

**VIDEO SERVICES AGREEMENT**  
**BETWEEN**  
**THE CITY OF COLORADO SPRINGS**  
**AND**  
**FALCON BROADBAND, INC.**

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**AGREEMENT**

**THIS AGREEMENT** ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between THE CITY OF COLORADO SPRINGS, a Colorado municipal corporation (hereinafter referred to as the "City") and FALCON BROADBAND, INC., a Colorado corporation doing business as FALCON BROADBAND, INC. (hereinafter referred to as "the Operator") with its primary place of business in Colorado Springs, Colorado.

**RECITALS:**

**WHEREAS**, the City is authorized to grant one or more nonexclusive, revocable, agreements to construct, reconstruct, operate, and maintain a Video Programming System within the City; and

**WHEREAS**, the Operator is agreeable to providing such services in the City and has made application to the City for the establishment of this agreement; and

**WHEREAS**, the City has determined that the financial, legal, and technical ability of the Operator is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future video programming-related needs and interests of the City; and

**WHEREAS**, the City Council wishes to grant to the Operator and the Operator wishes to accept the terms and conditions herein set forth for the use of City owned rights-of-way, of City owned easements, and of rights-of-way and access easements dedicated and accepted for public use by the City in installing and operating a Video Programming System in the City; and

**WHEREAS**, the City, after public proceedings and due evaluation, has determined that it is in the best interest of the City and its residents to grant an agreement to the Operator for the term herein provided; and

**WHEREAS**, pursuant to Colorado law, local Charter and ordinance, and federal law including the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (collectively the "Cable Acts"), the City is authorized to grant or renew agreements to construct, operate and maintain Video Programming Systems utilizing public rights-of-way and properties within the City's jurisdiction; and

**WHEREAS**, the Operator desires to construct, operate and maintain a Video Programming System within the City's jurisdiction, in accordance with applicable law and the provisions hereof; and

**WHEREAS**, the Operator is a competitive local exchange carrier ("CLEC") authorized to provide local telecommunications services by the Colorado Public Utilities Commission ("CPUC") with the State of Colorado; and

**WHEREAS**, the Operator can provide video programming, telecommunications services, internet services and security services all over the same fiber to the home (“FTTH”) facilities; and

**WHEREAS**, the City has a legitimate and necessary regulatory role in ensuring the availability of video programming service, the high technical capability and reliability of the Video Programming Systems in its jurisdiction, the availability of local programming, (including educational, and governmental access programming) optimum customer service, and fair rates subject to the limitations of applicable law; and

**WHEREAS**, the Operator is a provider of video programming services as provided for by the Cable Acts; and

**WHEREAS**, while grant of this Video Services Agreement to the Operator is found to be in the interest and welfare of the inhabitants of the City, it is also in the best interests of the City and its inhabitants that such grant be regulated according to the terms hereof and of applicable law; and

**WHEREAS**, the basis for the City's lawful regulatory authority to establish an enforceable franchise agreement and associated regulatory mechanisms include the Operator's use of public resources for its distribution network and applicable federal law authorizing the provision of video programming services through an agreement; and

**WHEREAS**, diversity in video programming service is an important policy goal and the Operator's Video Programming System should offer a wide range of programming services. Both the City and the Operator are aware of existing and evolving legal constraints regarding the regulation of program content. Both parties' actions in effectuating this Agreement seek to provide capacity, facilities, and programming access for government and educational agencies, so as to promote open government access and educational opportunity; and

**WHEREAS**, the provisions of federal law applicable to video communications at 47 U.S.C. Section 531 and 546 (the "PEG Cable Laws") provide that an authority may require a video operator to designate channel capacity for educational, or governmental use, and to designate channel capacity on institutional networks for educational or governmental use; and further provide that a determination of whether the Operator's proposed agreement is reasonable to meet the future video-related community needs and interests, taking into account the cost of meeting such needs and interests, is an element to be considered in determining whether a video agreement should be approved;

**WHEREAS**, this Agreement will be effective upon its approval by the City Council and a vote by a majority of the voters and as provided further herein; and

**NOW, THEREFORE, IN CONSIDERATION** of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

## I. DEFINITIONS

The following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number and words in lower case include words in upper case. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

The headings, titles and subtitles of the several sections of this Agreement are intended for reference or to indicate the contents of the sections, and shall not be taken as part of the substantive agreement or the sections to which they refer.

A. **"Access"** means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Video Programming System to acquire, create, receive, and/or distribute non-profit, non-commercial, non-competitive video, telecommunications, internet and security services, including, but not limited to:

1. **"Public Access"** means access where community-based, non-commercial organizations, groups or individual members of the general public, on a nondiscriminatory basis are the primary users.

2. **"Educational Access"** means access where Schools are the primary users having editorial control over programming and services.

3. **"Government Access"** means access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

4. **"EG Access"** means educational access, and government access, collectively.

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

B. **"Affiliate"** means an entity which owns or controls, is owned or controlled by, or is under common ownership with the Operator where the percentage of ownership is ten percent (10%) or more.

C. **"Basic Service"** means any service tier which includes the retransmission of local television broadcast signals, EG access channels, and any other signals or carriage as permitted by any federal law or regulation.

D. **"Bi-Directional Capability" and "Activated Bi-Directional Capability"** means the ability of the System to transmit signals for Services in both upstream and

downstream directions between the System Headend and subscriber locations without the installation of any major System components other than Headend equipment, return modules, user equipment at Subscriber locations and service specific equipment throughout the System.

E. **"Broadcast Signal"** means a television or radio signal transmitted over the air to a wide geographic audience, and received by a System off-the-air by antenna or any other means.

F. **"Cable Acts"** mean the Cable Communications Policy Act of 1984, as amended, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any amendments thereto and any future cable television legislation.

G. **"Video Programming Service(s)"** means the two-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.

H. **"Video Programming System" or "System"** means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide video service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any 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 Federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a video 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) any facilities of any electric utility used solely for operating its electric utility systems.

I. **"Channel"** means a portion of the electrical frequency spectrum which is used in a Video Programming System and is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

J. **"City Code"** means the Code of the City of Colorado Springs, 2001, as amended and any subsequent amendment thereto.

K. **"City"** means the City of Colorado Springs, Colorado, or the lawful transferee, or assignee thereof. City includes Colorado Springs Utilities where not inconsistent with the context.

L. **"Colorado Springs Utilities"** means the Utilities of the City of Colorado Springs created and operated as an enterprise pursuant to Article VI of the City Charter.

M. **"Connection"** with regard to connections to public buildings or Schools, means installation of fiber optic or coaxial cable, at Operator's discretion (except as provided elsewhere herein), or other System related facilities through the outer wall of the building leaving adequate excess space to permit further connection to other facilities or plant within the building.

N. **"Downstream"** shall mean signals originating at the Headend or hubs and transmitted to Subscribers.

O. **"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.

P. **"EG"** means educational and governmental access as further defined in the Cable Acts and including, but not limited to, that City and educational programming which is presently carried on Channels 16 - 21 or carried elsewhere on the System in the future. Educational Access shall be the responsibility of the City or its designee. Governmental access shall be the responsibility of the City.

Q. **"FCC"** shall mean the Federal Communications Commission or successor governmental entity thereto.

R. **"Force Majeure"** shall mean any delays caused by events, such as, but not limited to (i) civil commotion; (ii) riots; (iii) Acts of God, such as floods, earthquakes, and tornadoes; and any other circumstances reasonably beyond the control of the Operator.

S. **"Grant"** shall mean a payment made by the Operator to the City in consideration of the privilege authorized by an approved Video Service Agreement for the use of streets and public ways and the privilege to construct and operate a System. The grant is paid to the City to support educational and governmental access, telecommunications, and information technology programs.

T. **"Headend"** shall mean any facility for signal reception and dissemination on a System, including cable, antennas, wires, satellite dishes, monitors, switches, modulators, processors for television broadcast signals and the facility, including antennas and associated electronics which receives, controls, and switches the electronic information transmitted over the System.

U. **"Leased Access Channels"** means any channel or portion of a channel commercially available for programming for a fee or charge by persons other than the Operator.

V. **"Node"** means an electrical transmission signal distribution locale or facility or a branching or exchange point. In the case of fiber optics, this may be a fiber optic patching facility, aerial splice case or handhole/manhole suitable for splicing of fiber optic cable.

W. **"PEG"** means public, educational and governmental access.

X. **"Person(s)" or "person(s)"** means an individual, sole proprietorship, partnership, association, joint stock company, trust, corporation, governmental entity, limited liability company, or any other form of organization or entity.

Y. **"Public Utility Easement"** means an easement owned by the City for use by Colorado Springs Utilities whether created by reservation, grant, or otherwise which provides for

the use of the easement for public utility or utility purposes; provided that Public Utility Easement shall not include an easement for public utility or utility purposes which is limited by the terms of the easement to use for a specified utility or specified utilities.

Z. **"Rebuild"** means to replace System plant which includes an upgrade of the Operator's System.

AA. **"Residential Services"** means services delivered to single or multiple-dwelling units.

BB. **"Residential Subscriber"** means any Subscriber receiving residential services.

CC. **"School or Schools"** shall mean and include the members and participant institutions of the **Southern Colorado Educational Television Consortium** (SCETC) whose members and participants are listed on Exhibit A, any duly accredited public educational institution (Grades K-12), including elementary, middle and secondary schools, residential living facilities at The Colorado School for The Deaf and The Blind, but excluding home schools and other residential living facilities at educational institutions.

DD. **"Service Area"** or **"Agreement Area"** means the present boundaries of the City, and shall include any additions thereto by annexation or other legal means so that it covers both current and future areas.

EE. **"State"** means the State of Colorado.

FF. **"Street"** means the surface of and the space above and below any public street, road, highway, lane, alley, court, sidewalk, boulevard, drive or other public right-of-way now or hereafter held by the City and areas that the City shall permit to be included within this definition from time to time. "Street" shall not include a drainage easement, drainage right-of-way, trail, pedestrian right-of-way, pedestrian easement, park property, public utility easement or any other property owned by the City unless authorized for use by the City. No reference in this Agreement to a "Street" shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property (including public utility easements) are sufficient to permit its use for the installation and maintenance of a System, and the Operator shall be deemed to gain only those rights which the City has the undisputed right and power to give.

GG. **"Subscriber"** means a person or user of the System who elects to subscribe to and lawfully receives Service with the Operator's express permission.

HH. **"Tiers of Service"** shall mean a category of Service or other services provided by the Operator and for which a separate rate is charged by the Operator.

II. **"Universal Service"** means Service to all Residential Subscribers in the agreement area.

JJ. **"Upgrade"** means an improvement in channel capacity or other technical aspect of System in accordance with the terms provided in this Agreement.

KK. **"Upstream"** shall mean the transmission of signals through a System from Subscribers to the Headend or hubs.

LL. **"Upstream Channel"** means a channel capable of carrying a transmission to the Headend from points on the Video System or from interconnection points on the System.

MM. **"Video Programming"** means programming that is provided in a television format which typically includes the news, entertainment, informational or educational presentations customarily carried on a System or broadcast by a television broadcast station.

NN. **"Year", "Annual", or "Annually"** means the period consisting of a full calendar year, beginning January 1 and ending December 31 unless otherwise provided in this Franchise.

OO. **"Exhibits."** In addition to all applicable laws, regulations, rules, resolutions, ordinances, and City Code, including the Charter of the City, the following numbered documents, which are occasionally referred to in this Agreement or each other, are formally incorporated and made a part of this Agreement by this reference: Exhibits A and B.

In the event of conflict or ambiguity between this Agreement, including the above-referenced documents (the Exhibits), any ordinance and any other agreement between City and the Operator, this Agreement, together with the Exhibits, shall govern and prevail.

## II. GRANT OF AGREEMENT

A. The City hereby grants to the Operator, subject to the terms and conditions of this Agreement, a nonexclusive agreement which authorizes the Operator to construct and operate a Video Programming System and offer video programming Service in, along, among, upon, across, above, over, under, or in any manner connected with Streets and Public Utility Easements within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Street and all extensions thereof and additions thereto, such fiber optics, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the System; provided that this Agreement does not confer any rights to attach to poles or other facilities owned by Colorado Springs Utilities or any other utility. The right to make such attachment and the terms, conditions and fees for such attachments shall be governed by a separate agreement with Colorado Springs Utilities or such other utility and by the City Charter, City Code and all applicable City ordinances as amended.

B. This Agreement shall constitute both a right and an obligation to provide the services required by, and to fulfill the obligations set forth in this Agreement. This Agreement is subject to the general police power of the City. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the City.

### **III. RIGHT OF CITY TO ISSUE AGREEMENT**

The Operator acknowledges and accepts the legal right of the City to issue this Agreement on the date of grant thereof.

The Operator by acceptance of this Agreement acknowledges that it has not been induced to enter into this Agreement by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any other third person concerning any term or condition of this Agreement not expressed herein. The Operator further acknowledges by the acceptance of this Agreement that it has carefully read the terms and conditions hereof and is willing to and does accept all of the risks of the meaning of such terms and conditions, as defined and/or provided herein and has willingly and voluntarily signed this Agreement.

### **IV. EFFECTIVE DATE OF AGREEMENT**

This Agreement shall be effective after approval by the City Council of the City and only upon approval by a majority of the electors of a grant of franchise to the Cable Operator as provided for in Article X of the Charter of the City of Colorado Springs ("Charter") provided, however, that if the Operator fails to file an unconditional written acceptance of this Agreement and post the security required hereunder, the agreement granted under this Agreement shall be null and void and any and all right of the Operator to own or operate a System within the area under this or any other agreement or license is hereby terminated.

Upon this Agreement being effective any other agreement or license with respect to the Operator shall be null and void and of no further force or effect. However, the grant of the Agreement shall have no effect on the Operator's duty under any agreement, license or any ordinance in effect prior to the effective date of this Agreement to indemnify or insure the City against acts and omissions occurring during the period that such agreement was in effect.

### **V. TERM**

A. The Agreement and the rights, privileges, obligations and authority granted hereunder shall take effect, as provided in Section IV, the term of this Agreement shall be for a period term of ten (10) years from the effective date, unless sooner terminated or extended as provided in this Agreement.

### **VI. AGREEMENT NONEXCLUSIVE**

This Agreement shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City 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 City to use same for any purpose it deems fit, including the same or similar purposes allowed the Operator hereunder. The City may at any time grant authorization to use the public rights-of-way, Streets and Public Utility Easements for any purpose compatible with the Operator's authority under this Agreement and for such additional agreements for Video Programming Systems. The City agrees that any grant of additional agreements by the City to any other entity

to provide Video Programming Services similar to those provided by the Operator pursuant to this Agreement (although the parties expressly agree that direct broadcast satellite services are not similar services) and over which the City has regulatory authority similar to the City's regulatory authority over the Operator, shall cover the entire territorial area of the City and shall not be on terms and conditions more favorable or less burdensome to the Operator of any such additional agreement than those which are set forth herein.

However, the provisions of this Section shall apply only to the granting of franchises referred to the voters by the City Council. These provisions do not apply to any franchises that are submitted pursuant to an initiated ordinance under Articles X and XII of the Charter of the City of Colorado Springs (with respect to ballot measures initiated by the public.)

The Operator's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and the Operator agrees to comply with all generally applicable laws and ordinances enacted, or hereafter enacted, by the City pursuant to that power that do not alter Operator's material obligations under this Agreement.

## **VII. FAMILIARITY WITH AGREEMENT**

The Operator further acknowledges and states that it has fully studied and considered the requirements relating to the operation of the System, and all other requirements and provisions of this Agreement, and finds that the same are commercially practicable at this time and consistent with all local, state and federal laws and regulations currently in effect including the Cable Acts.

## **VIII. SERVICE AREA AND LINE EXTENSIONS**

It shall be the obligation of the Operator to furnish Video Programming Service to all who request service whether they are residential or commercial Subscribers and regardless of and whether service is requested to residential, commercial or industrial areas. However, for unusual circumstances, such as the existence of more than one hundred twenty-five feet (125') of distance from distribution fiber to connection of service to Subscribers, Video Programming Service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. The Operator may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

A. General Requirements. The Operator shall meet or exceed all construction, extension, and service availability requirements set forth in this Agreement or the attached exhibits.

B. Equivalent Service. It is the City's general policy that all residential, commercial and industrial establishments, serviceable dwelling units, and multiple dwelling unit addresses in the Operator's Agreement Area have equivalent service availability from the Operator's System under rates established in accordance with federal law and reasonable terms and conditions. The Operator shall not arbitrarily refuse to provide Service to any Person within its Agreement Area

provided such Persons have fulfilled their obligations to the Operator including, but not limited to timely payment of bills.

C. Video Programming Service Availability. In general, except as otherwise provided herein, the Operator shall provide Video Programming Service within seven (7) days of a request by any Person within its Agreement Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of appropriate funds by the Operator, receipt of a written request by the Operator or receipt by the Operator of a verified verbal request. Except as otherwise provided herein, the Operator shall provide such service:

1. With no line extension charge except as specifically authorized elsewhere herein;
2. At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five foot (125') drop connecting to an inside wall for residential, commercial and industrial subscribers, with additional charges for non-standard installations computed according to federal law and federal rate regulations adopted by the Operator and provided in writing to the City;
3. At monthly rates for residential, commercial and industrial subscribers established in accordance with federal law.

D. Inspection of Construction. The City shall have the right to inspect any construction or installation work performed under this Agreement. The City shall have the right to make such tests as it deems necessary to ensure compliance with the terms of this Agreement and applicable provisions of law.

E. Quality and Workmanship. The Video System constructed or erected by the Operator shall be of good quality and workmanship and shall be maintained in good repair and condition, and shall meet or exceed all FCC technical standards.

F. Connection of Public Facilities. The free basic, video programming (expanded basic) service, and Internet service provided herein shall include two (2) outlets and free service, for all accredited primary and secondary public Schools, residential and other facilities for The School for The Deaf and The Blind, the Pikes Peak Library District (including all branches), Pikes Peak Community College and CU-Colorado Springs (excluding residential living facilities) if such service is requested by the public facility and if the public facility is located within one hundred fifty feet (150') of Operator's distribution plant. The Operator will provide additional service outlets in each room or area where television reception is desired and the entity using the additional outlets shall reimburse the Operator for its actual cost basis for labor and material required in the installation of each outlet and for the receipt of service to those outlets (except there shall not be a monthly charge where the public entities have provided distribution to other outlets) which are additional to the main outlet. In addition, the Operator shall provide, at no cost, outlets of basic and expanded basic programming to all other public and educational buildings if requested by the public facility if the drop line from the feeder fiber optic facility to such building is less than one hundred fifty fiber feet (150') or if the City or other agency agrees

to pay the incremental cost of such drop line in excess of one hundred and fifty cable feet (150'), including the cost of such excess labor and materials. Such outlets shall not be located in public waiting areas, break rooms, nor used to entertain public groups, nor shall the outlets be used in any way that might violate copyright laws.

In areas where and when the Operator provides Internet access, the Operator, upon written request of the City, will provide use of one (1) cable modem and maintain one (1) connection for Internet access to one (1) computer terminal in each primary and secondary public school, library and City building within the geographic limits of the City and which is located within one hundred fifty feet (150') of Operator's distribution plant. Any additional costs will be borne by the requesting school or library on a time and materials basis. All such public schools, libraries and City buildings receiving such service will enter into Operator's standard installation agreement. The City agrees that such institutions will not internally network Operator's connection to any other computers, but in the event such schools, libraries and City buildings wish to create an internal network, the institutions may contact Operator for a proposal to provide such networking.

G. Educational/Governmental Access. Channels for EG Use:

1. The Operator will provide space on its system to accommodate 6 (six) channels of EG Programming or equivalent to that of the incumbent Cable Operator's E/G programming requirements. The Operator shall be responsible to run a direct feed to the E/G Access facilities to ensure that its Subscribers receive identical E/G Access programming as Subscribers for the incumbent Cable Operator in the City.

2. In addition to the six (6) channels specified above, the Operator shall make available without cost or charge space on its system to accommodate additional channels in accordance with the following formula, not to exceed ten (10) channels, provided that the provision of such additional space shall not require the Operator to install converters or add to the overall channel capacity of the system.

a. If a combination of any five (5) channels (including the initial six EG channels) are programmed with Qualified Programming for a combined total of 1575 hours during Sunday through Saturday, between the hours of 7:00 a.m. and 10:00 p.m. for six (6) consecutive weeks, and there is demand for use of an additional channel for the same purpose, the Operator shall within three (3) months after receipt of a request from the City, provide a new additional specially designated access channel at no cost or charge, for a total of seven (7) EG channels.

b. If a combination of any six (6) channels (including the initial six (6) EG channels) for a combined total of 1,925 hours during Sunday through Saturday, between the hours of 7:00 a.m. and 10:00 p.m. for six (6) consecutive weeks, and there is demand for use of an additional channel for the same purpose, the Operator shall within three (3) months after receipt of a request from the City, provide at no cost or charge a new additional specially designated access channel for a total of eight (8) EG channels.

c. If a combination of any seven (7) channels are programmed with Qualified Programming for a combined total of 2,225 hours during Sunday through Saturday, between the hours of 7:00 a.m. and 10:00 p.m. for six (6) consecutive weeks, and there is demand for use of an additional channel for the same purpose, the Operator shall within three (3) months after receipt of a request from the City, provide without cost or charge a new additional specially designated access channel for a total of nine (9) EG channels.

d. If a combination of any eight (8) channels are programmed with Qualified Programming for a combined total of 2,600 hours during Sunday through Saturday, between the hours of 7:00 a.m. and 10:00 p.m. for six (6) consecutive weeks, and there is demand for use of an additional channel for the same purpose, the Operator shall within three (3) months after receipt of a request from the City, provide at no cost or charge a new additional specially designated access channel for a total of ten (10) EG channels.

3. "Qualified Programming" under this Section means only non-commercial, not for profit, non-competitive, government or educational programming. Such programming shall not be considered as Qualified Programming after three telecasts (initial, first repeat, second repeat). Automated video telecasts of highways and roads, and any other telecasts using automated cameras to monitor any location, do not constitute Qualified Programming. It being understood that the City Council and other coverage in City Council Chambers is Qualified Programming as prescribed herein.

#### H. Public Access.

1. Throughout the term of this Agreement, the Operator shall provide, without charge, a minimum of one (1) channel for public access in order to meet the needs and interests of the community in addition to the ten (10) channels for educational and governmental programming provided for above. The Operator shall be responsible to run a direct feed to the Public Access facilities to ensure that its Subscribers receive identical Public Access programming as Subscribers for the incumbent Cable Operator in the City. The Cable Operator shall not be responsible for maintaining facilities and equipment in connection with the Public Access, nor shall the Cable Operator make any content decisions related to airing public access programming.

2. In addition to the foregoing, if any channel is utilized for public access for a total of 350 hours during Sunday through Saturday, between the hours of 7:00 a.m. and 10:00 p.m. for six (6) consecutive weeks, and there is demand for an additional channel for the same purpose, the Operator shall, within three (3) months after receipt of a request from the City, provide a new additional specially designated access channel at no cost or charge for public access.

I. City Web Site. To the extent that it is economically and technically feasible to do so, the Operator shall link the City Web Site with any Web Site developed by the Operator with respect to its program offerings and other services provided within the City.

## IX. SYSTEM

A. Initial System. The parties understand and agree that the initial Video Programming System in the City that will be operated by the Operator after the Effective Date of this Agreement will consist of a network with a channel capacity of one hundred and thirty-five (135) channels.

B. Relocation of Access Channels. The Operator shall provide the City 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 educational, and governmental access channel designations are changed. In addition, if relocation is required more than twice during the term of this Agreement, the Operator shall pay to City and educational institutions, as applicable, an amount equal to costs in remarketing the location of the access channels and managing the relocation administratively and technologically, up to a maximum of Fifty Cents (\$.50) per Subscriber. Any such amounts paid by the Operator may be added, at the Operator's discretion and in accordance with the applicable FCC regulations, to the price of video services and collected from such Subscribers as external costs as such term is used in 47 C.F.R. Section 76.922, if the Operator's decision to relocate such access channels is required by federal, state, or local law. The Operator, at the Operator's expense, will place the notices of any channel change under this Subsection on its regular monthly billings, upon request. Any relocated or new channel designations for the educational and governmental access channels provided pursuant to this Agreement shall be in full compliance with FCC signal quality, and proof of performance standards.

C. Technical Quality. The Operator shall maintain all upstream and downstream Access services, channels and interconnections, if any, at the same level of technical quality and reliability required by this Agreement and all other applicable federal laws, rules and regulations for residential subscriber channels. The Operator shall provide routine maintenance and shall repair and replace all transmission equipment including channel modulators, associated fiber and equipment, required to carry signal quality to and from the Operator's facilities for the Access channels provided under this Agreement.

D. Undergrounding Requirements. The Operator shall construct, operate and maintain all of its transmission or distribution facilities in accordance with the following requirements:

1. All Utilities Underground. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Operator likewise shall construct, operate and maintain all of its transmission and distribution facilities underground.

2. One of the Utilities Underground. In those areas of the Service Area where either the transmission or distribution facilities of the respective public utilities providing telephone communications or electric services are underground, the Operator shall construct, operate and maintain all of its transmission and distribution facilities underground.

3. Overhead to Underground Conversion. In the event that all of the transmission and distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Agreement, if the Operator receives sufficient advance notice of the same, the Operator shall convert, operate and maintain all of its transmission and distribution facilities underground in concert with such other utilities. Receipt by the Operator of ninety (90) days' notice shall constitute sufficient advance notice. If sufficient advance notice is not received by the Operator to place its facilities underground when the other utilities are placed underground, the Operator agrees to place its facilities underground within one hundred eighty (180) days after such request by the City. Where all utilities owned by Colorado Springs Utilities are to be placed underground, the City agrees to provide ninety (90) days notice to the Operator to the extent reasonably necessary for the Operator to place its facilities underground when the electric facilities are placed underground. All placement by the Operator of its property underground shall be at the pro rata cost and expense of the Operator.

E. Easements and City's Cable or Conduit.

1. The City shall not be required to obtain easements for the Operator and in those instances where space is not available, the Operator shall obtain its own easements for its plant and equipment. The Operator shall provide at least three (3) days advance written notice (unless a lesser time is agreed to by a person) before it does any work in that person's property and shall obtain requisite other approvals if it needs to secure its own easements. The Operator shall allow the City or Colorado Springs Utilities to lay its cable, conduit, and fiber optic cable in the Operator's trenches and bores provided the City or Colorado Springs Utilities equitably shares in the cost of the trenching and boring. The method of equitable sharing shall be determined as agreed between the City or Colorado Springs Utilities and the Operator as appropriate. The City or Colorado Springs Utilities shall be responsible for maintaining its respective cable, conduit, and fiber optic cable buried in the Operator's trenches and bores under this paragraph. Notwithstanding the foregoing, if sufficient time does not exist to so notify the City and Colorado Springs Utilities and submit plans or if the Operator is using trenches belonging to another utility, the requirements of this subsection 1 shall not be applicable.

2. The Operator and the City or Colorado Springs Utilities recognize that situations may occur in the future where the City or Colorado Springs Utilities may desire to place its own cable or conduit for fiber optic cable in trenches and/or bores opened by the Operator. Therefore, as the Operator installs facilities now or in the future, the Cable Operator shall cooperate with the City or Colorado Springs Utilities in any other construction by the Operator that involves trenching or boring provided that the City or Colorado Springs Utilities has first notified the Operator in some manner that it is interested in sharing the trenches or bores in the area where the Operator's construction is occurring. The Operator shall allow the City or Colorado Springs Utilities to lay its cable, conduit and fiber optic cable in the Operator's trenches and bores provided the City or Colorado Springs Utilities shares in the cost of the trenching and boring on the same terms and conditions as the Operator at that time shares the total cost of trenches and bores. The City or Colorado Springs Utilities shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried in the Operator's trenches and bores under this paragraph. Notwithstanding the foregoing, if sufficient time does not exist to so notify

the City or Colorado Springs Utilities and submit plans or if the Operator is using trenches belonging to another utility, the requirements of this subparagraph 2 shall not be applicable.

3. The City, Colorado Springs Utilities and the Operator are authorized to enter into supplementary agreements to implement the provisions of this subsection E.

F. Interconnection with Other Video and Cable Systems.

1. The Operator shall enter into good faith negotiation, in accordance with this Section, to interconnect the public, educational and government access channels of the System with other video or cable systems in the Agreement Area not owned or operated by the Operator or an affiliate of the Operator upon the directive of the City. Interconnection of channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. The Operator may not be required to interconnect under circumstances where excessive costs would be incurred.

2. Upon receiving a directive from the City to interconnect, the Operator shall immediately initiate negotiations with the other affected system or systems and shall report to the City the results of such negotiations no later than sixty (60) days after such initiation. All costs of interconnection shall be shared on a pro rata basis among the Video or Cable Operators for both construction and operation of the interconnect link. If the Operator provides a direct feed for EG Access, and if a negotiated agreement cannot be reached between the affected operators, the City may direct the Operator to allow for a direct connection to its access feed to assure that EG Access is carried on each operator's System.

3. The Operator shall cooperate with any public interconnection authority, regional interconnection authority or city, county, state or federal regulatory agency which may hereafter be established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the Agreement Area.

## **X. TECHNICAL STANDARDS**

The Video System shall at all times operate so that, at a minimum and in accordance with applicable law, it continuously meets or exceeds all federal technical specifications (as they now exist or may hereafter be amended) in FCC rules and regulations (as they may be amended), or any other applicable law which may supersede such rules.

A. The Operator, at its cost, shall perform all tests necessary to determine compliance with the prescribed technical standards.

1. Proof of Performance Tests. After the Effective Date of this Agreement, the Operator shall provide to the City at the Operator's expense its first proof of performance test which indicates that the Video System meets FCC performance specifications. This proof of performance test shall be used by the City as the baseline to track technical performance. Within thirty (30) days after providing video services to its first Subscriber, the Operator shall provide to

the City at the Operator's expense, the written opinion of its general contractor indicating that the Video System meets all FCC performance specifications.

2. **Certifications and Recertification.** The Operator shall, no less often than as provided by law provide to the City at the Operator's expense, a proof of performance test to verify that the System conforms to all requirements specified by applicable law.

3. **Signal Leakage Tests and Reports.** The Operator shall specifically monitor the complete plant, Downstream and Upstream, on a continual basis for signal leakage and shall submit to the City, on request a written report detailing the section tested, measurements recorded at specified locations, and corrections made. Written records of test results also shall be maintained and shall be available for City inspection upon request.

4. **Technical Tests.** The City may perform technical tests of the System by qualified persons with proper equipment during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Operator or the System in order to determine whether or not the Operator is in compliance with the terms hereof and applicable federal laws. Such tests may be undertaken only after giving the Operator reasonable notice thereof, and providing a representative of the Operator an opportunity to be present during such tests. In the event that such testing demonstrates that the Operator has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Operator. In the event that such testing demonstrates that the Operator has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the City. Except in emergency circumstances, the City agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the Operator upon the Operator's request.

5. **Technical and Safety Standards.**

a. The Operator shall at all times employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public or to employees of the Operator.

b. The Operator shall install and maintain its System in accordance with the requirements of the National Electrical Safety Code and all applicable FCC regulations, and in such manner that the System shall not interfere with any pre-existing installations of the City, Colorado Springs Utilities, educational institutions nor any public utility or telecommunication utility, nor any franchisee, licensee or permittee of the City.

c. The Operator shall provide and put in use such equipment and appliances so as to prevent injury to the wires, pipes, structures, and property belonging to the City and Colorado Springs Utilities, the educational institutions and to any person within the City's jurisdiction.

d. The City or Colorado Springs Utilities shall have the right to require the Operator to change the location or grade of any of the Operator's System within the Streets or Public Utility Easements when the public convenience or the provision of utility services requires such change, and the expense thereof shall be paid by the Operator. Should the Operator fail to remove or relocate any such facilities by the date established by the City or Colorado Springs Utilities as applicable, the City or Colorado Springs Utilities may effect such removal or relocation, and the expense thereof shall be paid by the Operator including all costs and expense incurred by the City or Colorado Springs Utilities due to the Operator's delay. If the City or Colorado Springs Utilities requires the Operator to relocate its facilities located within the Streets or Public Utility Easements, the City or Colorado Springs Utilities shall make a reasonable effort to provide the Operator with an alternate location within the Streets or Public Utility Easements. If the funds are generally made available to users of public rights-of-way for such relocation (excluding funds made available by Colorado Springs Utilities), the Operator shall be entitled to its pro rata share of such funds. The Operator may not be required to move its lines or facilities due to the placement of lines or facilities of a competitive video or cable system operator including any competitive video or cable system of the City or Colorado Springs Utilities without payment of the reasonable costs of such relocation.

B. Further Video Programming System Performance Testing.

1. In addition to the foregoing, the Operator shall, at the Operator's expense, perform tests in response to subscriber complaints.

2. The Operator shall maintain written records of all results of its System tests, performed by or for the Operator. Such test results shall be available for inspection by the City upon request.

3. If the FCC no longer requires proof of performance tests for the Operator's System during the term of this Agreement, the Operator agrees that it shall continue to conduct proof of performance tests on the System in accordance with the standards current at the time of execution of this Agreement, or any generally applicable standards later adopted, at least twice a year, and provide written results of such tests to City upon request. All tests may be witnessed by representatives of the City, and the Operator shall inform the City in writing of the time and place when each test will be conducted no less than three (3) weeks prior to the test.

4. In the event that the System does not pass a Proof of Performance or CLI test, retesting shall be done and results submitted to the City within thirty (30) days of such retesting until passing results occur.

C. Specific Technical Facilities or Capabilities. The following specific technical facilities or capabilities shall be provided on the System by the Operator:

1. Emergency Standby Power. The Video Operator shall provide standby power generating capacity at key locations throughout the System and at its Headend, all in conformance with standby power at the following levels: 22 hours in the field and 12 hours at the Headend.

D. Notice of Shutdown. At least twelve (12) hours before any planned shutdown, the Operator shall give notice to affected Subscribers when possible, of maintenance or major equipment changeouts which require loss of service to twenty-five (25) or more customers.

## **XI. SYSTEM DESIGN AND CAPACITY**

The following provisions shall govern and be applicable to the installation of the Video Programming System by the Operator:

A. Two-Way Services. The System shall be activated so as to provide for two-way services.

B. Reliable Equipment. The Operator shall use in the System equipment generally used in high-quality, reliable, modern systems of similar design, including modulators, antennas, amplifiers and other electronics that permit and are capable of passing through the signal received at the Headend with minimal alteration or deterioration.

C. Buried Drops. Wherever service lines of telephone and electric utilities are buried, the Operator shall whenever possible bury any underground Subscriber drops, buried as part of any routine maintenance or repairs or any other underground drops buried subsequent to the effective date of this Agreement, at a minimum depth of 12-18 inches. Prior to burying any drop that will cross the lot of a dwelling unit, the Operator, or its representative, shall make reasonable efforts to contact the occupant of the dwelling unit to discuss the location of the drop to be buried. The purpose of the discussion shall be for the Operator to work in good faith with the occupant of the dwelling unit to bury the drop in a location that will: (1) minimize the physical disruption to the lot of the dwelling unit; (2) minimize interference with the occupant's use of the lot; and (3) provide the Operator with a reasonable path for burying its drop. In the event that a Subscriber drop not buried a minimum of 12-18 inches is damaged, by the City or Colorado Springs Utilities because such does not meet the minimum depth requirements as set forth above, the Operator waives any claims against the City or Colorado Springs Utilities for reinstallation, repair, or as otherwise may be asserted by the Operator.

D. Parental Control Device. Upon request by any subscriber, and consistent with federal law, the Operator shall make available a parental control or lockout device to enable a Subscriber to control access to any or all channels. The Operator shall inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

E. Leased Access Channels. The Operator shall meet the leased access channel requirements imposed by federal law.

F. Broadcast Channels. To the extent required by federal law and this Agreement, Operator shall provide to all residential Subscribers the signals of:

1. Local commercial television stations and qualified low power stations; and
2. Qualified local noncommercial educational television stations.

G. Continuity of Service. It shall be the right of all Subscribers to continue to receive service from the Operator insofar as their financial and other obligations to the Operator are honored. Subject to the force majeure provisions of Section XXXVIII of this Agreement, the Operator shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances.

H. Local Office. The Operator shall maintain one (1) local office in the City which shall be open Monday through Friday from 8:00 a.m. to 5:00 p.m. with extended evening hours of at least ten (10) hours per week, and shall be fully staffed with customer service representatives offering the following services to customers who come to the office: bill payment, equipment exchange, processing of change of service requests, and response to customer inquiries and requests. More stringent hours and days of operation may be imposed by the City.

I. Additional Construction Codes. Construction, installation and maintenance of the video system shall be performed in an orderly and workmanlike manner. All fibers and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple fiberoptic configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

The Operator shall at all times comply with applicable provisions of the following as they now exist or are hereafter amended:

- Manual of Uniform Traffic Control Devices;
- National Electrical Safety Code (National Bureau of Standards);
- National Electrical Code (National Bureau of Fire Underwriters);
- Bell System Manual of Construction Practices, Code of Pole Line Construction; Buried Standards; and
- Applicable FCC or other federal, state and local regulations.

J. Construction Standards. The Operator shall comply with all applicable City construction codes, including, without limitation, the Uniform Building Code, the Uniform Fire Code, and the Uniform Mechanical Code and the Electronic Industries Association Standard for Physical Location and Protection of Below Ground Fiber Optic Cable Plant, and City Code.

All construction practices shall be in accordance with all applicable sections of federal and state Occupational Safety and Health Acts and any amendments thereto as well as all State and local codes and standards where applicable. In addition, such construction shall comply with the Colorado Springs Utilities Facility Separation Standards.

Nothing herein authorizes the construction of a Headend, Antenna or Tower on City or SCETC property. Such related matters are subject to City Code and any lease to be negotiated between the parties.

Neither the Operator's plant and equipment, nor any work the Operator performs, shall endanger or interfere in any manner with the rights of any property owner, or hinder or obstruct pedestrian or vehicular traffic.

The Operator shall at all times employ professional care and shall install and maintain in use methods and devices to prevent failures and accidents which risk damage, injury or nuisance to the public.

In any event, the system shall not endanger or interfere with the safety of persons or property in the City or other areas where the Operator may have equipment located to serve the City.

The Operator shall abide by the City Code with respect to overlay excavations including, without limitation with regard to the following: Excavation shall be done in accordance with the City Code by the Operator which shall award its work as provided in the City Code with respect to excavations overlays and related construction and maintain established specifications on the depth of its excavations.

## **XII. SYSTEM CONSTRUCTION**

A. The Operator shall submit a schedule for construction work. The Operator shall meet with the City and Colorado Springs Utilities to discuss its progress.

B. Construction Plans. The Operator shall provide to the City and the Colorado Springs Utilities work schedules depicting all key project dates for System installations, enhancements and upgrades. Work shall not commence until such times as design drawings are reviewed and approved by the City and Colorado Springs Utilities. Within thirty (30) days after the completion of construction, the Operator is to furnish the City and Colorado Springs Utilities with as-built drawings of the work completed. This requirement may be waived in instances where the work that is planned is deemed by the City and Colorado Springs Utilities to be minor in nature. Every effort shall be made by the Operator to coordinate work to be performed in the right-of-way with work to be performed in the same area of the right-of-way during the same approximate time by the City, Colorado Springs Utilities and with other video and cable operators. The Operator shall adhere to the construction schedule as submitted, within customary industry norms. The Operator shall update the City and Colorado Springs Utilities of the need to deviate from the planned project scope and/or work schedule. Such maps and related information shall be provided in an electronic format.

Operator shall provide construction drawings to be submitted to the City and Colorado Springs Utilities for review and approval along with electronic files.

The Operator agrees the City and Colorado Springs Utilities may use the drawings and other construction drawings it submits to update Colorado Springs Utilities' FIMS database and other facilities databases and records, and at a later date, Colorado Springs Utilities may have such data/records registered with the U.S. Copyright Office.

Upon agreement between the Operator and the City and Colorado Springs Utilities, the provisions set forth in this Subsection may be modified. In addition, the requirements under this Subsection may be changed by the City in the event the City adopts subsequent standards or requirements generally applicable to all users of Streets or public rights-of-way or Public Utility Easements.

C. Right of Inspections. The City shall have the right to inspect all construction and installation work performed subject to the provisions of this Agreement, and shall make such tests as it shall find necessary to ensure compliance with the terms of this Agreement and other pertinent provisions of the law; provided, however, that the City shall be permitted to charge the Operator its usual and customary fees of general applicability (if any) for the inspection of construction in the Streets; and provided, further, that such inspection and tests shall not interfere with the provision of Subscriber services.

### **XIII. GENERAL PROVISIONS**

The following provisions shall be applicable to the Video System as contemplated herein upon the effective date of this Agreement and shall be applicable throughout the life of this Agreement.

A. Emergency Alert Capabilities. In addition to other requirements herein, the Operator shall provide an Emergency Alert System which shall be operational at all times, and which shall comply with FCC Standards.

B. Employee Identification. The Operator shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, the Operator shall use its best efforts to clearly identify all personnel, vehicles, and other major equipment that are operating under the authority of the Operator.

C. Services for the Disabled. The Operator shall comply with the Americans With Disabilities Act, any amendments thereto, any other applicable federal or state laws or regulations.

D. Programming Service. In addition to the service requirements in this Agreement, the Operator agrees to provide programming responsive to the programming needs and interests of Subscribers in the City.

E. Reporting. In addition to the other reporting requirements provided herein, the Operator shall submit to the City, upon request, the following reports: (i) a report on trouble calls

and service outages (no more than quarterly), (ii) proof of performance testing, (iii) a signal leakage or CLI test.

F. Annexation by Municipality. It is understood that the annexation by the City of areas presently in the unincorporated part of El Paso County and which may be served by the Operator shall be governed by the provisions of this Agreement.

#### **XIV. SUBSCRIBER RIGHTS AND COMPLAINTS**

A. Prior to the time an installation or service agreement is to be signed, the Operator shall furnish to each Subscriber a written statement that clearly sets forth the following:

1. A complete schedule of rates, fees, charges, and terms and conditions of service currently applicable to the type of installation and service ordered;
  2. A complete statement of the Subscriber's right to privacy;
  3. Information concerning the procedures for making inquiries or complaints;
- and
4. The address, telephone number and hours of the Operator office responsible for handling complaints.

B. The Operator shall furnish the above Subscriber information, or any changes thereto, to the City in advance of distributing it to Subscribers.

C. The Operator shall also fully comply with the Customer Service Standards set forth in Exhibit B which are attached hereto and incorporated herein by reference, and as the same may be amended from time to time, consistent with applicable law.

#### **XV. EQUAL OPPORTUNITY**

The Operator shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, disability, national origin, age, ancestry or marital status.

#### **XVI. AGREEMENT RENEWAL**

The Operator shall pay for a pro rata share of the costs of any election and publication related to any renewal of this Agreement. The City and the Operator agree that any future proceedings undertaken by the City that relate to the renewal of this Agreement shall be governed by and comply with the provisions of (i) the Cable Acts, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of law and (ii) the Charter of the City of Colorado Springs and City Ordinances and as otherwise provided by law.

In addition to the procedures set forth in the Cable Acts, the City agrees to notify the Operator of the completion of its assessments regarding the identification of future video-related community needs and interests, as well as, the past performance of the Operator under the then current term of this Agreement. Notwithstanding anything to the contrary set forth herein, the Operator and the City agree that at any time during the then current term of this Agreement, while affording the public adequate notice and opportunity for comment, the City and the Operator may agree to undertake and finalize negotiations regarding renewal of the then current agreement and the City may grant a renewal thereof.

## **XVII. RIGHT TO PURCHASE THE SYSTEM**

In accordance with Section 10-80 of the Charter of the City of Colorado Springs, and subject to any rights Operator may have under applicable law as a result of its status as a CLEC, the City may purchase and take over the property of the Operator in whole or in part. No such action by the City under this provision shall occur except upon the City providing written notice thereof to the Operator of the City's intent to purchase and take over the property of the Operator in whole or in part. In the event that the City and the Operator are unable to agree upon a purchase price, determination of just compensation of the value of the Operator's property to be acquired shall be in accordance with Colorado Constitution and statutes authorizing municipalities to condemn as now existing or hereinafter amended and such other requirements as may be imposed by law. The inclusion of this paragraph in the Agreement does not constitute a waiver by the Operator of any rights that it may have, including rights to challenge any aspect of any attempt/effort the City might make to purchase or condemn the property of the Operator.

## **XVIII. GRANTS**

A. The Operator, in consideration of the privilege granted under this Agreement for the use of Streets and public ways and the privilege to construct and operate a Video System, shall pay, as a Grant to support educational and governmental access, telecommunication, and information technology programs of the City and SCETC a monthly Grant amount of One and 53/100 Dollars (\$1.53) per Subscriber. If Operator's Video Service is provided to multiple dwelling units that are billed on a bulk-billing basis, each unit receiving Service shall be considered a separate Subscriber for purposes of calculating this per Subscriber grant. This Grant amount will be paid on a quarterly basis for the quarters ending on March 31, June 30, September 30, and December 31 of each year for the Agreement term. Payment of the quarterly Grant amount is due forty-five (45) days following the end of the said quarters. Each payment of the Grant amount shall be accompanied by a brief report from a representative of the Operator showing the basis for the calculation of the quarterly Grant payment. If the City's current incumbent cable operator increases the amount of its pass through charge to Subscribers in an amount that exceeds \$1.53 per Subscriber per month, the Operator shall, after thirty (30) days written notice from the City, increase the amount of the monthly Grant to match that amount. If the City's current incumbent cable operator decreases the amount of its pass through charge to Subscribers in an amount below \$1.53 per Subscriber per month, the Operator may reduce its monthly Grant payment by the same amount, effective thirty (30) days after Operator provides written notice of the upcoming reduction to the City.

Subject to approval of an appropriate exemption by the City Council or as otherwise provided by law, for the purposes of Article X, Section 20 of the Colorado Constitution and Charter of the City of Colorado Springs, Section 7-90, receipt or expenditure of the Grant amounts shall be accounted for, budgeted and appropriated separately from other revenues and expenditures of the City and outside of the fiscal year spending of the City as calculated under Article X, Section 20 of the Colorado Constitution, or the Charter of the City of Colorado Springs Section 7-90. Nothing in Article X of Section 20 and Charter of the City of Colorado Springs Section 7-90 shall limit the receipt and expenditure in each fiscal year of the full amount of such revenues from the Grant amounts nor shall receipt or expenditure of such Grant amounts revenue affect or limit the receipt or expenditure of any and all other revenues of the City for any fiscal year. A portion of the Grant amounts will support programming, facilities and equipment and administration and operation of government and educational related channels and related benefits to the residents of the City.

It is agreed by the City and the Operator that payments for Grant amounts represent fees paid, oversight, and use of the right-of-way, Streets, and Public Utility Easements, and for the support of educational and governmental programming services, operations, facilities and equipment, and expenditures for telecommunications and information technology, operations, facilities, and equipment by the City and SCETC.

The City may require the Operator to pay directly to the City's designee(s) any part of the Grants due to the City under this Agreement.

B. On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to audit the Operator's records regarding Subscriber numbers with respect to the Colorado Springs system and all relevant records, and to recompute any amounts determined to be payable under this Agreement. If the results of the audit by the City show a discrepancy of underpayment by more than five percent (5%) in the Grant amounts that were to be paid to the City, the Operator shall pay for the cost of such audit.

C. In the event that any payment is not received by the City on or before the applicable due dates, interest shall be charged from such due date at an annual interest rate of twelve percent (12%).

D. In the event this Agreement is revoked or otherwise terminated prior to its expiration date, the Operator shall file with the City, within ninety (90) days of the date of revocation or termination, a statement showing the number of Subscribers since the end of the previous year and shall make adjustments at that time for the Grant amount due up to the date of revocation or termination.

E. No acceptance of any payment by the City shall be construed as a release, waiver or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a tax, fee or for the performance of any other obligation of the Operator. Once any Grant amounts are paid to the City, they shall be credited to a reporting period and the City shall have the right to collect any additional moneys owed to the City as determined by an audit of the Grant amounts paid. The period of limitation for recovery of any Grants payable hereunder shall

be three (3) years from the date on which payment by the Operator is due. Unless within three (3) years from and after said payment due date the City initiates an action or suit for recovery of such Grants, such recovery shall be barred and the City shall be estopped from asserting any claims whatsoever against the Operator relating to any such alleged deficiencies.

In the event any payment is not received within forty-five (45) days from the end of the calendar quarter, the Operator shall be assessed a late fee in the additional amount of One Hundred Dollars (\$100.00) per day, beginning on the forty-sixth (46th) day after the end of the calendar quarter and continued every day thereafter until payment is made.

F. The Grant amounts shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State of Colorado, or the United States, including without limitation sales, use and other taxes, business license fees or other payments. Payment of the Grant amounts under this Agreement shall not exempt the Operator from the payment of any other license fee, tax or charge on the business, occupation, property or income of the Operator that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax, or charge. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against the Operator solely because of its status as an Operator as defined herein.

G. No term or condition in this Agreement shall in any way modify or affect the Operator's obligation to pay Grant amounts.

H. Beginning six (6) months after the Effective Date, and at six (6) month intervals thereafter during the entire term of this Agreement, Operator shall pay to the City a grant in an amount equal to \$200,000.00 multiplied by Operator's percentage of cable market share in the City, which percentage shall be calculated as Operator's total Cable Service Subscribers in the City divided by the total number of Cable Service Subscribers in the City. For example, if the Operator has five percent (5%) of all Cable Service Subscribers in the City at the end of the first six (6) months after the Effective Date, the amount of the grant for that period will be \$10,000.00. For each six month period, payment shall be due within thirty days after the City gives notice to Falcon of Falcon's percentage of the cable market for the six month period. This grant is intended by the parties to support the programs described in Subparagraph A above and be additional compensation to the City in consideration of the grant of this Franchise.

I. The City acknowledges that under FCC rules certain external costs, including the PEG and Institutional Network grants described in this Section XVIII, are eligible for "pass through" to Subscribers. The City agrees that it will not challenge either the method or length of amortization for any such grants that the Operator seeks to pass through consistent with FCC rate regulations.

## **XIX. REGULATION, RATES, AND CHARGES**

A. The City and the Operator acknowledge that any rates and charges relating to the provision of Video Programming Services and equipment under this Agreement shall be

governed by applicable federal, state and local laws and the rules and regulations of the FCC (as amended). In addition, the City may from time to time elect not to regulate the Operator's rates and charges, but any such election shall not waive the City's right to regulate in the future. The City and the Operator, in evaluating and resolving any matters which arise concerning rates and charges, will adhere to applicable laws and FCC rules and regulations.

B. All Operator rates and charges for Video Programming Services and equipment under this Agreement shall be published (in the form of a publicly-available rate card), made available to the public and shall be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. The Operator shall apply its rates in accordance with governing law and without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location in the Operator's Agreement Area. To the extent consistent with applicable law, nothing herein shall be construed to prohibit:

1. The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or
2. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or
3. The offering of rate discounts or free service as provided in this Agreement or video service to governmental agencies, or educational institutions.
4. The offering of bulk discounts.
5. The offering of bundled services.

C. Upon request, the Operator shall provide a complete schedule of current rates and charges for any and all leased access channels, or portions of such channels, provided by the Operator.

D. The Operator shall comply with all applicable federal laws regarding rates for Video Services and all applicable federal laws covering issues of cross subsidization. The Operator reserves the right to charge Subscribers costs authorized by the Cable Acts and to itemize such legally authorized costs on Subscriber bills.

## **XX. CONSTRUCTION PROVISIONS**

A. The Operator shall not erect or authorize or permit others to erect any poles within the Streets or Public Utility Easements for operation of its System without first obtaining approval of the City and Colorado Springs Utilities which may be granted or withheld in its sole and absolute discretion.

Whenever feasible the Operator shall use existing poles when the installation of facilities above-ground is permitted. In the event the Operator cannot obtain the necessary poles and

related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for the Operator to make all needed excavations in the streets for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of the System. All poles of the Operator shall be erected between the sidewalk and the property line unless otherwise designated by the proper City authorities, and each pole shall be set whenever practicable at an extension lot line. The City or Colorado Springs Utilities shall have the right to require the Operator to change location of any pole, conduit, structure or other facility within the Streets or Public Utility Easements when in the opinion of the City or Colorado Springs Utilities the public convenience or the provision of utility services requires such change, and the expense thereof shall be paid by the Operator.

This Agreement does not confer any rights to attach to poles or other facilities owned by Colorado Springs Utilities or any other utility. The right to make such attachment and the terms, conditions and fees for such attachments shall be governed by a separate agreement with Colorado Springs Utilities or such other utility and by the City Charter, City Code and all applicable City ordinances as amended.

Nothing herein shall exempt the Operator from compliance with all Charter and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto.

B. Upon its receipt of reasonable advance notice, not to be less than fifteen (15) days, except in the event of an emergency, the Operator shall, at its own expense, protect, support, temporarily disconnect, relocate in the Streets, Public Utility Easement or public way, or remove from the Streets, Public Utility Easement or public way, any property of the Operator when lawfully required by the City or Colorado Springs Utilities by reason of traffic conditions, public safety, street abandonment or vacation, street construction, change or establishment of street grade, installation of City or Colorado Springs Utilities owned and operated sewers, drains, gas or water pipes, or electric facilities or any other type of structures or improvements owned or operated by the City or Colorado Springs Utilities. In the event the City or Colorado Springs Utilities determines that an emergency exists, the City or Colorado Springs Utilities may require compliance by the Operator with the provisions of this subsection B without advance notice. If an emergency exists and compliance is not undertaken by the Operator as required by the City or Colorado Springs Utilities, this subsection shall not be construed to prohibit such action by the City or Colorado Springs Utilities as permitted by law.

C. The Operator shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building, provided: (i) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Operator, making such payment in advance; and (ii) the Operator is given not less than five (5) business days advance written notice to arrange for such temporary wire changes.

D. Subject to the requirements imposed under the City Code the Operator shall have the authority to trim trees or other natural growth overhanging any of its System in the Service

Area so as to prevent branches from coming in contact with the Operator's wires, cables, or other equipment. The Operator shall reasonably compensate the property owner for any damages caused by such trimming as provided by law or the City Code.

E. Any use of other public ways, places or parks other than a Street or Public Utility Easement shall require prior written approval by the City or Colorado Springs Utilities, as appropriate. The Operator shall have the right to continue to use all Streets, Public Utility Easements and public ways currently occupied.

F. **Minimum Interference.** All transmission lines, equipment, and structures shall be installed, constructed, maintained and located so as to cause minimum interference with the rights and reasonable convenience of property owners and at all times be kept and maintained in a safe and adequate condition, and in good order and repair. The Operator shall, at all times, employ necessary and reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which would likely cause damage, injury or nuisance to the public or to facilities of the City, Colorado Springs Utilities or other public utilities. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any use of other public ways, places or parks other than a Street or Public Utility Easement shall require prior written approval by the City or Colorado Springs Utilities, as appropriate. The Operator shall have the right to continue to use all Streets, Public Utility Easements and public ways currently occupied.

G. The Operator at its own cost and expense and in the manner approved by the City shall replace and restore all landscaping, paving, sidewalks, driveways, or the surface of any Street, alley, Public Utility Easement, easement or private property disturbed as may be reasonably required by the City. As required by the City shall mean as required by the City Code, resolution, or policy. If such replacing or restoration is not covered by a City Code, resolution, or policy, then such shall be as may be reasonably required by the City. Failure of the Operator to replace or restore such landscaping, paving, sidewalk, driveway, or the surface of any Street, alley, Public Utility Easement, easement, or private property disturbed within the time required under any City Code, resolution, or policy or in the absence of any applicable City Code, resolution, or policy within seventy-two (72) hours (weather permitting) after notification by the City shall entitle the City to cause the proper replacing or restoration to be made at the Operator's expense. The Operator shall also be subject to any street cut fee.

H. As required by City ordinances, regulation or policies, no installation of any facility shall be performed or conducted within any of the Streets or Public Utility Easements unless such plans have first been submitted to the City for design, review and approval by the City and Colorado Springs Utilities.

I. Upon any failure of the Operator to commence, pursue or complete any work required of it by law or by the provisions of this Agreement to be done in any Street, the City, at its option, may cause such work to be done and the Operator shall pay to the City the cost thereof in the itemized amounts reported by the City to the Operator, within thirty (30) days after receipt of such itemized report.

J. Subject to applicable laws, regulations and ordinances of the City and the provisions of this Agreement, the Operator may perform all construction necessary for the operation of its System. All construction and maintenance of any and all facilities within Streets and Public Utility Easements incident to the Operator's System shall, regardless of who performs the construction, be and remain the Operator's responsibility. The Operator shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities, within the Streets and Public Utility Easements. The Operator shall pay all generally applicable fees upon issuance of the requisite construction permits by the City to the Operator.

K. Prior to beginning any construction, the Operator shall provide the City with a construction schedule for work in the Streets and Public Utility Easements. Within thirty (30) days of when the Operator's construction of facilities in the Streets is completed, the Operator shall provide the City with a map showing the location of the installed facility in the Streets and Public Utility Easements, as built, in detail, excluding proprietary electronics. All as-builts shall be presented to the City in a GIS or other format acceptable to the City and Colorado Springs Utilities.

L. The Operator may make excavations in Streets and Public Utility Easements for any facility needed for the maintenance or extension of the Operator's System. Prior to doing such work, the Operator shall apply for, and obtain, appropriate permits from the City, and give appropriate notices to City and the notification association established in Article 1.5 of Title 9 C.R.S. When obtaining a permit, the Operator shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, the Operator shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Street or Public Utility Easements cuts within the City.

M. In the event that emergency repairs are necessary, the Operator shall immediately notify the City of the need for such repairs. The Operator may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency. The Operator shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permit or license fees.

N. Within forty-eight (48) hours after the City or Colorado Springs Utilities, or a licensee or permittee notifies the Operator of a proposed Street or Public Utility Easement excavation, the Operator shall, at the Operator's expense:

1. Mark on the surface all of its locatable underground facilities within the area of the proposed excavation;
2. Notify the excavator of any unlocatable underground facilities in the area of the proposed excavation; or

3. Notify the excavator that the Operator does not have any underground facilities in the vicinity of the proposed excavation.

O. If the Operator excavates the surface of any Street or Public Utility Easement, the Operator shall warrant the work performed within the Street or Public Utility Easement for two (2) years or such period of time as the City ordinances or regulations provide and be responsible for restoration of the Streets or Public Utility Easements and surface in accordance with applicable ordinances and regulations in the area affected by the excavation. When any opening is made by the Operator in a hard surface pavement in any Street or Public Utility Easements, the Operator shall promptly refill the opening and restore the surface to a condition satisfactory to the City or Colorado Springs Utilities.

P. The Operator's Video System shall be constructed and maintained in such manner as not to interfere with sewers, drains, water pipes, electric and natural gas distribution facilities, or any other property of the City or Colorado Springs Utilities, or with any other pipes, wires, conduits, pedestals, structures, drainage or other facilities that may have been or are in the future laid in the Streets by, or under, the authority of the City or as otherwise authorized by law or in connection with the franchise granted to the Pikes Peak Historical Street Railway Foundation to construct, operate and maintain a railway system in the City.

The Operator shall provide and use any equipment and appliances necessary to control and carry the Operator's signals so as to prevent injury to the City's property, the property of Colorado Springs Utilities, or property belonging to any person. The Operator shall maintain, repair, renew, change and improve its facilities in good repair, and safe and presentable condition.

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

R. Nothing in this Agreement shall prevent the City or Colorado Springs Utilities from constructing sewers; establishing grading, paving, repairing and/or altering any Street or Public Utility Easement; laying down, repairing or removing water mains; constructing, removing or repairing any electric or natural gas distribution facility; or constructing, removing, maintaining or repairing any communications or telecommunications facilities; or any other public work or improvement. All such work shall be done, insofar as reasonably practicable, so as not to obstruct, injure or prevent the use and operation of the Operator's System. However, if any of the Operator's System interferes with the construction, removal, maintaining or repair of any street or public improvement or Public Utility Easements, as set forth above, the Operator's System shall be removed, relocated or replaced in the manner the City shall direct, and City and Colorado Springs Utilities shall in no event be liable for any damage to any portion of the Operator's System. Any and all such removal or replacement shall be at the expense of the Operator, except that the Operator may not be required to move its lines or facilities due to the

placement of lines or facilities of a competitive video or cable system operator including any competitive video or cable system of the City or Colorado Springs Utilities without payment of the reasonable costs of such relocation. Should the Operator fail to remove, adjust or relocate its facilities by a reasonable date established by the City's written notice to the Operator, the City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by the Operator, including all reasonable costs and expenses incurred by the City or Colorado Springs Utilities due to the Operator's delay.

S. If any Street or Public Utility Easement or portion thereof used by the Operator is vacated or conveyed by the City during the term of this Agreement, unless the City specifically reserves to the Operator the right to continue its installation in the vacated Street or Public Utility Easement, the Operator shall, without delay or expense to the City, remove its facilities from such Street or Public Utility Easement, and restore, repair or reconstruct the Street or Public Utility Easement where such removal has occurred, and place the Street or Public Utility Easement in such condition as may be required by the City or Colorado Springs Utilities. In the event of failure, neglect or refusal of the Operator, after thirty (30) days notice by the City or Colorado Springs Utilities, to restore, repair or reconstruct such Street or Public Utility Easement, the City or Colorado Springs Utilities may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by City or Colorado Springs Utilities, shall be paid by the Operator within thirty (30) days of receipt of invoice and documentation, and failure to make such payment shall be considered a material breach of this Agreement.

The Operator shall comply with all applicable state and federal laws, statutes, regulations and orders concerning hazardous substances relating to the System in the Streets.

The Operator shall maintain and inspect its System located in the Streets or Public Utility Easements. Upon reasonable notice to the Operator, the City may inspect the Operator's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to the System. In removing or modifying the Operator's facilities as provided in this Agreement, the Operator shall also remove all residue of hazardous substances related thereto.

The Operator agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City and Colorado Springs Utilities arising out of a release of hazardous substances caused by the System in the Streets or Public Utility Easements.

## **XXI. ADDITIONAL DESIGN AND CONSTRUCTION REQUIREMENTS**

A. System Design. The Operator's Video Programming System shall comply with the design and service requirements and schedules contained in this Agreement, all applicable laws and regulations, and the attached Exhibits. All of the Operator's construction shall be subject to the City's supervision, public inspection, in accordance with local law, including, without limitation, location of facilities, and placement of poles. The Operator shall submit to the City and Colorado Springs Utilities prior to construction, any construction drawings, design

plans, and specifications for review on all projects; provided that plans need not contain proprietary electronic information.

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

C. **Rights-of-Way Occupancy.**

1. In any case where the Operator has the required written permission from City not to underground its System facilities, the Operator shall enter agreements to utilize existing poles, conduits and other facilities whenever possible and economically feasible, and may not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of the City is obtained as provided in this Agreement.

2. The Operator shall:

a. Locate and install all transmission and distribution lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;

b. Keep and maintain all transmission and distribution lines, equipment and structures in a safe, adequate and substantial condition, and in good order and repair;

c. Employ professional care and install and maintain methods and devices for preventing failures and accidents that are likely to cause damage, injuries or nuisances to the public;

d. Use suitable barricades, flags, lights, flares or other devices as necessary for the safety of all members of the public;

e. Place any poles or other fixtures in any public right-of-way in such manner as not to interfere with the usual travel of the right-of-way or cause unsafe conditions of any sort;

f. Before beginning any excavation or other construction activity on a public right-of-way or easement which crosses or abuts any private property, the Operator shall clearly mark and delineate with flags, stakes or non-polluting water-soluble spray paint the boundaries of that public right-of-way or easement where it abuts or crosses the private property; and

g. The Operator shall locate, mark and map any of its installed System at no expense to City. The Operator shall install the underground portion of its System

with appropriate technology so as to be able to receive accurate information identifying the location of damaged underground facilities when such damage occurs.

D. Removal of Facilities. On receipt of written notice, the Operator at its own expense shall:

1. As provided in this Agreement, protect, support, temporarily disconnect, relocate or remove any of its property as necessary because of traffic conditions, public safety, street vacation or street grade, separation or realignment, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other type of structure or improvements; and

2. Nothing described in this Agreement shall be considered a taking of the property of the Operator and the Operator is not entitled to additional compensation because of these actions.

E. Stop Work.

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

2. The stop work order shall be:

a. In writing;

b. Given to the individual doing the work, or posted on the work site;  
and

c. Sent to the Operator by overnight or hand delivery at the address  
given herein; and may:

(1) Indicate the nature of the alleged violation or unsafe  
condition, and

(2) Establish conditions under which work may be commenced  
or continued.

Any act or omission of any contractor of the Operator which violates any provision of this Agreement shall be considered an act or omission of the Operator for the purposes of this Agreement.

F. Private Property. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the Operator shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed, provided that in the case of construction operations, such

notice as provided in this Agreement shall be delivered or provided at least two (2) days prior to entry. If any damage is caused by any Operator activity or omission, the Operator shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace the damaged property. For major construction involving excavation, property owners shall also be notified by mail at least five (5) days in advance. In the case of an emergency (as defined above), the Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law.

## **XXII. INSURANCE PROVISIONS**

A. **Liability Insurance.** Subject to City risk management review, the Operator shall furnish to the City and file with the City Clerk, and at all times during the existence of this Agreement maintain in full force and effect at the Operator's own cost and expense, a commercial general liability insurance policy in the principle amount of Two Million Dollars (\$2,000,000.00) for bodily injury or death to any one person or for bodily injury or death to any number of persons in any one incident, and Two Million Dollars (\$2,000,000.00) for all property damage occurring during any one incident and Two Million Dollars (\$2,000,000.00) for deprivation of civil rights and civil liberties, defamation of character, libel, slander, invasion of contractual rights, inverse condemnation, or other causes of action. The insurance limits hereunder shall be revised upward in the event the statutory maximums applicable to local governments in Colorado are raised during the term of this Agreement. The insurance company providing insurance pursuant to this Section shall provide insurance pursuant to this Section comparable to general liability insurance of commercial quality. The insurance company shall be licensed to do business in Colorado, and in a form and substance satisfactory to the City Attorney, indemnifying and defending the City, City Council and any officers, boards, commissions, agents and employees thereof from and against any and all claims, demands, actions, suits and proceedings by any person whatsoever for loss or damage, for personal injury, death or real or personal property damage, occasioned by the operations of the Cable Operator under this Agreement or alleged to so have been caused or occurred and against all liabilities to others, including but not limited to any liability for damages by reason of, or arising out of, any failure by the Operator to secure consents from the owners, authorized distributors or licensees of programs to be transmitted or distributed by the Operator, and against any loss, cost, expense and damages resulting therefrom, including reasonable attorneys' fees, arising out of the exercise or enjoyment of this Agreement, irrespective of the amount of the commercial general liability policy required hereunder. The City shall be named as an additional insured on all policies referred to herein. The insurance certificate shall be subject to approval of the City Attorney as to form and substance with respect to compliance with the requirements of this Agreement, which approval shall not be unreasonably withheld.

Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or

interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

B. Other Insurance. The Operator shall also provide Workmen's Compensation Insurance as required by state law.

C. Changes in Insurance - Notice to City Required. The Operator shall maintain on file with the City a certificate of insurance certifying insurance coverage as required above. Willful failure to maintain adequate insurance as required under this Section shall be cause for immediate termination of this Agreement by the City. All insurance coverage shall provide for at least thirty (30) days prior written notice to the City Clerk in the event of material alterations or cancellation of any coverage afforded in the policies, before such alteration or cancellation becomes effective. The insurance shall provide coverage at all times as provided herein for not less than Two Million Dollars (\$2,000,000.00) combined single limits for bodily injury and property damage per occurrence. Coverage shall include blanket contractual, broad form property damage, products, completed operations, personal injury, and X.C.U. endorsements.

D. Insurance - No Limitation. Nothing herein shall be in any way construed as a waiver on behalf of the City of any of the protections or provisions of the Colorado Governmental Immunity Act, and the Operator shall ensure that in naming the City as an insured under this Section, all insurance policies or agreements shall specifically contain a non-waiver provision, and shall not impair said protections and provisions. The Operator's maintenance of insurance policies required by this Agreement shall not be construed to excuse unfaithful performance by the Operator or to limit the liability of the Operator to the coverage provided in the insurance policies, or otherwise to limit the City's recourse to any other remedy available at law or in equity.

### **XXIII. LETTER OF CREDIT AND PERFORMANCE BOND**

A. Amount. No later than the effective date of this Agreement, the Operator shall establish and provide to City, on behalf of the City as security for the faithful performance by the Operator of all provisions of this Agreement, and of the Customer Service Standards, an irrevocable Letter of Credit in the amount of One Hundred Thousand Dollars (\$100,000.00).

B. The Letter of Credit shall be maintained at One Hundred Thousand Dollars (\$100,000.00) throughout the term of this Agreement, provided that at intervals no more often than every five (5) years, City shall have the right to review whether this amount should be increased to reflect increases in the Consumer Price Index during the prior five (5) year period.

C. The Letter of Credit may be assessed by City, in accordance with Section XXIV of this Agreement, or under the Customer Service Standards, for purposes including, but not limited to, the following:

1. Failure of the Operator to pay City sums due under the terms of this Agreement;

2. Reimbursement of costs borne by the City to correct Agreement violations not corrected by the Operator after notice and opportunity to cure;

3. Monetary remedies, liquidated damages, or other damages assessed against the Operator due to default or breach of franchise requirements; and

4. Failure to comply with the Customer Service Standards.

D. The Operator shall have the right to appeal to the City Council for reimbursement in the event the Operator believes the Letter of Credit was drawn upon improperly. Any funds the City erroneously or wrongfully withdraws from the Letter of Credit shall be returned to the Operator with interest from the date of withdrawal at a rate equal to the prime rate of interest as quoted by the Bank of New York within thirty (30) business days of a determination by the City Council that withdrawal was in error or wrongful.

E. If the Operator fails within thirty (30) days after the date of written notice to pay to the City any assessment, fees or taxes lawfully due and unpaid which the City determines can be remedied by a draw upon the Letter of Credit, the City may thereafter withdraw the amount thereof from the Letter of Credit. Upon such withdrawal, the City shall notify the Operator of the amount and date thereof. The Operator may contest such withdrawal by written notice to the City. The Operator's maintenance of the Letter of Credit shall not be construed to excuse unfaithful performance by the Operator, or to limit the liability of the Operator to the amount of the Letter of Credit, or otherwise to limit the City's recourse to any other remedy available at law or equity.

F. The Letter of Credit deposited pursuant to this Section and its accrued interest shall become the property of the City in the event that the Agreement is lawfully terminated or revoked for cause by reason of the default or material breach of the Operator, and the Operator has exhausted all of its remedies relating thereto. The Operator, however, shall be entitled to the return of the Letter of Credit deposited in accordance with this Section, or any portion thereof remaining upon normal expiration of this Agreement.

G. The rights reserved to the City with respect to the Letter of Credit are in addition to all other rights of the City whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such Letter of Credit shall constitute a waiver of any other right the City may have.

H. City shall give the Operator written notice of any withdrawal under this Section upon such withdrawal. Within thirty (30) days following receipt by the Operator of written notice from the City that any amount has been withdrawn from the Letter of Credit, the Operator shall restore such Letter of Credit to the amount required under this Agreement. Failure by the Operator to so restore the Letter of Credit shall be considered a material breach of this Agreement.

I. Within thirty (30) days after the acceptance of this Agreement, the Operator shall file with the City a performance bond in the amount of up to Five Hundred Thousand Dollars

(\$500,000) in favor of the City to assure compliance with the System constructions provisions of this Agreement. The Operator shall maintain an approved bond in the above amount throughout the term of this Agreement. Upon completion of the term of this Agreement, the City shall release the requirement of the Operator to maintain said bond.

J. In the event that the Operator fails to reasonably comply with any law, ordinance or regulation governing the construction of the System, or fails to well and truly observe, fulfill and perform each term and condition of this Agreement pertaining to such construction, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Operator, plus a reasonable allowance for attorney's fees, including the City's legal fees, costs and expenses, up to the full amount of the bond. The bond shall contain the following endorsement:

“It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City by registered mail, of a written notice of such intent to cancel or not renew.”

#### **XXIV. LIQUIDATED DAMAGES**

A. Subject to the notice and cure requirements referred to in Subsection B of this Section, the City shall be authorized to withdraw from the Letter of Credit required by Section XXIII and Section XXIV of this Agreement the following amounts as liquidated damages in the event of the willful failure of the Operator to perform faithfully the following requirements of this Agreement.

1. Failure to construct the Video Programming System in accordance with this Agreement and continuously operate the System as required hereunder - the sum of One Thousand Dollars (\$1,000.00) per day;
2. Failure to provide the EG access channels, equipment or facilities required hereunder - the sum of Two Hundred Dollars (\$200.00) per day;
3. Failure to test the system or failure to provide or maintain data or reports thereof as required hereunder - the sum of One Hundred Dollars (\$100.00) per day;
4. Failure to comply with Customer Service as expressed in Exhibit B attached hereto, operation or maintenance standards following the City's resolution to undertake action - the sum of Two Hundred Dollars (\$200.00) per day;
5. Failure to provide any other report as required hereunder - the sum of One Hundred Dollars (\$100.00) per day;
6. Failure to comply with any other material provision of this Agreement – the sum of One Hundred Dollars (\$100.00) per day.

The amount of liquidated damages provided above shall be adjusted annually on the anniversary of the effective date of this Agreement by a percentage equal to the increase, if any, during the preceding twelve months in the Consumer Price Index, all Urban customers (CPI-U) for the Denver, Colorado Metropolitan area, published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index.

The City and the Operator recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of the Operator's breach of this Agreement. Accordingly, instead of requiring such proof, the City and the Operator agree that the Operator shall pay to the City the sums set forth above for each day that the Operator shall be in breach of the specific provisions of this Agreement, described in numbers 1 through 6 inclusive, above. Such amounts are agreed to be a reasonable estimate of the actual damages the City would suffer in the event of the Operator's breach of such provisions of this Agreement, and are not intended as a penalty.

B. Notwithstanding anything contained herein to the contrary, the City may not collect liquidated damages as provided herein until the City has given notice of default as provided in Section XXV and the Operator has failed to cure such default within the applicable cure period. In the event the Operator shall fail to cure the default, liquidated damages shall be payable from the date written notice is received by the Operator.

C. The Subscriber rates and charges imposed by the Operator shall not be affected either directly or indirectly by reason of any payments the Operator may be required to make pursuant to this Section XXIV or Section XXV.

D. The Operator's maintenance of the Letter of Credit and performance bond shall not be construed to excuse unfaithful performance by the Operator of this Agreement; to limit the liability of the Operator to the amount of the Letter of Credit and performance bond; or to otherwise limit the City's recourse to any other remedy available at law or equity.

## **XXV. DEFAULT**

A. An event of default shall include but not be limited to a situation whereby the Operator shall either:

1. fail to construct the System as hereinbefore and hereinafter provided;
2. fail to substantially perform any of the material terms, covenants or agreements to be kept, done or performed by the Operator under the terms of this Agreement, or practice any fraud or deceit upon the System Subscribers or the City;
3. fail to maintain a business office within the City;
4. abandon the System, or terminate the System's operations;

5. fail to restore service to the System after three (3) consecutive days of an outage or interruption in service except when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the System;

6. have made a material misrepresentation of fact in the application, proposal or during the negotiations related to the granting of this Agreement;

7. in the event the Operator fails to operate the system for seven (7) consecutive days without prior approval of the City or without just cause;

8. the Operator becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, or all or part of the Operator's System are sold under an instrument to secure a debt and are not redeemed by Operator within thirty (30) days from said sale; or

9. the appointment of a receiver or trustee to take over and conduct the business of the Operator whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

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

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

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

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

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

C. In the event of default, the City shall notify the Operator in writing of the nature of such default. Within thirty (30) days following receipt of such notice, the Operator shall correct such default; or, in the event of a default not capable of being corrected within thirty (30) days, the Operator shall commence correcting the default within thirty (30) days of receipt of notification thereof and thereafter correct the default with due diligence or may request a hearing as provided in Section XXVI. The Operator may contest such allegation of default by written notice to the City, and in the event of a dispute as to whether a default has occurred, the parties

shall meet and attempt to arrive at a settlement of the dispute before either party may attempt to enforce the remedies referred to in this Agreement.

D. If, after the public hearing, the City determines that a default still exists, the City shall order the Operator to correct or remedy the default or breach within fifteen (15) days or within such other reasonable timeframe as the City shall determine. In the event the Operator does not cure within such timeframe to the City's reasonable satisfaction, the City may:

1. Withdraw an amount from the Letter of Credit as monetary damages; or
2. Revoke this Agreement; and
3. Pursue any other legal or equitable remedy available under this Agreement or any applicable law.

E. The assessment does not constitute a waiver by the City of any other right or remedy it may have under this Agreement or applicable law including its right to recover from the Operator any additional damages, losses, costs and expenses that are incurred by the City by reason of the breach of this Agreement. The City shall hear any persons interested in the revocation, and shall allow the Operator, in particular, an opportunity to state its position on the matter. Within ninety (90) days after the hearing, City shall determine whether to revoke the Agreement and declare that the Agreement is revoked and the Letter of Credit forfeited; or if the breach at issue is capable of being cured by the Operator, direct the Operator to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City determines are reasonable under the circumstances. The City may at its sole discretion take any lawful action which it deems appropriate to enforce City's rights under the Agreement in addition to revocation of the Agreement.

F. Additionally, the Operator acknowledges and agrees that the obligations referred to herein as they pertain to the SCETC or educational access, facilities, equipment services or receipt of monetary payments and other amounts are material obligations of this Agreement. If the Operator fails to correct a default as provided in this Agreement, and if the default is one for which liquidated damages have been provided in Section XXIV, the City shall have the right without further notice to withdraw such funds from the Letter of Credit and seek to collect on the performance bond as shall be required to pay the liquidated damages. If the default is not one for which liquidated damages have been provided, the City shall have the right to recover such damages as shall be entitled by law.

G. The City may seek legal and equitable relief to enforce the provisions of this Agreement, and to recover any damages not covered by the Letter of Credit or any bond.

H. Nothing herein contained shall limit or restrict any legal rights that the City may have arising from a default in the performance of the terms, conditions and covenants of this Agreement by the Operator.

## **XXVI. TERMINATION**

A. In addition to all other rights and powers retained by the City under this Agreement, the City reserves the right to terminate this Agreement, and the Operator's rights hereunder, in the event the Cable Operator defaults in the substantial performance of any material term, covenant or agreement of this Agreement specified in Section XXV, and fails to cure such default.

B. Before the City may terminate this Agreement and the Operator's rights hereunder, the City conduct a public hearing, at which time the Operator shall be given an opportunity to present evidence and argument in opposition to the forfeiture or termination of this Agreement. The Operator shall be provided with not less than thirty (30) days' notice prior to such public hearing.

C. If this Agreement expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law allow the Operator to maintain and operate its Video System on a month-to-month basis unless Operator demonstrates to City's satisfaction that it needs additional time to complete a sale.

D. In the event that a sale has not been completed in accordance with Subsection C above, the City may order the removal of the above-ground system facilities and such underground facilities as required by the City in order to achieve reasonable engineering or Street use purposes, from the Agreement Area at the Operator's sole expense within a reasonable period of time as determined by the City. The indemnification and insurance provisions and the Letter of Credit shall remain in full force and effect during the period of removal.

## **XXVII. DISCONTINUANCE OF SERVICE OVER THE VIDEO PROGRAMMING SYSTEM**

A. To the extent that it is not utilizing its Video Programming System infrastructure for the lawful provision of any other communications service, the Operator shall promptly remove from the Streets and Public Utility Easements where its properties are located all or any part of its facilities so located when one or more of the following enumerated conditions occurs:

1. The Operator ceases to operate its System for a continuous period of seven (7) days from the date of said occurrence;

2. This Agreement is terminated or revoked as provided in this Agreement;  
or

3. Upon the non-renewal of this Agreement, including the exhaustion of any rights of appeal.

B. The City is authorized to enforce the provisions of this Section as provided herein:

1. City shall notify the Operator in writing of any occurrence provided for in Section A above. Within one hundred eighty (180) days following receipt of said notice, the Operator shall remove from the Streets and Public Utility Easements upon, over and under which its properties are located all of said properties except for underground direct burial cable and unless otherwise authorized and permitted by the City or as otherwise provided for in this Section XXVII.

2. If the Operator has failed to remove its property or not made a reasonable effort to remove same, then in that event, the City may cause the same to be removed and the cost of same shall be recovered from the Operator either by legal process or applying the cost toward the Letter of Credit deposited with the City and any deficiency may be collected through a legal action in a court of competent jurisdiction.

C. Any property abandoned by the Operator shall become the property of the City, and the Operator agrees to execute and deliver an instrument in writing transferring its ownership interest in any such property to the City. Any notice given the Operator by the City as provided in this Section shall be deemed notice to any other person claiming interest in said property of the Operator and said persons shall be subject to all the provisions provided herein.

D. All removals under this Section are to be done at the expense of the Operator.

E. In addition to the foregoing, at the expiration of the term for which this Agreement has been granted, or upon its termination or revocation as provided herein, the Operator shall forthwith, upon notice by the City, remove at the Operator's own expense all portions designated by the City of the System (except for direct burial cable) from all Streets, Public Utility Easements and public ways within the City, and shall restore said Streets, Public Utility Easements and public ways to their former condition; provided however, the Operator shall have the right to sell its physical plant, subject to City approval in which case said plant need not be removed. Any property of the Operator remaining in place one hundred eighty (180) days after the expiration, termination or revocation of this Agreement shall be considered permanently abandoned and may become the property of the City at the City's discretions as provided herein, and may be used for public, governmental or any other educational purposes.

F. When service to any Subscriber is terminated, the Operator shall comply with all rules and regulations of the FCC concerning ownership and removal of wiring.

## **XXVIII. TRANSFER OF OWNERSHIP OR CONTROL**

A. The Video Programming System and this Agreement shall not be sold, assigned (excluding granting a security interest therein), transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, partnership, joint venture, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person or entity, without the prior written consent of the City.

B. In this Section, the following words have the meanings indicated:

1. "Control" means majority stock ownership and/or the legal or practical ability to exert actual working control in whatever manner exercised.

2. "Proposed Transferee" means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the Agreement or the Operator.

C. The Operator shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the Agreement or any of the rights or privileges herein granted, without the prior written consent of the City. The consent required by the City may not be unreasonably withheld, but may be conditioned upon the financial, legal and technical ability of the proposed assignee or transferee and as set forth in Subsection E herein.

D. The requirements of Subsection C shall only apply when there is a change in control of Operator. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any Person or group of persons of ten percent (10%) or more of the voting shares of the Operator. A transfer of control by the Operator shall void this Agreement unless and until the City consents in writing. For the purpose of determining whether it should consent to transfer of control, the City may inquire into the qualifications of the proposed transferee.

E. For purposes of determining whether it should consent to any proposed transaction under either Subsection C. or D. above, the City may also inquire into compliance issues under the Agreement, except that, in lieu of consideration of compliance issues, the Video Operator, and any Person that proposes to acquire the Agreement or control of the Operator may acknowledge in writing that, by consenting to any proposed transaction, the City will not waive or otherwise adversely affect any right it may have with respect to any Agreement compliance issue.

F. The Process for Operator to seek consent to any transaction for which it must obtain City consent is as follows:

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

2. The City shall render a final written decision on the request within one hundred twenty (120) days of the request and receipt by the City of all required and requested information.

3. If the City fails to render a final decision on the request within such one hundred twenty (120) days (as provided in Subsection 2 above), such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

4. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, the Operator shall file with the City a written instrument evidencing such

sale or transfer of ownership or control, certified and sworn to as correct by the Operator and the transferee shall file its sworn acceptance and agreement to abide by each and every provision of this Agreement.

G. In seeking the City's consent to any change in ownership or control, the Operator shall require the proposed transferee to indicate whether it:

1. Has ever been convicted or held liable for acts involving deceit; or
2. Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction; or
3. Is financially solvent by submitting the financial data including financial statements that are audited by a certified public accountant who may also be an officer of the proposed assignee or transferee along with any other data that the City may reasonably require; and
4. Has the financial, legal and technical capability to enable it to maintain and operate the Video System for the remaining term of the Agreement.

H. The consent or approval of the City to any transfer by the Operator does not constitute a waiver or release of the rights of the City in or to its Streets, public rights-of-way or easements and any transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement.

I. A sale, transfer or assignment of the Agreement may not be approved without the successor in interest becoming a signatory to this Agreement.

J. Notwithstanding anything contained in this Agreement, the Operator may pledge the assets of the System for the purpose of financing; provided that such pledge of assets shall not impair the Operator's or mitigate the Operator's responsibility and capability to meet all its obligations under the provisions of this Agreement.

K. Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, the Operator shall notify the City of such fact and such notification or the occurrence of such event shall be treated as a notification that a change in control of this Agreement has taken place and such change in control is subject to the consent of the City.

L. The City may condition said transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee.

## **XXIX. PERIODIC REEVALUATION**

A. Since the field of video and electronic communications is rapidly evolving and many technological, regulatory, financial, marketing, legal, competitive, and other changes are likely to occur during the term of this Agreement, a degree of flexibility is needed in order to achieve and maintain a video and electronic communications system that adequately serves the public interest. To this end, it shall be the policy of the City to amend this Agreement upon application of the Operator when necessary to enable the Operator to take advantage of advancements in the State-of-the-Art which will afford it an opportunity to more effectively, efficiently or economically serve its Subscribers; provided, however, such amendments must be acceptable to the City in its sole and absolute discretion. Subject to applicable law, this Agreement may be amended in writing signed by both the City and Operator at any time in order to conform with the applicable federal law and FCC rules and regulations after notice and public hearing.

B. The City may reevaluate the Operator's Video Programming Service and operations two (2) years following the award date of this Agreement and every two (2) years thereafter for the life of this Agreement.

C. All regular evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Agreement Area. The Operator shall notify its subscribers of all regular and special evaluation sessions by announcement on at least one channel of its System between the hours of 7:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

D. The City and the Operator may meet at other times to discuss and negotiate changes to this Agreement which are mutually agreed upon by both parties.

E. Topics which may be discussed at any evaluation session may include, but are not limited to, service rate structures, liquidated damages, free or discounted services, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to this Agreement, judicial and FCC rulings, line extension policies, and City or the Operator's rules; provided that nothing in this Section shall be construed as requiring the renegotiation of this Agreement.

F. During any review and evaluation session, the Operator shall cooperate with the City and shall provide without cost such reasonable and relevant information as the City may request.

## **XXX. COOPERATION**

The parties recognize that it is in their mutual best interests for the Video Programming System to be operated as efficiently as possible, and for construction of the System to occur in accordance with the requirements and schedule set forth in this Agreement. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Agreement.

### **XXXI. WAIVER**

The failure of the City at any time to require performance by the Operator of any provision hereof shall in no way affect the right of the City hereafter to enforce the same or the rights and remedies provided to the City in this Agreement, by law and in equity. Nor shall the waiver by the City of any breach of any provision hereof or the failure of the City to require or enforce prompt compliance 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. The Operator is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of the City to enforce prompt compliance. The Operator's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to prevent any subsequent enforcement of such provision or any other provision in this Agreement.

### **XXXII. BOOKS AND RECORDS**

A. Open Records. The City shall have access to, and the right to inspect, any books and records of the Operator, its parent companies and affiliated entities which are reasonably necessary for the City's administration or enforcement of the terms of this Agreement. The Operator shall not deny the City access to any of the Operator's records on the basis that the Operator's records are under the control of any parent company, affiliated entity or a third party. The City may, in writing, request copies of any such records or books and the Operator shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of the Operator. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Operator may request, in writing within ten (10) days, that the City inspect them at the Operator's local offices. If any books or records of the Operator are not kept in a local metro office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate to the performance of any of the City's duties, administration or enforcement of this Agreement, then all reasonable travel and maintenance expense(s) incurred in making such examination shall be paid by the Operator.

B. Confidentiality. The City agrees to treat as confidential any books/or records that constitute confidential commercial, financial or proprietary information under applicable federal or state law, to the extent the Operator makes the City aware of such confidentiality and to the extent that the City concludes that such information comes within an exception to nondisclosure under applicable federal or state law. The Operator shall be responsible for clearly and conspicuously stamping the work "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise the Operator in advance so that the Operator may take appropriate steps to protect its interests. If the City receives a demand from any person for disclosure of any information designated by the Operator as confidential, the City shall, so far as consistent with applicable law, advise the Operator and provide the Operator with a copy of any written request by the party demanding access to such information within a reasonable time. The City agrees

that, to the extent permitted by applicable state and federal law, it shall deny access to any of the Operator's books and records marked confidential as set forth above to any person, provided that the Operator shall indemnify the City for any of the City's losses, costs, damages, attorney fees, or other expenses in connection therewith. The information required to be submitted under Section XII, Subsection B, "Construction Plans" shall not be treated as confidential under this Subsection.

C. Records Required. The Operator shall at all times maintain:

1. A full and complete set of plans, records, and as built maps showing the exact location of all System equipment installed or in use in the Agreement Area within thirty (30) days after such installation or use exclusive of electronics, Subscriber service drops and equipment provided in Subscribers' homes. This information shall be available to the City and to the Colorado Springs Utilities.

2. A copy of all FCC filings on behalf of the Operator, its parent companies or affiliates which are material to the operation of the System;

3. All Subscriber records and information;

4. A summary of the prior year's activities, including services added or dropped, changes, number of Subscribers added or terminated, all construction activity, and total homes passed;

5. A list of company services, rates, and channel lineups;

6. A statistical compilation of customer or Subscriber complaints, action taken and resolution, if any, and a log of service calls which shall be submitted quarterly to the City within thirty (30) days after the close of each quarter of the year.

Provided, however, that the information specified in Subsections 3, 4, 5 and 6 need only to be maintained for one (1) year from the date it is created.

D. Annual Reports. Within ninety (90) days after the close of the Operator's fiscal year, the Operator shall submit to the City a written annual report, in a form acceptable to the City, which shall include the following information for the franchise area:

1. A revenue statement, certified by an officer of the Operator;

2. A summary of the previous year's activities in development of the Video System, including, but not limited to, services begun or discontinued during the reporting year, and the number of Subscribers for each class of service (i.e., basic, expanded basic, or premium);

3. A statement of planned construction, if any, for the next year.

E. Plant Survey Report. At the City's request, the Operator shall submit to the City an annual plant survey report which shall be provided in conformity with FCC technical standards. The City shall be provided the ability to inspect "as built" maps, upon request.

F. Copies of Federal and State Reports. The Operator shall submit to the City, upon request, copies of all pleadings, applications, notifications, communications, and documents of any kind, submitted by the Operator or its parent corporation(s), to any federal, state, or local courts, regulatory agencies and other government bodies if such documents specifically relate to the operations of the Operator's System within the Agreement Area; provided, however, they shall be limited to those items which do not violate Subscriber rights of privacy under the Cable Acts. The Operator shall submit such documents to the City no later than thirty (30) days after receipt of a request. The Operator shall not claim confidential, privileged, or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. Any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the City and its authorized agents and shall not be made available for public inspection unless otherwise provided by law.

G. Complaint File and Reports.

1. The Operator shall keep an accurate and comprehensive file of any and all complaints regarding the technical service of the System, and any other written complaints, in a manner consistent with the privacy rights of Subscribers, and the Operator's actions in response to those complaints.

2. A summary of service requests for any specific month or quarter within a given year, identifying the number and nature of the requests and their disposition, shall be provided upon request to the City within thirty (30) days of the Operator's receipt of the request.

3. A log of all service interruptions shall be maintained and provided to the City quarterly.

H. Inspection of Facilities. The City may inspect any of the Operator's facilities and equipment at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice.

I. False Statements. Any intentional false statement or representation in any report required by this Agreement may be deemed a material breach of this Agreement and may subject the Operator to all remedies, legal and equitable which are available to the City under this Agreement or otherwise provided by law.

The Operator agrees that the City may upon fifteen (15) days written request review (at a location within the City) such of its books and records, during normal business hours and on a non-disruptive basis, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by

the Operator pursuant to the rules and regulations of the FCC. The Operator shall maintain sufficient books and records in the City of customer service, customer complaints and billings.

**XXXIII. CUMULATIVE RIGHTS**

The City reserves all regulatory authority arising from the Cable Acts, any amendments or superseding statutes thereto, and any other relevant provisions of federal, state or local law.

The rights and remedies reserved to the City by this Agreement are cumulative and shall be in addition to and not in derogation of any other legal or equitable rights or remedies which the City may have with respect to the subject matter of this Agreement, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time. This provision shall be construed in a manner consistent with the doctrine of election of remedies.

**XXXIV. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

The Operator, its contractors, employees, and agents shall comply with all applicable federal, state, and local laws, rules, and regulations, including compliance with the City Charter, City Code and City ordinances of general applicability as existing or as subsequently amended.

**XXXV. NOTICES**

Every notice or response to be served upon the City or the Operator shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid.

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

The City of Colorado Springs, Colorado  
Attention: City Manager's Office  
107 North Nevada Avenue  
Colorado Springs, CO 80903

With a copy to: Internal Support Services Director  
30 South Nevada Avenue, Suite 701  
Colorado Springs, CO 80903

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

Falcon Broadband, Inc.  
Randy DeYoung  
2790 N. Academy Blvd., Suite 150  
Colorado Springs, CO 80917

The City and the Operator may designate such other new or changed address or addresses from time to time by giving notice to the other.

### **XXXVI. CAPTIONS**

The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

### **XXXVII. INDEMNIFICATION**

A. If any action or suit arises in connection with this Agreement, the prevailing party (either the City or Operator, as the case may be) shall be entitled to recover all of its reasonable attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper. Subject to Subsection B below, the Operator does covenant and agree with the City for itself, its successors and assigns, at its sole cost and expense, to indemnify, protect and hold harmless the City, City Council, (all hereinafter "Indemnitees") and any officers, commissions, agents and employees thereof, at all times from all claims, actions, suits, liabilities, loss, cost, expenses, or damages, of every kind or description which may accrue to or be suffered by any person, or persons, or property, and to appear and defend at its own cost and expense in any actions instituted or begun against the Indemnitees for damages by reason of the construction, reconstruction adjustment, repair, maintenance, operation, or use of the System or of the Streets, Public Utility Easements or any act(s) or omission(s) of the Operator, its successors, or assigns and shall pay all damages and penalties which the Indemnitees may be legally required to pay. Such damages and penalties shall include, without limitation, damages arising out of copyright infringements, use of utility poles, and the construction, erection, operation, maintenance and repair of the System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. If legal action is filed against the Indemnitees, either independently or jointly with the Operator to recover for any claim or damages, the Operator, upon notice to it by the Indemnitees, shall defend the Indemnitees against the action. In the event of a final judgment being obtained against the Indemnitees, either independently or jointly with the Operator, whether by reason of the acts of the Indemnitees or the Operator, so long as the Operator received notice and assumed its duty to indemnify, the Operator shall pay the judgment and all costs and hold the Indemnitees harmless therefrom as well as from the cost and expense of any settlement in connection therewith. If, as a result of entering into this Agreement, any other cable operator takes any action which results in the City's bringing of any claim against that operator to enforce any provisions of its agreement with the City, the Cable Operator shall be responsible to the City for all of the City's costs incurred in connection with such action. Should judgment be rendered against the Indemnitees in any suit or action, the Operator shall fully satisfy such judgment within ninety (90) days after such action or suit shall have been finally determined. Such shall include, but are not limited to, any liability that may arise or occur, or be alleged to arise or occur, from concurrent, contributing or joint acts or omissions of the Operator or the Indemnitees. Nothing in this Agreement shall be interpreted to abridge or otherwise affect the Indemnitees' right to intervene or participate in any suit, action or proceeding involving any provisions of this Agreement at its own expense. The Operator shall pay all expenses incurred by the Operator and the Indemnitees in defending with regard to

all damages as set forth in this Section. These expenses shall include all out-of-pocket expenses, attorneys' fees, witness and discovery costs.

B. The City, to the extent provided or permitted by the statutory and common law of the State will be responsible for its own acts, particularly acts of negligence, willful misconduct or breach of obligation committed by the City for which the City is legally responsible, subject to any and all defenses and limitation of liability provided by law.

The Operator shall not be required to indemnify the City for acts of the City, including acts of negligence or willful misconduct on the part of the City or its officials, boards, commission, agents, or employees. Further, the City shall indemnify (only to the extent allowed under Section 7-60 of the Charter of the City of Colorado Springs) and hold the Operator harmless from any damage or claims resulting from any such acts of the City or its officials, boards, commissions, agents, or employees in connection with the City's use of the emergency alert system set forth in this Agreement, and in utilizing any EG access channels, equipment or facilities.

This Section does not and shall not be construed as a waiver, relinquishment, or abrogation of the statutory limitation of liability available to the City. This Section in no way waives the City's limited right to sovereign immunity or protection under the applicable statutory limitation of liability available to cities generally in this State or provided by federal law.

C. The Operator shall indemnify the Indemnitees for any damages, claims, additional costs or expenses assessed against, or payable by, the Indemnitees arising out of, or resulting directly or indirectly, from, the Operator's failure to remove, adjust or relocate any of its facilities in the Streets or Public Utility Easements in a timely manner in accordance with any relocation required by the Indemnitees.

D. The Operator shall also indemnify, defend and hold the Indemnitees harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses in any way arising out of any failure by the Operator to secure consents from the owners, authorized distributors or licensees/licensors of programs to be delivered by the System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement.

E. If a claim or action arises, the Indemnitees shall tender the defense of the claim to the Operator. The Operator may not agree to any non-monetary settlement of claims affecting the Indemnitees without the Indemnitees' prior written approval.

F. The fact that the Operator carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of or defense to the Operator's duty of defense and indemnification under this Section.

G. The Operator shall, at all times, maintain and ensure the protections of the City by the Colorado Governmental Immunity Act, or any amendments or successor statutes thereto, and any other federal, state, or local laws that may protect the City from liability for any reason, and

will take no action that may effect a waiver or exemption from said protections on behalf of, or otherwise affecting the City.

H. Governmental Immunity. The City is relying on, and does not waive, or intend to waive, by any provision of this Agreement, any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the City, its officers, employees or agents under federal, state or local law.

### **XXXVIII. FORCE MAJEURE**

The Operator shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by reasons of Force Majeure.

However, in the event that the Operator is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond the reasonable control of the Operator such as acts of God, floods, fires, hurricanes, tornadoes, earthquakes, or other unavoidable casualty, acts of public enemy, insurrection, war, riot, sabotage, vandalism, epidemic, or unusually severe weather conditions, litigation brought by third parties that prevents Operator from performance of this Agreement or shortages of materials or qualified labor which are not reasonably foreseeable, the Operator shall have a reasonable time, under the circumstances to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the City. The same force majeure exception shall apply to the City with regard to any of its obligations under this Agreement.

### **XXXIX. CONSTRUCTION OF AGREEMENT**

Except as otherwise provided for herein, this Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Colorado (as amended), the Cable Acts as amended, any applicable rules, regulations, and orders of the FCC and any other applicable local, state and federal laws, rules, regulations, legislation, or orders (as such now exist, are later amended or subsequently adopted).

### **XL. ADDITIONAL RIGHTS RESERVED TO THE CITY**

Without limitation upon the rights which the City might otherwise have, as provided elsewhere in this Agreement or as provided by law, the City does hereby expressly reserve the following additional rights, powers and authorities:

A. To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the City.

B. To exercise any other rights, powers or duties required or authorized under the Constitution of the State of Colorado, the laws of Colorado or the Charter, Ordinances and Codes of the City.

## **XLII. NO JOINT VENTURE**

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

## **XLIII. ENTIRE AGREEMENT**

This Agreement and all attachments and Exhibits represent the entire understanding and agreement between the City and Operator with respect to the subject matter hereof and supersede all prior oral negotiations between the City and Operator.

## **XLIV. ACTIONS OF THE CITY AND VIDEO SERVICES OPERATOR**

In any action by the City or the Operator mandated or permitted under the terms hereof, each party shall (unless specified otherwise in this Agreement) act in a reasonable, expeditious, and timely manner.

## **XLV. SEVERABILITY**

If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, unconstitutional or unenforceable, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of this Agreement. In this regard, the Operator specifically agrees that it will not challenge the City's authority to enter into this Agreement with its terms and provisions set forth herein as of the effective date hereof.

## **XLVI. BILL INSERTS**

Four (4) times a year, the City may provide the Operator at no extra cost to the Operator with an insert to be mailed with the Subscribers' bills for service. At all times throughout this Agreement, the Operator shall make available two (2) lines on each of its bills for messages to be included by the City.

## **XLVII. CUSTOMER SERVICE STANDARDS**

The Operator shall comply with any applicable customer service standards, and shall fully comply with any applicable provisions regarding the privacy rights of Subscribers contained in federal, state or local law. The City and the Operator agree that the Customer Service Standards attached hereto as Exhibit B, incorporated by this reference and made a part hereof, are the initial Customer Service Standards to which the Operator will adhere.

The Operator acknowledges that the Customer Service standards may be amended at any time at the sole discretion of the City in accordance with the authority granted under the Cable Acts without voter approval.

IN WITNESS WHEREOF, the City and the Operator have caused this Agreement to be executed as of the date first set forth above, and the signature of the Operator shall constitute the filing of the unconditional written acceptance of this Agreement by the Operator as contemplated by Section IV above.

OPERATOR:  
Falcon Broadband, Inc., a Colorado corporation

By: \_\_\_\_\_  
Randy DeYoung, President

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007 by Randy DeYoung, President on behalf of Falcon Broadband, Inc., a Colorado corporation.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

CITY:  
City of Colorado Springs,  
a Colorado municipal corporation

By: \_\_\_\_\_  
Lionel Rivera, Mayor

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Mayor Lionel Rivera of the City of Colorado Springs, a Colorado municipal corporation, on behalf of the City of Colorado Springs.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

ATTEST:

\_\_\_\_\_  
City Clerk

**EXHIBIT A**  
**LIST OF EDUCATIONAL INSTITUTIONS**  
**AND LIBRARY DISTRICT**

Members and Participants of Southern Colorado Educational Television Consortium:

- AA District 2
- AA District 11
- AA District 12
- AA District 20
- AA District 49
- AA CU Colorado Springs
- AA Pikes Peak Community College
- AA Pikes Peak Library District
- AA The Colorado School for The Deaf and The Blind

## EXHIBIT B

### CUSTOMER SERVICE STANDARDS

Initial customer service obligations.

A Operator shall be subject to the following customer service standards:

A. Video System Office Hours and Telephone Availability.

1. The Operator shall maintain a phone system available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing inquiries. Dispatchers and technicians will be on call twenty-four (24) hours a day, seven (7) days a week.

a. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

b. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer's concern, the recorded message must provide the customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. An Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to service/repair and billing inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a customer chooses a menu option to speak directly with a CSR. These standards shall be met no less than ninety (90) percent of the time measured quarterly.

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

4. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

5. Customer service center and bill payment locations will be open at least during normal business hours or as provided in the Agreement and will be conveniently located.

B. Installations, Outages and Service Calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

1. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five feet (125') from the existing distribution system.

2. Excluding conditions beyond the control of the operator, the Operator will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Operator must begin actions to correct other service problems the next business day after notification of the service problem. In the event of a system outage affecting three (3) or more customers, the Operator shall respond to such failure within two (2) hours after the third customer call is received.

3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

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

5. An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

C. Communications Between the Operator and Subscribers.

1. Notifications to subscribers:

a. The Operator shall provide written information on each of the following areas at the time of installation of service:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;

(4) Instructions on how to use the video and electronic information service;

(5) Channel positions of programming carried on the system; and

(6) Billing and complaint procedures, including the address and telephone number of the local office.

b. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Operator. In addition, the Operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by Subsection C I(a) of this Section.

## 2. Billing.

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

b. In case of a billing dispute, the Operator must respond to a written complaint from a subscriber within fifteen (15) days.

## 3. Refunds. Refund checks will be issued promptly, but no later than either:

a. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

b. The return of the equipment supplied by the Operator if service is terminated.

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

D. Privacy Standards. The Operator shall comply with all standards pertaining to customer privacy as required by the Cable Acts, FCC rules and regulations, or as otherwise required by law. The Operator agrees to delete any customer from the Operator's contact list upon written request from the customer.

## E. Services for Customers with Disabilities.

1. For any customer with a disability, the Operator shall at no charge deliver and pick up equipment required for service at customers' homes. In the case of a malfunction,

the technician shall diagnose and correct the problem, and ensure that the service is working properly.

2. The Operator shall provide TDD service with trained operators who can provide every type of assistance rendered by the Operator's customer service representatives for any hearing-impaired customer at no charge.

3. The Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with paragraph 4, immediately below) customers.

4. Any customer with a disability may request the special services described above by providing the Operator with a letter from the customer's physician stating the need, or by making the request to the Operator's installer or service technician where the need for the special services can be visually confirmed.

#### F. Definitions.

1. Normal Business Hours. The term "normal business hours" means those hours during which most similar 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 weekend hours.

2. Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the Operator. Those conditions which are not within the control of the Operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the video system.

3. Service Interruption. The term "service interruption" means the loss of picture or sound on one or more video channels.