town has made no recommendation to the Grantee as to the insurance necessary to protect the Grantee's interests and any decision by the Grantee to carry or not carry insurance amounts in excess of the above is solely that of the Grantee. The Grantee shall be responsible for judgments, settlements, damages, costs, attorneys' fees and expenses that exceed the limits of the Grantee's insurance coverage.

(C) Endorsements.

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

(a) The Town shall be designated as an additional insured.

(b) The Grantee's insurance coverage shall be primary insurance with respect to the Town, its officers, officials, boards, commissions, employees and duly authorized agents. Any insurance or self-insurance maintained by the Town, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it, provided the occurrence arises out of the Grantee's acts or negligence; and

(c) The 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.

(2) The policy shall not be cancelled or materially altered so as to be out of compliance with the requirements of this Section without thirty (30) days written notice first being given to the Town. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, the Grantee shall provide a replacement policy. The Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the
duration of this Franchise.

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

(E) Verification of Coverage. The Grantee shall furnish the Town with certificates of insurance. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates 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 by the Town within forty-five (45) days of acceptance of this Franchise by the Grantee. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

5.3 Construction Bond

During any construction on the Cable System during the term of this Franchise, Grantee shall provide a construction bond to ensure the performance of its responsibilities under this Franchise related to construction activity, including restoration of the Rights-of-Way and other property, in accordance with the lawful provisions of the Town Code or other Town regulations as exists now or as may be amended in the future.

5.4 Letter of Credit

(A) Within thirty (30) days of receipt of a notice from the Town under Section 15.2 of an alleged violation of this Franchise, as determined by the Town, if Grantee has not resolved the alleged violation Grantee shall provide the Town with an irrevocable Letter of Credit in the sum of Fifty Thousand and No/100 Dollars ($50,000.00); provided that at intervals no more often than every three (3) years, Town shall have the right to review whether this amount should be increased to reflect increases in the Denver – Boulder Consumer Price Index during the prior three (3) year period. The Letter of Credit shall insure the faithful performance by the Grantee of all the provisions of this Franchise, and compliance with all orders, permits and directions of the Town and the payment by Grantee of any claim, penalties, damages, liens and taxes due the Town related thereto or which arise by reason of the construction, operation or maintenance of the Cable System, or violation of any other obligations of this Franchise. The Letter of Credit shall be provided by Grantee regardless of whether Grantee disputes the alleged violation. Any failure by Grantee to provide the Letter of Credit as required herein shall constitute a breach of this Franchise. Any interest on this deposit shall be paid to the Grantee. If the Letter of Credit was timely delivered to the Town in accordance with this Section 5.4, once the proceeding addressing the alleged violation has been completed the Grantee shall be relieved of the obligation to maintain the Letter of Credit until such time as another alleged violation notification is received by Grantee at which time the process shall begin again. If the Letter of Credit was not timely delivered, it shall be maintained by Grantee and held by the Town, until the Town determines, in its reasonable discretion, that such Letter of Credit is no longer necessary to be held as security against future violations.
(B) The Town 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. Withdrawal of any sums due from the letter of credit in an amount less than the full amount of recovery shall not result in a waiver of the Town's right to recover any balance due from a subsequent letter of credit or in any other manner.

(C) Grantee shall have the right to appeal to the Town 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 Town 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.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

The Grantee shall comply with Customer Service Standards as adopted by the Town by Ordinance or Resolution. It is acknowledged and agreed that the Town may, from time to time, modify or add to the Customer Service Standards as permitted by applicable law. The Grantee reserves the right to challenge any Customer Service Standards that it believes are inconsistent with its rights under applicable law or the contractual rights granted in this Franchise.

6.2 Subscriber Privacy

Grantee's provision of Cable Service shall be subject to the provisions of applicable federal, State and local law regarding limitations on Grantee's collection and use of personally identifiable information and the protection of Subscriber privacy. Grantee reserves the right to challenge any such laws which it believes are inconsistent with its contractual rights under this Franchise and applicable law.

6.3 Customer Service Location

No later than three (3) years after the Effective Date, the Grantee must maintain, at a minimum, one (1) customer service center conveniently located no more than ten (10) miles from any boundary of the Franchise Area that will be open during Normal Business Hours, to provide Subscribers the opportunity to pick up and return Subscriber equipment and to make bill payments and address complaints.

6.4 Customer Service Agreement and Manual

(A) The Grantee shall provide to Subscribers an accurate, comprehensive service agreement and customer installation packet for use in establishing Subscriber service. This material shall, at a minimum, contain the following:
(1) The Grantee's procedure for investigation and resolution of Subscriber service complaints.

(2) Services to be provided and rates for such services.

(3) Billing procedures.

(4) Service termination procedure.

(5) A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.

(6) A complete statement of the Subscriber's right to privacy.

(7) Equipment policy.

(8) The name, address and phone number of the customer care department that is responsible for handling cable questions and complaints for the Grantee. This information shall be prominently displayed in the installation packet.

(9) Upon written request by the Town, the Grantee shall use reasonable efforts to include information about Access channel programming in the installation packet provided to Subscribers. The Town shall supply such materials, for insertion in the packet, in a format consistent with the Grantee's requirements.

(B) A copy of the installation packet shall be provided to each Subscriber at the time of initial installation and any reconnection or Cable Service upgrade requiring a home visit by the Grantee (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber. Within thirty (30) days following material policy changes, information regarding the changes will be provided to Subscribers.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

The Town shall have the right to inspect any books and records of the Grantee and/or its Affiliates, if necessary and reasonably related to the enforcement of the terms of this Franchise. The Grantee shall not deny the Town access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, Affiliated Entity or a third party. The Town may request in writing copies of any such records or books, and if Grantee is obligated pursuant to this Section 7.1 to produce the requested information it shall provide such copies within thirty (30) days of the receipt of such request. One copy of all reports and records required under this or any other section shall be furnished to the Town at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot
be copied or removed, then the Grantee may request, in writing within ten (10) days of receipt of such request, that the Town inspect them at the Grantee’s local offices. If any books or records of the Grantee are not kept in a local office and not made available in copies to the Town upon written request as set forth above, and if the Town determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

7.2 Confidentiality

Access to Grantee’s records which are reasonably related to the administration or enforcement of the terms of this Franchise shall not be denied to the Town on the basis that said records contain proprietary information. Subject to applicable law, the Town shall keep any information that is marked “proprietary” or “confidential” (and, under applicable law, deemed “proprietary” or “confidential”) submitted by Grantee as required under this Agreement (“Information”) in confidence. In the event that the Town believes requested Information or any part thereof must be disclosed to a third party, government agency or regulatory body seeking to inspect or obtain the information under a Colorado Open Records Act request, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interest. Upon receipt of demand from a third party, government agency or regulatory body for disclosure of Information, the Town shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such Information that has been requested pursuant to the Colorado Open Records Act before the proposed release. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee’s books and records marked confidential as set forth above. The Town shall not be liable to Grantee for any submission or disclosure of such information to a third party as required by applicable law or to a government agency or regulatory body seeking the Information and claiming jurisdiction in any of these events. Nothing in this Subsection 7.2 shall limit the right of Grantee to contest disclosure or submission to a third party as required by law or to a government agency or regulatory body asserting jurisdiction over it or such subject matter before such disclosure shall be effected. Grantee shall reimburse the Town for all reasonable costs and attorneys’ fees incurred in any legal proceedings pursued under this section.

7.3 Complaint File and Other Reports

The Grantee shall keep an accurate compilation of any and all customer complaints received and the Grantee’s actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. These files shall be made available for review to the Town upon reasonable written request at Grantee’s metro-Denver offices. In addition or in the alternative, Grantee upon the Town’s reasonable written request may provide the Town with a summary of all customer complaints referred by the Town and their disposition and/or status.

In addition, the Grantee shall maintain, and shall provide to the Town within one-hundred twenty (120) days of a written request an executive summary report which shall include the following information:

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

(B) A summary of unplanned service interruptions, including the frequency, location and customer impact information;

(C) Any significant construction activities that affected the quality or otherwise enhanced the service of the Cable Communications System;

(D) Average response time for service calls;

(E) Phone activity report;

(F) New areas constructed and available for Cable Service, including Multiple Dwelling Units; and

(G) Video programming changes (additions/deletions).

Within thirty (30) days of a written request by the Town, Grantee shall provide all of its regularly maintained backup documentation and records relating to the executive summary.

7.4 False Statements

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

SECTION 8. PROGRAMMING

8.1 Obscenity

The Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming that is obscene under applicable law.

8.2 Parental Control Device

Upon request by any Subscriber, the Grantee shall make available at its regular and nondiscriminatory charge 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.
8.3 Complementary Cable Service

Upon request of the Town, the Grantee shall provide without charge, a standard installation and one outlet of Expanded Basic Service to each fire authority buildings, police station, School, public library, and other municipal buildings provided that the buildings are either owned and occupied or leased and occupied by the Town, and provided further that the buildings are either already served or are within 125 feet (a Standard Installation) of its Cable System. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Town or building owner/occupant agrees to pay the Incremental Cost (time and materials) of any necessary Cable System extension and/or non-Standard Installation. If additional outlets or installations of Cable Service are provided to such buildings beyond those required herein, the building owner/occupant shall pay the usual installation and service fees associated therewith.

Such obligation to provide complementary Cable Service shall not extend to areas of Town buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g. golf courses, recreation center work out facilities, or other public viewing areas in Town facilities, educational facilities or other public buildings). Outlets of Cable Service provided in accordance with this subsection may only be used for lawful purposes, and shall not be used for commercial purposes. The Town shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. To the extent not inconsistent with other provisions in this Franchise, the Town shall hold the Grantee harmless from any and all liability or claims arising out of the use of Cable Service at the Town facilities, educational facilities and other public buildings required by this Section.

8.4 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 programming;

(D) General entertainment programming;

(E) Children's programming;

(F) Arts, culture and performing arts;

(G) Foreign language programming;
(H) Science/documentary programming;

(I) National news, weather and information;

(J) Access programming, to the extent required by this Franchise.

8.5 Continuity of Service Mandatory

(A) The Grantee shall use reasonable efforts so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service insofar as their financial and other obligations to Grantee are honored. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

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

(C) Failure of Grantee to operate the Cable System for four (4) consecutive days without prior approval of the Town or without just cause may be considered a material violation of this Agreement.

8.6 Services for the Disabled

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

SECTION 9. GOVERNMENTAL AND EDUCATIONAL ACCESS AND I-NET

9.1 Access Channels

No sooner than four (4) years after the Effective Date, and upon ninety (90) days written notice from the Town, the Grantee shall make available the following Access Channels throughout the Franchise Area:

(A) One (1) Government Access Channel, which shall be made available as part of the Basic Cable Service Tier.

(B) If there is a demonstrated community need and Subscriber demand for additional Access Channel programming as reasonably determined by the Town, then up to two (2) additional Access Channels shall be made available to the Town within one-hundred eighty (180) days of receipt by the Grantee of a written request from the Town.
(C) In the event the Grantee makes any change in the Cable System and related equipment and facilities or in signal delivery technology, which change negatively affects the signal quality of any Access Channel programming or services, the Grantee shall, at its own expense, take necessary technical steps, provide necessary technical assistance, acquire new equipment, provide training, and in addition, provide the necessary assistance and foregoing equipment so that the Access facilities and equipment may be used as intended to ensure that delivery of Access signals is not diminished or adversely affected, including, among other things, so that live and taped programming can be cablecast with as good or better signal quality than existed prior to such change. For example, these provisions shall apply if Basic Service on the Cable System is converted from an analog to a digital format, so that Access Channels supplied to Grantee in analog format may continued to be received by Subscribers.

(D) All assigned Access Channels can be used to transmit programming 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 (character generated) messages. Such uses must be in furtherance of Access purposes. Any Access Channel provided shall have at least the same transmission quality as is used to carry any of the commercial Channels that deliver programming on the Cable System.

9.2 Management and Control of Access Channels

The Town may authorize Designated Access Providers to control, operate, and manage the use of any Town controlled Access facilities provided by Grantee under this Franchise. The Town or its designee may formulate rules for the placement of programming on the Access Channels, consistent with this Franchise. Nothing herein shall prohibit the Town from authorizing itself to be a Designated Access Provider.

9.3 Relocation of Access Channels

Grantee shall provide the Town with a minimum of sixty (60) 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 Town the maximum notice possible. In addition, in the event of a change in an Access Channel’s designation, Grantee shall cooperate in the following manner with the Town in order to notify Subscribers of this change. Grantee, at Grantee’s expense, will place the Town’s notices of the Channel change on and/or with its regular monthly billings, upon the Town’s request. In addition, Grantee shall provide the Town with a total not to exceed one hundred (100) thirty second (.30) promotional spots (“Spots”) on the System serving the Franchise Area during a thirty (30) day period prior to the date of the change in the location of the Access Channels. The number of Spots to be provided under this section shall be prorated with respect to any partial period less than thirty (30) days. The Town or its designee shall have sole responsibility to produce at no cost to Grantee and deliver the Spots to Grantee on a timely basis and in a cablecast-ready state. Such Spots shall promote the Access Channels and the Channel relocations only for the sole purpose of notifying Subscribers of the change in Channel designations, and shall not include any mentions of third party sponsors or individual users of the
Access Channel. Placement of the Spots shall be made by Grantee on a run-of-schedule basis. All Spots are subject to Grantee’s approval; such approval not to be unreasonably withheld or delayed. 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.

9.4 Return Lines

(A) The Grantee shall, at its cost, provide and maintain a fiber-optic return line from the new Town Hall located in Block 1, Timnath Ranch Subdivision, 3rd Filing (expected to be completed within one (1) year of the Effective Date) to the Cable System Headend for so long as such return line is necessary. Within one hundred twenty (120) days after written notice from the Town, Grantee shall, at its cost, provide and maintain a similar return line from an additional Town facility located at 2113 County Road 1, expected to be completed for Town use within two (2) to three (3) years, and at 3903 Main Street, expected to be completed for Town use within three (3) to five (5) years of the Effective Date. It is the Grantee’s responsibility to ensure that the signal carried on the existing return line from the existing point of demarcation back to the Cable System Headend meets FCC technical standards. Similarly, it is the Town’s responsibility to ensure the technical quality of the signal from the Town’s origination equipment to the designated demarcation point.

(B) All new fiber-optic return lines from the Cable System Headend to the Town buildings described in this Franchise will be terminated at a designated internal location within the Town buildings at a standard termination panel provided by Grantee. The Town will provide wall mount backboard and a power source for the termination panel. The termination panel will be the fiber demarcation point. The Town shall have the indefeasible and exclusive right to use the fiber-optic return lines described in subsection (A) above, which right cannot be revoked by the Grantee or its successors, if any, during the term of the Franchise or any renewals thereof. However, the Grantee shall at all times own in fee the fiber optic cable infrastructure and associated facilities and equipment up to the designated termination point.

(C) The Grantee shall provide the fiber optic transmitter(s) (the “transmitter”) and receiver(s), for transmitting and receiving the video/audio signal(s) from the locations where Grantee has installed a return line for Access broadcasting and where such Access programming originates (“Access origination locations”). The Town and any other Access providers are responsible for all costs for equipment necessary to send programming capable of being received by the transmitter located at the Access origination location so that the programming can be viewed on the Cable System; provided however that Grantee shall install such equipment upon reasonable notice, at its cost. For purposes of signal quality, the identified point of demarcation will be the input connector on the transmitter(s) provided by the Grantee at the Access origination locations. After the transmitter(s) provided by the Grantee receives the properly engineered signal(s) from the Access origination locations, the Grantee shall be responsible for the signal quality on the return line to the Cable System Headend and on the Cable System.
9.5 Technical Quality

The Grantee shall maintain Access channels at the same or better level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for other Channels. The Grantee shall provide routine maintenance and shall repair and replace, if necessary, all Grantee's transmission equipment required to carry a quality signal to and from the Town's facilities (and Designated Access Providers' facilities) and the Grantee's facilities for the Access channels provided under this Franchise. The Town and/or Access providers are responsible for all equipment costs necessary to repair and replace the Town's and/or Access Providers' facilities required to send programming to the Headend; provided however that Grantee shall install such equipment upon reasonable notice, at the Town's cost.

9.6 Institutional Network (I-Net)

(A) At the time it constructs its Cable System in the Town, Grantee shall install for the Town, two strands of fiber optic lines connecting the following locations: 4100 Main Street; Lot 11 in Block 1, Timnath Ranch Subdivision, 3rd Filing; 3903 Main Street. The Town shall be responsible to Grantee for the actual cost of the fiber, and the incremental increase in cost to install the additional two strands at the time of Grantee's initial Cable System construction. The Town shall have the indefeasible and exclusive right to use the fiber-optic lines described herein so long as the Town has met its financial obligations to the Grantee for any construction and materials costs and costs, for services it has contracted for to be used on the I-Net, which right cannot be revoked by the Grantee or its successors, if any, during the term of the Franchise or any renewals thereof. However, the Grantee shall at all times own in fee the fiber optic cable infrastructure and associated facilities and equipment up to the designated termination point.

(B) The Grantee recognizes that during the term of this Franchise, the Town may require additional redundant I-Net connections between the existing Town or other government locations and/or additional I-Net connections to other Town buildings and/or additional I-Net connections to public schools or other government buildings located within the Franchise Area. The Grantee agrees that, within 120 days of the Town's written request, the Grantee will prepare and submit to the Town its reasonable time and materials estimate of the cost for the Grantee to construct and install fiber optic connections to the Town's locations, and a reasonable timeline for completion of the I-Net construction.

(C) If the Town rejects Grantee's estimate of costs, then the Town shall only be responsible for reimbursing the Grantee of the actual and reasonable cost incurred by the Grantee to prepare the Town's I-Net cost estimate.

(D) If the Town accepts Grantee's estimate of costs, and directs the Grantee in writing to proceed with I-Net infrastructure construction, the I-Net infrastructure will be constructed, acceptance tested, terminated and maintained by the Grantee in accordance with terms and conditions of a new Institutional Network Agreement for the new I-Net connection(s) as negotiated by the parties.
So long as it is technically feasible and does not interfere with normal operations of the Cable System, the Town may use existing Town conduit and/or fiber, or fiber and/or conduit provided by a third party, for the purpose of expanding the I-Net to achieve the most economical coverage, so long as the Town's I-Net usage is non-commercial. Upon the reasonable written request of the Town, and at the Town's cost, the Grantee shall Interconnect the Town's existing network infrastructure with the Town's conduit and/or fiber, or any fiber and/or conduit provided by a third party. The point of demarcation for maintenance will be specified at the time of interconnection.

For any I-Net fiber-optic lines constructed under this Section, the Grantee shall be responsible for the ongoing administration, maintenance and management of the fibers and associated electronics up to the designated termination point. The Town shall be responsible for the ongoing administration, maintenance and management of the I-Net equipment and facilities located on the Town side of the designated termination point at each I-Net site, and any internal site network itself.

9.7 Support for Access / I-Net Capital Costs

In order to help the Town meet the capital need for Government, Educational and Public Access production equipment and facilities, the Grantee shall pay to the Town an Access Capital Contribution as follows:

(A) Grantee shall provide a recurring Access Capital Contribution to the Town in an amount not to exceed fifty cents ($0.50) per Residential Subscriber per month. Grantee shall not be responsible for collecting or paying the Access Capital Contribution with respect to gratis or bad debt accounts. The Town shall have discretion to allocate the Access Capital Contribution for Access and/or I-Net capital needs in accordance with applicable law. Such payments are to be made quarterly on the same schedule as Franchise Fees. With each quarterly payment, Grantee will prepare and submit a report, in a form acceptable to the Town that shows how such payments were calculated. The Town may adjust the amount of the recurring Access Capital Contribution on an annual basis (up to the maximum amount of $0.50), provided that Grantee is given ninety (90) days advance written notice.

(B) The Grantee may recover the Access Capital Contribution provided for in this Section 9.7 from Residential Subscribers to the extent and in a manner provided for in federal law, and the Town and the Grantee agree that if Grantee seeks to identify the recovery of the Access Capital Contribution on Subscribers' bills, such itemization shall be referred to on Subscribers' bills as a "PEG Fee," or language substantially similar thereto.

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

10.1 Construction

(A) Subject to generally applicable federal, state and local laws, regulations and ordinances and the provisions of this Franchise, the Grantee may perform all maintenance,
construction, repair, upgrade and reconstruction necessary for the operation of its Cable System. All construction and maintenance of any and all of the Grantee’s facilities within Right-of-Way shall, regardless of who performs the construction, be and remain the Grantee’s responsibility. The Grantee shall apply for, and obtain, all permits necessary for construction of any facilities and for excavating and laying any facilities underground within the Right-of-Way. The Grantee shall pay all generally applicable fees upon issuance of the requisite construction permits by the Town to the Grantee.

(B) The Grantee may make excavations in Right-of-Way for any facility needed for the maintenance or extension of the Grantee’s Cable System. Prior to doing such work, the Grantee shall apply for, and obtain, appropriate permits from the Town. The Town may impose such conditions and regulations as are lawful and necessary for the purpose of protecting any structures in such Right-of-Way, proper restoration of such Right-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic. 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 to reduce so far as possible the number of Rights-of-Way cuts within the Franchise Area.

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

10.2 Location of Facilities

(A) Upon the Town’s reasonable request, in connection with the design of any Town project, the Grantee will verify the location of its underground Cable System within the Franchise Area by marking on the surface the location of its underground facilities as required by law.

(B) Upon the Town’s reasonable written request, the Grantee will provide, at no expense to the Town, electronic data showing the location of Grantee’s System within the Franchise Area, with such information to be updated for inclusion in the Town’s GIS database. These data shall be certified as accurate by an appropriate representative of Grantee, and shall be considered proprietary under Section 7.2.

10.3 Restoration of Right-of-Way and Other Public Property

If the Grantee excavates, disturbs or damages any Right-of-Way or other public property, then the Grantee shall be responsible for restoration in accordance with applicable regulations to a condition as good as its prior condition in the Town’s sole determination. Grantee shall guaranty such restoration for at least two (2) years against defective materials and workmanship. The Town may, after providing reasonable notice to the Grantee and an opportunity to cure a failure in restoration, or without notice where the excavation, disturbance or damage may create a risk to public health, safety or welfare, or cause delay or added expense to a public project or
activity, repair, refill or repave any excavation, disturbance or damage. The actual and
reasonable cost thereof, including the costs of inspection and supervision, shall be paid by the
Grantee within forty-five (45) days of an itemized billing invoice. All excavations made by the
Grantee in Right-of-Way shall be properly safeguarded for the prevention of accidents.

10.4 Maintenance and Workmanship

(A) The 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 Town, or with any other
pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the
Right-of-Way by, or under, the Town's authority.

(B) The Grantee shall provide and use any equipment and appliances necessary to
control and carry the Grantee's signals so as to prevent injury to the Town's property or property
belonging to any Person. The Grantee, at its own expense, shall repair, renew, change and
improve its facilities to keep them in good repair and safe and presentable condition, in
accordance with all applicable codes.

(C) Prior to doing any work in the Right-of-Way, Grantee shall give statutorily
required notices to the Town and to the notification association established in C.R.S. Section 9-
1.5-101, et seq., as such may be amended from time to time.

(D) In the absence of any applicable law governing notice to private property owners,
the Grantee shall give reasonable notice to private property owners of construction work in
adjacent Right-of-Way.

10.5 Acquisition of Facilities

Upon the Grantee's acquisition of facilities in any Right-of-Way, or upon the addition or
annexation to the Town of any area in which the Grantee owns or operates any facility, the
Grantee shall, at the Town's request, submit to the Town 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 the Grantee has possession of such information.
Subject to applicable law, such facilities shall immediately be subject to the terms of this
Franchise.

10.6 Relocation of Facilities

(A) Movement of the System For and By the Town. Nothing in this Franchise shall
prevent the Town from constructing any public project. Unless otherwise provided by applicable
law, the Grantee shall assume the costs (in accordance with applicable law) associated with any
requirement of the Town to relocate its Cable System facilities located in the Right-of-Way.
Following ninety (90) days written notice by the Town, the Grantee shall remove, replace,
relocate, modify or disconnect any of its Facilities within any Right-of-Way, or on any other
property of the Town. If the Town requires Grantee to relocate its facilities located within the
Rights-of-Way, the Town shall use best efforts to provide Grantee with an alternate location with the Rights-of-Way. If the Town receives funds for such relocation from any public or private source, after reimbursement to the Town of all of its out of pocket costs, Grantee shall be entitled to its pro rata share of such funds, unless such funds are only received for the relocation of another specific entity’s facilities. If the Grantee fails to complete this work within the time prescribed and to the Town’s satisfaction, the Town may cause such work to be done and bill the cost of the work to the Grantee. The Grantee shall remit payment to the Town within forty-five (45) days of receipt of an itemized list of those costs.

In the case of fire, disaster or other emergency, the Town may remove or disconnect the Grantee’s facilities and equipment located in the Right-of-Way or on any other property of the Town. The Town shall provide reasonable notice to the Grantee prior to taking such action and shall provide the Grantee with the opportunity to perform such action unless, in the Town’s reasonable discretion, the imminent threat to public health safety or welfare make such notice impractical.

(B) **Movement for Other Permits.** At the request of any Person holding a valid Town permit and upon at least thirty (30) days advance written notice, the Grantee shall remove, replace, relocate, modify or disconnect any of its Facilities or temporarily raise, lower or remove its Facilities as necessary to accommodate the work under the permit. The permit holder must pay the cost, and the Grantee may require the estimated payment in advance.

(C) If the Town requires the subsequent relocation of any Cable System equipment or facilities within three (3) years from the date of relocation of such facilities pursuant to this Section, the Town shall bear the entire cost of such subsequent relocation.

(D) The Town may assist Grantee, but shall not be required to obtain easements for the Grantee.

10.7 **Right-of-Way Vacation**

If any Right-of-Way or portion thereof used by the Grantee is vacated by the Town during the term of this Franchise, unless the Town specifically reserves to the Grantee the right to continue the use of vacated Right-of-Way, the Grantee shall, without delay or expense to the Town, remove its facilities from such Right-of-Way, and restore, repair or reconstruct the Right-of-Way where such removal has occurred. In the event of failure, neglect or refusal of the Grantee, after thirty (30) days' notice by the Town, to restore, repair or reconstruct such Right-of-Way, the Town may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the Town, shall be paid by the Grantee within forty-five (45) days of receipt of an invoice and documentation.

10.8 **Removal of Discontinued Facilities**

Whenever the Grantee intends to discontinue using any Cable System facilities within the Right-of-Way, the Grantee shall submit to the Town a complete description of the facilities and
the date on which the Grantee intends to discontinue using the facilities. The Grantee may remove the facilities or request that the Town allow them to remain in place. Notwithstanding the Grantee’s request that any such facilities remain in place, the Town may require the Grantee to remove the facilities from the Rights of Way or modify the facilities to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. The Town may require the Grantee to perform a combination of modification and removal of the facilities. The Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the Town. Until such time as the Grantee removes or modifies the facilities, or until the rights to and responsibility for the facilities are accepted by another Person having authority to construct and maintain such facilities, the Grantee shall be responsible for all necessary repairs and relocations of the facilities, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facilities were in active use, and the Grantee shall retain all liability for such facilities. If Grantee abandons its facilities, the Town may choose to use such facilities for any purpose.

10.9 Hazardous Substances

(A) The Grantee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Right-of-Way.

(B) The Grantee shall maintain and inspect its Cable System located in Right-of-Way. Upon reasonable notice to the Grantee, the Town may inspect the Grantee’s facilities in Right-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to the Grantee’s System. In removing or modifying the Grantee’s facilities as provided in this Franchise, the Grantee shall also remove all residues of hazardous substances related thereto.

10.10 Undergrounding of Cable System

(A) In areas of the Franchise Area where electrical or telephone utility wiring is aerial the Grantee may operate and maintain the Cable System aerially, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(B) When electric and telephone utility wiring and the aerial lines of telecommunications providers in an area of the Franchise Area are subsequently relocated to underground the Grantee shall concurrently relocate its aerial Cable System facilities to underground, at no cost or expense to the Town. Notwithstanding the foregoing, if C.R.S. 29-8-101, et seq. or any other provision of applicable law provides that such undergrounding shall be at Town expense, such applicable law shall control.

(C) The Grantee shall utilize existing poles wherever possible. 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 Town or any other Person.
(D) Related Cable System facilities (such as pedestals, equipment cabinets, etc.) that need to be placed above ground for technical reasons will be placed in accordance with applicable Town code requirements and underground utility policies.

(E) The Town shall provide reasonable advanced notice of available opportunities for access to open trenches. To the extent technically and economically feasible, the Grantee shall participate with other providers in joint trench projects to relocate its overhead facilities underground provided that Grantee's share of the cost of participation in a joint trench project does not exceed Grantee's cost of relocation to a single occupancy trench.

(F) The Grantee and the Town recognize that situations may occur in the future where the Town 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 Town in any construction by the Grantee that involves trenching or boring, provided that the Town has first provided reasonable notice to 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 Town to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the Town shares in the cost of the trenching and boring on the same terms and conditions as the Town at that time shares the total cost of trenches and bores. The Town shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

10.11 Avoid Interference

The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of interference, the Town may require the removal or relocation of the Grantee's lines, cables and other appurtenances from the property in question.

10.12 Tree Trimming

Subject to the Town's trimming and removal ordinance requirements, the Grantee may trim or prune trees in the Right-of-Way that interfere with the Cable System. Any such trimming or pruning will be performed using standard practices accepted by the International Society of Arboriculture (ISA) addressing vegetation health and aesthetics.

10.13 Standards

(A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must 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, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA)
Standards.

(B) The Grantee shall ensure that all cable drops are properly bonded and grounded at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by the Grantee as necessary.

(C) All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices and of sufficient height to comply with all federal, State and local regulations, ordinances and laws so as not to interfere in any manner with the right of the public or individual property owner, 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.

(D) In the maintenance and operation of its Cable System in the Right-of-Way and other public places, and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the Right-of-Way or other public places made by the Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked.

10.14 Corrections and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions

Whenever the Town determines that the Grantee has taken any action or caused any condition within the Franchise Area in violation of the Timnath Town Code or other applicable Town ordinances, standards, procedures and/or regulations that results in or produces any unsafe, nonconforming, or unauthorized condition the Town may order the correction or discontinuance of such condition or any activity causing such condition, or take any other remedial action, pursuant to applicable provisions of the Timnath Town Code or other applicable Town ordinances, standards, procedures and/or regulations, as from time to time amended.

10.15 Work of Contractors and Subcontractors

The Grantee’s contractors and subcontractors shall be licensed and bonded in accordance with applicable ordinances, regulations and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law. 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.
10.16 Burial Standards

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

Underground cable 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 twenty-four (24) 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 or other weather conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

10.17 Prewiring

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

10.18 Inspection of Construction and Facilities

The Town may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice. If an unsafe condition is found to exist, the Town, 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 reasonably established by the Town. The Town has the right to correct, inspect, administer and repair the unsafe condition and reasonably charge Grantee therefor if Grantee fails to do so after having received reasonable notice and having an opportunity to correct the unsafe condition.
10.19 Stop Work

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

(B) The stop work order shall:

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

SECTION 11. SYSTEM DESIGN AND CAPABILITY

Grantee's Cable System shall be two-way capable and shall offer a minimum of one hundred ten hundred (110) channels of digital and/or analog programming services. The Cable System shall be activated for and deliver two-way cable communications as well as deliver high quality signals that meet or exceed FCC technical quality standards regardless of a particular manner in which signal is transmitted. The Cable System shall utilize an infrastructure that will permit additional improvements necessary for high quality and reliable service throughout the Franchise term. The Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of this Franchise.

SECTION 12. TECHNICAL STANDARDS

12.1 Technical Performance

The technical performance of the Cable System shall meet or exceed all FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

12.2 Cable System Performance Testing

(A) The Grantee shall, at its expense, perform all tests on its Cable System required by the FCC and shall maintain written records of its test results. Copies of such test results will be provided to the Town upon request.
(B) All required technical performance or other Cable System tests may be witnessed by representatives of the Town. Upon written request, the Grantee will notify the Town before any required technical proof-of-performance or other testing occurs. The FCC semi-annual testing is conducted in January/February and July/August of each year. If the Town contacts Grantee prior to the next test period (i.e., before December 15 and June 15 respectively of each year), Grantee shall provide Town with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If the Town 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.

(C) The Grantee shall promptly take such measures as are necessary and diligently continue the same until completion in order to correct any performance deficiencies fully and to prevent their recurrence. The Grantee’s failure to correct deficiencies identified through this testing process shall be a violation of this Franchise. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

12.4 Additional Tests

(A) Upon thirty (30) days prior written notice, the Town may require the Grantee to conduct proof of performance tests on up to five (5) test points located within the Town. The Town may only trigger this testing requirement once during the thirty-six (36) month franchise renewal window.

(B) Notwithstanding Subsection (A) above, where there exists a pattern of poor technical performance or quality on the Cable System (including multiple Subscriber complaints which indicate that tests may be necessary), the Town may upon thirty (30) days prior written notice, require the Grantee to conduct an additional performance test within the Town. The Grantee shall fully cooperate with the Town 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:

1. The nature of the complaint or problem that precipitated the special tests;
2. The Cable System component tested;
3. The equipment used and procedures employed in testing;
4. The method, if any, in which such complaint or problem was resolved; and
5. Any other information pertinent to said tests and analysis that may be required.
SECTION 13. SERVICE AVAILABILITY

13.1 Service Availability

(A) It is understood that this Franchise Agreement authorizes and anticipates the construction of a new Cable System within the Town. Grantee has no existing Cable System facilities in the Town as of the Effective Date of this Agreement. As such, Grantee shall be given a reasonable period of time, not to exceed eighteen (18) months for Old Town Timnath and nine (9) months for other portions of the Town, to complete construction of the Cable System to all parts of the Franchise Area that meet the density requirements described in Subsection (C). For purposes of this subsection 13.1(A), “Old Town Timnath” is defined as that part of Town with the following borders: Dixon Street on the west side; County Road 40 on the north side; Kern Street on the east side; and Harmony Road on the south side. Construction shall commence on the installation of the Cable System within forty-five (45) days after the Effective Date. So long as Grantee is provided reasonable access to open trenches, in all new developments, Grantee shall install its Cable System at the same time that other utilities are placed in open trenches during construction. After initial construction of the Cable System is completed in all developments that meet the density requirements in Subsection (C), extensions of the Cable System shall be made to newly developed areas consistent with this Section 13 and applicable Town codes.

(B) In general, except as otherwise provided herein, the Grantee shall provide a standard installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified verbal request. The Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized herein.

(2) At a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations.

(C) No customer shall be refused service arbitrarily. However, for unusual circumstances, such as the existence of more than one hundred twenty-five (125) feet from distribution cable to connection of service to Subscribers, or a density of less than thirty-five (35) residences per 5280 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 cost of construction to be borne by the Grantee and Subscribers 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 feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Subscribers 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 Subscribers be paid in advance.

13.2 Universal Service

Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area. Subject to subsection 13.1, 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 Town 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 either construction or an upgrade of the Cable System. Grantee may also charge for line extensions and non-standard installations pursuant to subsection 13.1.

13.3 Annexations

(A) In the event that the Town annexes territory that is contiguous to the current Franchise Area and not being provided Cable Service by the Grantee or an Affiliate of Grantee, Grantee agrees that it will extend its Cable System into the newly annexed territory under the terms of subsection 13.1.

(B) In the event the Town annexes territory that is currently being provided Cable Service by Grantee or an Affiliate of Grantee, but not the same Cable Service as provided within the current Franchise Area, Grantee shall estimate the cost to make such adjustments to the Cable System as is necessary to provide the same Cable Service to the annexed area. If requested by the Grantee, Grantee and the Town shall discuss the cost of such adjustment and potential impact on Subscriber rates within one hundred twenty (120) days of Grantee’s receipt of notification of the annexation. Unless waived by the Town, Grantee shall make the required adjustments to the Cable System and billing system to provide the same Cable Service to the annexed area within two (2) years of receipt of the annexation notification.

(C) In the event that the Town annexes territory that is not contiguous to the current Franchise Area, Grantee shall have no obligation to extend to such area; provided, however that if Grantee and/or an Affiliate has permission from the appropriate government authority to use the intervening Right-of-Way for this purpose, either by franchise or separate agreement, Grantee shall extend or adjust the Cable System in accordance with subsection (A) or (B) above.

(D) If Grantee finds it convenient for any of the annexed territory to be served by an Affiliate versus the Grantee, it is understood by the parties that the rights, benefits and obligations of this Franchise shall apply to such Affiliate for the annexed area, without the need for transfer approval of the Town.
SECTION 14. STANDBY POWER AND EMERGENCY ALERT SYSTEM

14.1 Standby Power

The Grantee shall provide continuous backup power generating capacity at the Cable System Headend. 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.

14.2 Emergency Alert Capability

(A) Grantee shall install for use by the Town an Emergency Alert System ("EAS"). The EAS shall at all times be operated in compliance with FCC requirements. Subject to the foregoing, the EAS shall be remotely activated by telephone and shall allow a representative of the Town to override the audio and video on all channels on the Grantee’s Cable System that may lawfully be overridden (subject to any contractual or other rights of local broadcasters) without assistance of the Grantee, for emergency broadcasts from the Larimer County Communications Center or other location as may be designated by the Town pursuant to federal law in the event of a local emergency or for reasonable tests.

(B) The Town shall only permit its appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee’s Cable System that in any manner results in an inappropriate use thereof. To the extent allowed by law, the Town shall hold the Grantee, its employees and officers harmless from any claims arising out of the emergency use of the EAS facilities by the Town.

(C) The Town will provide reasonable notice to Grantee prior to any test use of the EAS. Grantee shall cooperate with the Town in any such test to the maximum extent feasible.

(D) The Grantee shall ensure that the EAS system is functioning properly at all times. It will test the EAS system periodically, in accordance with FCC regulations.

SECTION 15. FRANCHISE VIOLATIONS

15.1 Informal Dispute Resolution

Prior to proceeding with the formal Procedure for Remedy of Franchise Violations process as set forth below, the Town agrees to provide Grantee informal verbal or electronic mail notice of any alleged material violation of this Franchise and allow Grantee a reasonable opportunity to cure the violation. If the alleged violation is investigated by Grantee and determined to be valid, Grantee agrees to exert good faith efforts to resolve the matter as quickly and as efficiently as possible. However, if the alleged violation is determined by Grantee to be invalid, or outside of Grantee’s legal responsibilities, the Grantee promptly shall so advise the
Town in writing. Grantee agrees to exert good faith efforts to expedite its investigation, determination and communications to the Town so that the informal resolution process proceeds on an expedited basis. If the Town believes that Grantee is unreasonably delaying the informal resolution process, it may commence the formal dispute resolution process.

15.2 Procedure for Remediating Material Franchise Violations

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

(1) Respond to the Town, contesting the Town’s assertion that a default has occurred, and requesting a hearing in accordance with subsection (B), below; or

(2) Cure the default; or

(3) Notify the Town that the 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, the Grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a hearing in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether the 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 hearing in accordance with subsection (A)(1), or the Town orders a hearing in accordance with subsection (A)(3), the Town shall set a public hearing to investigate said issues or the existence of the alleged default. The Town shall notify Grantee of the hearing in writing and such hearing shall take place no less than thirty (30) days after Grantee’s receipt of notice of the hearing. At the hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense. At any such hearing, the Town shall permit Grantee’s opportunity to make a record which may be reviewed should any final decision of the Town be appealed to a court of competent jurisdiction. The hearing shall be recorded, and the recording preserved in the event of an appeal. The determination as to whether a default or a material breach of this Franchise has occurred shall be within the Town’s sole discretion, but any such determination shall be subject to appeal upon the administrative record to a court of competent jurisdiction.

(C) If, after the public hearing, the Town determines that a default still exists, the Town shall order Grantee to correct or remedy the default or breach within no less than fifteen (15) days or within such other reasonable timeframe as the Town shall determine. In the event Grantee does not cure within such time to the Town’s reasonable satisfaction, the Town may:
(1) Assess and collect monetary damages in accordance with this Franchise;

(2) Commence procedures to revoke this Franchise pursuant to subsection 15.5; or,

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

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

15.3 Assessment of Monetary Damages

(A) Upon completion of the procedures set forth above in Section 15.2, and from the date of the Town’s order pursuant to Section 15.2 (C), and after all appeals have been exhausted, the Town may assess against and collect from Grantee monetary damages as follows:

(1) For failure to complete construction of the Cable System in accordance with Section 13.1 (A): $500 per day.

(2) For failure to restore damaged property; failure to render payment for reimbursement of any franchise-required expenses; or failure to comply with requirements of Section 9 for PEG obligations or capital grants; or failure to pay liquidated damages; or failure to file, obtain or maintain the required performance bond or other security instruments in a timely fashion: $75.00 per day for the first thirty days; $100.00 per day for days 31 – 60; $150.00 per day for days 61 – 90; and $250.00 per day for days 91 – 120.

(3) For violation of technical standards established by the FCC or other lawful Authority; failure to pay franchise fees when due; or any other violation of a monetary obligation to the Town contained in Sections 3.6, 3.8, 3.9, 5.1, 5.2, 7.2, 8.3, or 19.2: $50.00 per day for the first thirty days; $75.00 per day for days 31 – 60; $150.00 per day for days 61 – 90; and $250.00 per day for days 91 – 120.

(4) For failure to provide complete and accurate information, reports, or filings lawfully required under this Agreement or applicable law: $50.00 per day for the first thirty days; $75.00 per day for days 31 – 60; and $100.00 per day for days 61 – 120.

(5) For any other material violation of this Agreement not itemized herein for which the Town sustains actual damages that are in an amount not readily ascertainable: $50.00 per day for the first thirty days; $75.00 per day for days 31 – 90; and $100.00 per day for days 91 – 120.
In no event shall monetary damages be assessed for a period exceeding one hundred twenty (120) days.

(B) The Town and the Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Town as a result of the Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, the Town and the Grantee agree that the Grantee shall pay to the Town the sums set forth above for each day that the Grantee shall be in breach of the specific provisions of this Franchise. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the Town would suffer in the event of the Grantee's breach of such provisions of this Franchise, and are not intended as a penalty. To the extent that the Town elects to assess monetary damages as provided in this Section and such liquidated damages have been paid by Grantee, such damages shall be the Town's sole and exclusive monetary remedy during that period when the liquidated damages are being assessed. Nothing in this Section is intended to preclude the Town from exercising any other right or remedy with respect to a breach that continues past the time the Town stops assessing liquidated damages for such breach, and if Grantee has not cured or commenced to cure the alleged breach to Town's satisfaction after the maximum one hundred twenty (120) day period for assessment of monetary damages, the Town may pursue any other right or remedy it may have under this Franchise or applicable law, including its right to recover from Grantee any additional rights or claims the Town might have to damages, losses, costs and expenses.

(C) The Grantee's maintenance of the Security required herein or by applicable code shall not be construed to excuse unfaithful performance by the Grantee of this Franchise; to limit the liability of the Grantee to the amount of the Security; or to otherwise limit the Town's recourse to any other remedy available at law or equity.

15.4 Revocation

(A) In addition to all other rights and powers retained by the Town, consistent with the procedures in Section 15.5, the Town reserves the right to revoke and terminate this Franchise and all rights and privileges of the Grantee in the event of a material breach of its terms and conditions. A material breach by the Grantee shall include, but shall not be limited to, any of the following acts or omissions:

(1) An uncured violation of any material provision of this Franchise;

(2) An intentional evasion or knowing attempt to evade any material provision of this Franchise or the practice of any fraud or deceit upon the Cable System Subscribers or upon the Town;

(3) Failure to begin or substantially complete any System construction or System extension as required;

(4) Failure to provide the services as specified in this Franchise;
(5) Any use or occupation of the Right of Way that presents a risk to public health or safety or the construction, installation, operation or maintenance of the Cable System in an unsafe or dangerous manner;

(6) Misrepresentation of material fact in the application for, or during negotiations relating to, this Franchise;

(7) A continuous and willful pattern of interrupted Cable Service or failure to respond to legitimate subscriber complaints;

(8) Failure to provide insurance, bonds, letter of credit, or indemnity as required by this Franchise;

(9) An uncured failure to pay Franchise Fees as required by this Franchise.

(B) None of the foregoing shall constitute a material breach if the Grantee is without fault or if the material breach occurs as a result of circumstances beyond the Grantee's reasonable control. The Grantee shall bear the burden of proof in establishing the existence of such circumstances. However, the Grantee's material breach shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, employees, agents or, contractors.

15.5 Revocation Procedures and Process

(A) This Franchise may be terminated in accordance with the following procedures:

(1) The Town Manager, or other person designated by the Town Manager, shall notify the Grantee in writing of the exact nature of the alleged material breach constituting a ground for termination. Said notice shall provide that the Grantee shall have sixty (60) days from the date of receipt of the notice to correct and cure such material breach or to present facts and argument in refutation of the alleged material breach. A copy of said notice of material breach shall be mailed to the surety on any performance bond.

(2) If the Grantee corrects any alleged material breach within the sixty (60) day cure period, then in no event shall the violation be weighed against such Grantee in any subsequent review of Franchise performance.

(3) If the Grantee does not correct and cure the alleged material breach or breach within the sixty (60) day cure period then the Town Council shall, within sixty (60) days from the last day of the sixty (60) day cure period, conduct a public hearing to determine if the revocation and termination of the Franchise is warranted.

(4) At least twenty (20) days prior to the public hearing, the Town shall issue a public hearing notice that shall provide the time, date and location of the hearing;
provide that the Town shall hear any persons interested therein; and provide that the
Grantee shall be afforded fair opportunity for full participation, including the right to
introduce evidence, to require the production of evidence, to be represented by counsel
and to question witnesses.

(5) The Town Council shall hear testimony, take evidence, hear oral argument
and receive written briefs, if submitted in the discretion of the parties. The Town Council
shall keep a complete record of the public hearing including all exhibits introduced at the
hearing and an electronic sound recording.

(6) The Grantee carries the burden of proof and must demonstrate that a
preponderance of the evidence supports the conclusion that there is not an uncured
substantial violation or breach or that the substantial violation or breach is a result of
circumstances beyond the Grantee’s reasonable control.

(7) Within thirty (30) days after the close of the record the Town Council
shall take final action which shall include a written decision containing findings of facts
and the conclusions derived from those facts.

(B) If the action by the Town Council will result in the revocation and termination of
the Franchise, it shall adopt an ordinance which shall declare that the Franchise shall be revoked
and terminated; any security fund or bonds are forfeited; and shall include findings of fact and
conclusions derived from those facts which support the decision of the Council. The ordinance
may by reference adopt some or all of the findings and conclusions of the Town Council.

(C) The decision of the Town Council shall be the final decision of the Town and
subject to applicable law, may be appealed to court of competent jurisdiction pursuant to
applicable law.

15.6 Removal

(A) In the event of the termination, expiration, revocation or non-renewal of this
Franchise, and after all appeals from any judicial determination are exhausted and final, the
Town may order the removal of the Cable System facilities from the Franchise Area at the
Grantee’s sole expense, within a reasonable period of time as determined by the Town. In
removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any
excavation that is made by it and shall leave all Right-of-Way, public places and private property
in as good a condition as that prevailing prior to the Grantee’s removal of its equipment.

(B) If the Grantee fails to complete any required removal to the satisfaction of the
Town, the Town may cause the work to be done, and the Grantee shall reimburse the Town for
the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the
Town’s expenses and costs, or the Town may recover its expenses and costs from the security, or
pursue any other judicial remedies for the collection thereof. Any expenses incurred in the
collection by the Town of such obligation shall be included in the monies due the Town from the
Grantee, including reasonable attorneys' fees, court expenses and expenses for work conducted by the Town's staff or agents.

SECTION 16. ABANDONMENT

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System as required herein, the Town, at its option, may operate the Cable System or designate another entity to operate the Cable System temporarily until the Grantee restores service, or until the Franchise is revoked and a new Grantee is selected by the Town. If the Town designates another entity to operate the Cable System, the Grantee shall reimburse the Town for all reasonable costs, expenses and damages incurred, including reasonable attorneys' fees, court expenses and attributed expenses for work conducted by the Town's staff or authorized agents.

SECTION 17. FRANCHISE RENEWAL AND TRANSFER

17.1 Renewal

Any proceedings undertaken by the Town that relate to the renewal of this 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 any subsequent provision of applicable law.

17.2 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 Town, which consent shall not be unreasonably withheld.

(B) The Grantee shall promptly notify the Town of any actual or proposed sale, change in, transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stock ownership 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 Town shall have consented in writing thereto, provided that consent shall not be required for any change in control to an Affiliate of Grantee, and Town's consent shall not be unreasonably withheld. Such consent shall not be deemed to waive any rights of the Town to subsequently enforce noncompliance issues relating to this Franchise.

(C) The parties to the sale, transfer or change in control of the Cable System or the Grantee to a non-affiliated entity shall make a written request to the Town for its approval of a sale, transfer or change in control and furnish all information required by law, and in accordance with this Franchise.
(D) In seeking the Town's consent to any change in ownership or control, the proposed transferee or new controlling Person or entity shall indicate whether, as applicable, 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 it 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 or new controlling entity; 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 Town shall act on the request within one hundred twenty (120) days of the request, provided it has received a complete application with all information required by FCC Form 394 and this Franchise. Subject to the foregoing, if the Town 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 Town agree to an extension of time.

(F) Within thirty (30) days of any transfer, sale or change in control to a non-affiliated entity, if approved or deemed granted by the Town, Grantee shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or change in control, certified and sworn to as correct by Grantee and the transferee or new controlling Person or entity. In case of a sale or transfer of ownership 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 this Franchise, subject to applicable law, and will file a written acceptance as required.

(G) In reviewing a request for sale or transfer or change in control, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee. Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer or change in control upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be consistent with applicable federal law.
(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Town shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an Affiliate; provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Town 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 Town, 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.

(I) Approval of any transaction described in this Section 17 does not constitute a waiver or release of the rights of either the Grantee or the Town under this Franchise or any applicable law, unless specifically identified in the resolution or ordinance approving the transaction.

SECTION 18. NOTICES

Throughout the term of this 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 to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

The Grantee’s address shall be:

Comcast of California/Colorado, LLC
8000 East Iliff Avenue
Denver, CO 80231
Attention: Director of Government Affairs

With a copy to:

Comcast
434 Kimbark
Longmont, CO 80501
Attention: General Manager/Government Affairs

The Town’s address shall be:

Town of Timnath
4100 Main Street
Post Office Box 37
Timnath, CO 80547-0037
Attention: Town Administrator
With a copy to:

Town of Timnath
4100 Main Street
Post Office Box 37
Timnath, CO 80547-0037
Attention: Town Attorney

SECTION 19. MISCELLANEOUS PROVISIONS

19.1 Costs to be Borne by the Grantee

The Grantee shall pay for all costs of publication of this Franchise and the ordinance necessary to its adoption, and any and all notices prior to any public meeting or hearing provided for pursuant to this Franchise.

19.2 Binding Effect

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

19.3 Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

19.4 Venue

The venue for any dispute related to this Franchise shall be in the United States District Court for the District of Colorado, the Larimer County District Court in Fort Collins, Colorado or the Weld County District Court in Greeley, Colorado.

19.5 Condemnation

This Franchise shall not limit any authority of the Town in accordance with applicable law to condemn, in whole or in part, the Franchise and/or any other property of Grantee, provided that the Grantee shall receive whatever condemnation award the Grantee would normally be entitled to recover as a matter of applicable law.

19.6 Captions

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.
19.7 No Joint Venture

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

19.8 Waiver

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party 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.

19.9 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.

19.10 Force Majeure

The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control, including but not limited to war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages, slow downs, power outages exceeding back-up power supplies, failure to obtain construction or utility permits where Grantee has applied and submitted all required information for such permits in a timely fashion, or work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached. If Grantee believes that its compliance with any term of this Franchise will be prevented or delayed by non-Normal Operating Conditions, to the extent Grantee has knowledge of such conditions in advance and a reasonable opportunity to do so, Grantee shall, prior to the deadline for compliance, provide documentation as reasonably required by the Town to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the Town with its proposed plan for remediation, including the timing for such cure.

19.11 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.
19.12 Time of the Essence

Whenever this Franchise sets forth a time for any act to be performed by the Grantee, such time shall be deemed to be of the essence.

IN WITNESS WHEREOF this Franchise is executed on this ___ day of ______, 2007.

TOWN OF TIMNATH, COLORADO

By: [Signature]
Mayor

ATTEST:

[Signature]
Town Clerk

APPROVED AS TO FORM

[Signature]
Town Attorney

COMCAST OF CALIFORNIA/COLORADO, LLC

By: [Signature]
Name: Scott H. Binder
Title: Senior VP