CABLE FRANCHISE RENEWAL AGREEMENT
BETWEEN
IVINS, UTAH
AND
TDS BROADBAND SERVICE LLC
(2023)

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CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement ("Franchise") is entered into this _____ day of March, 2023, by and between Ivins City, Utah, a municipal corporation (hereinafter, the "City"), and TDS Broadband Service LLC (hereinafter "Grantee"). The City and Grantee are sometimes referred to hereinafter collectively as the "Parties."

WHEREAS, the City wishes to grant Grantee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the City is a "franchising authority" in accordance with Title VI of the Communications Act (see 47 U.S.C. § 522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to State law and federal law;

WHEREAS, Grantee has requested a cable franchise from the City to operate a Cable System over, under, and along the Rights-of-Way within the City's jurisdiction, in accordance with Title VI of the Communications Act (see 47 U.S.C. § 521, et seq.);

WHEREAS, the City has identified the future cable-related needs and interests of the City and its citizens, and has determined that Grantee's plans for operating and maintaining its Cable System are adequate; and

WHEREAS, the public has had adequate notice of this proposed Franchise renewal; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of Cable Service, the technical capability and reliability of a cable system in the Franchise Area, and quality customer service; and

WHEREAS, diversity in Cable Service is an important policy goal and Grantee's Cable System should offer a broad range of programming services; and

WHEREAS, flexibility to respond to changes in Subscriber interests within the Cable Service market is important; and

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

Section 1. Definitions.

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

A. "Access" includes Public, Educational and Governmental Access and means the availability for noncommercial use by various public, educational and governmental agencies, institutions and organizations in the community, including the City and its designees, of a particular Channel on the Cable System to receive and distribute Video Programming to Subscribers, including, but not limited to:

1. "Public Access" means Access where local institutions or residents are the primary users having editorial control over programming and services.

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

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

B. "Access Channel" means Channel capacity designated for Public, Educational or Governmental Access use, or otherwise made available to facilitate Access programming.

C. "Affiliate" means any entity that owns or controls Grantee, or is owned or controlled by Grantee, or otherwise has ownership or control in common with Grantee.

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

E. "Basic Service" or "Basic Service Tier" means the lowest priced, separately available Tier of Cable Service that includes, at minimum, the signals of local television broadcast stations, the Access Channel and any additional Video Programming signals or service added to the Basic Service Tier by Grantee.

F. "Cable Operator" means any Person or group of Persons who provides Cable Service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

G. "Cable Ordinance" means that certain Cable Television Franchise Ordinance (Ordinance No. 2011-09) enacted by the City on November 3, 2011.

H. "Cable Service" means the one-way transmission to Customers of video programming or other programming service, and Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.

I. "Cable System" or "System" means Grantee's Facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community.

J. "Channel" means a portion of the spectrum which is used in a cable system and which is capable of delivering a television Channel, as television Channel is defined by federal regulations.

K. "City" means Ivins, Utah and all territory within its existing and future corporate limits.

L. "Communications Act" shall mean the Communications Act of 1934, as amended by, among other things, the Cable Communications Policy Act of 1984, the Cable Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as it may be further amended from time to time.

M. "Converter" means an electronic device that converts transmitted signals to a frequency that permits their reception on an ordinary television receiver.

N. "Demarcation Point" means the physical point at which the Cable System enters the Subscriber's home or building.

O. "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage Access programming and facilities. The City may be a Designated Access Provider.

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

Q. "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and is designed for residential occupancy. Buildings with more than one set of facilities for cooking are multiple unit buildings unless the additional facilities are clearly accessory.

R. "Facility" or "Facilities" means the component parts of the Cable System whether owned, rented, leased or otherwise controlled by Grantee including, but not limited to, conduit, pedestals, coaxial cable, fiber-optic cable, amplifiers, taps, power supplies and electronics located in the Rights-of-Way.

S. "FCC" means the Federal Communications Commission or its lawful successor.

T. "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service or Institutional Network service by means of electric lightwave impulses.

U. "Franchise" means the non-exclusive right and authority to construct, maintain and operate a Cable System through use of the Rights-of-Way in the Franchise Area pursuant to this contractual agreement executed by the City and Grantee.

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

W. "Gross Revenues" means all revenues or compensation received directly or indirectly by Grantee or its Affiliates, arising from or in connection with the provision of Cable Services in the Franchise Area as calculated according to "Generally Accepted Accounting Principles" (GAAP).

This definition shall be construed so as to include all Gross Revenues to the maximum extent permitted by federal and State law, except to the extent specifically excluded in this section, and encompasses revenues that may develop in the future, whether or not anticipated. If a change in State or federal law or a decision of the FCC or a court of competent jurisdiction modifies the categories of revenue available to the City for franchise fees beyond those permitted under this definition as of the effective date, that change shall automatically be included in the definition of Gross Revenues under this Franchise, provided that the City imposes the same requirement upon any other similarly situated multichannel video provider over which the City has jurisdiction and authority to impose such fees.

1. Gross Revenue shall include but may not be limited to the following items:

   (a) fees charged for Basic Service;

   (b) fees charged to Subscribers for any service tier other than Basic Service;

   (c) fees charged for premium Channel(s), e.g. HBO, Cinemax, or Showtime;

   (d) fees charged to Subscribers for any optional, per-channel, or per-program services;

   (e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees for video or audio programming;

   (f) fees for downgrading any level of Cable Service programming;

   (g) fees for service calls;

   (h) fees for leasing of Channels;

(i) rental of customer equipment, including converters (e.g. set top boxes, high definition converters, and digital video recorders) and remote control devices;

(j) advertising revenue as set forth herein;

(k) revenue from the sale or lease of Access Channel(s) or Channel capacity;

(l) revenue from the sale or rental of Subscriber lists;

(m) revenues or commissions received from the carriage of home shopping channels;

(n) fees for any and all music services that are deemed to be a Cable Service over a Cable System;

(o) revenue from the sale of program guides;

(p) late payment fees, including interest;

(q) foregone revenue that Grantee chooses not to receive in exchange for trades, barters, services, or other items of value;

(r) revenue from NSF check charges;

(s) revenue received from programmers as payment for programming content cablecast on the Cable System; and

(t) Franchise Fees hereunder.

Advertising commissions paid to independent third parties shall not be deducted from advertising revenue included in Gross Revenue. Advertising revenue is based upon the ratio of the number of Subscribers as of the last day of the period for which Gross Revenue is being calculated to the number of Grantee's Subscribers within all areas covered by the particular advertising source as of the last day of such period, e.g., Grantee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within Utah. Grantee has one hundred (100) Subscribers in the Franchise Area, five hundred (500) Subscribers in Utah, and one thousand (1,000) Subscribers nationwide. Gross Revenue as to the City from Ad "A" is ten percent (10%) of Grantee's revenue therefrom. Gross Revenue as to the City from Ad "B" is twenty percent (20%) of Grantee's revenue therefrom.

2. Notwithstanding the foregoing, Gross Revenue shall not include:

(a) revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Grantee to provide Cable Service over the Cable System;

(b) Bad Debt, provided, however, that Bad Debt recoveries shall be included in Gross Revenue during the period collected;

(c) refunds, rebates or discounts made to Subscribers or other third parties;

(d) any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; and any other revenues attributed by Grantee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders, provided that if any such services are Cable Services at any future time pursuant to applicable law, revenues derived from such services shall be included in Gross Revenues;

(e) payments by Subscribers for merchandise purchased from any home shopping channel offered as part of the Cable Services; provided, however, that commissions or other compensation paid to Grantee by such home shopping channel for the promotion or exhibition of products or services shall be included in Gross Revenue;

(f) revenues from the sale of Cable Services on the Cable System to a reseller, when the reseller pays the cable Franchise fees on the resale of Cable Services;

(g) any tax of general applicability imposed upon Grantee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Grantee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees), provided however, as set forth above, Franchise Fees under this Agreement are included in Gross Revenues;

(h) any foregone revenue which Grantee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Grantee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Grantee chooses not to receive in exchange for trades, barters, services or other items of value shall be included in Gross Revenue;

(i) sales of capital assets or sales of surplus equipment;

(j) reimbursement by programmers of marketing costs incurred by Grantee for the introduction of new programming pursuant to a written marketing agreement;

(k) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or

(l) any fees or charges collected from Subscribers or other third parties for any Access Grant or retransmission consent fees.

X. "Headend" means a facility for signal reception and dissemination on the Cable System, including all related equipment.

Y. "Information Service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

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

AA. "Leased Access Channel" means a Channel or portion of a Channel made available by Grantee for programming by others for a fee in accordance with Section 612 of the Cable Act.

BB. "Non-Cable Service" means any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Service and Telecommunications Service.

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

DD. "Right-of-Way" or "Rights-of-Way" means all public streets, roads, avenues, alleys and highways in the City.

EE. "School" means any public educational institution accredited by the State of Utah, including primary and secondary Schools (K-12).

FF. "Standard Installation" means a one hundred fifty (150) foot aerial drop or seventy-five (75) feet of underground trench connecting to the exterior Demarcation Point for Subscribers.

GG. "State" means the State of Utah.

HH. "Subscriber" means any Person(s) who lawfully elects to receive Cable Services provided by Grantee by means of the Cable System.

II. "Telecommunications Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

JJ. "Tier" means a category of Cable Services provided by Grantee for which a separate rate is charged.

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

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

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

Section 2. Grant of Franchise.

A. Grant.

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

2. The Parties hereby incorporate by reference the terms of the Cable Ordinance into this Franchise to the extent applicable; provided that in the event of a conflict between the provisions of the Cable Ordinance, or any other City codes, ordinances, resolutions, standards, procedures and regulations and this Franchise, the parties will work to amend this Franchise to coincide to applicable law. Subject to federal and State

preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution or other enactment of the City, except in the lawful exercise of the City's police power. Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, resolution or other enactment of the City that conflicts with the rights granted by this Franchise, either now or in the future.

3. This Franchise shall not be interpreted to prevent the City from imposing other conditions to the extent permitted by law.

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

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

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

5. This Franchise is intended to grant limited rights and interests only as to those Rights of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way. It does not provide Grantee with any interest in any particular location within the Right-of-Way. This Franchise shall not be deemed to authorize Grantee to provide service, or install cables, wires, lines or any other equipment or Facilities upon City property other than the Right-of-Way, or upon private property without the owner's consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof.

B. Use of Rights-of-Way. Within parameters reasonably related to the City's role in protecting the public health, safety and welfare, the City may require that Cable System Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way and may deny access if Grantee is not willing to comply with the City's requirements.

C. Term. The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be ten (10) years from the effective date of this Franchise.

D. Effective Date.

1. This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the effective date of this Franchise. The effective date of this Franchise shall be March ___, 2023

2. The grant of this Franchise shall have no effect on Grantee's duty under any prior franchise, in effect prior to the effective date of this Franchise, to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any affect upon liability to pay all franchise fees which were due and owed under a prior franchise.

E. Additional Franchises. The City reserves the right to grant additional cable franchises to qualified Persons for the purpose of constructing and/or operating a cable system within the Franchise Area. In the event the City enters into a cable franchise with any other Person other than Grantee to use the Rights-of-Way for the purpose of constructing or operating a cable system to provide Cable Service to all or any part of the Franchise Area in which Grantee is providing Cable Service under the terms and conditions of this Franchise, then the parties agree that the terms and conditions of the cable franchise, taken as a whole, should be reasonably comparable to those contained herein for comparable situations, in order that one grantee not be granted an unfair competitive advantage over another. However, nothing in this provision shall be constructed in such a way as to limit the City's authority to enter into other cable franchises that the City, in its sole discretion, determines meet the cable related needs and interests of the community, considering both the added risk of entry into the market and the benefits of incumbency and the historic investment in the Cable System made by the incumbent.

F. Effect of Acceptance. By accepting the Franchise, Grantee acknowledges and accepts the City's legal right to issue and enforce the Franchise; agrees that it will not oppose the City's intervening, to the extent it is legally entitled to do so, in any legal or regulatory proceeding affecting the Cable System; accepts and agrees to comply with each and every provision of this Franchise; and agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

Section 3. Franchise Fees and Financial Controls.

A. Franchise Fees. As compensation for the use of the City's Rights-of-Way, Grantee shall pay as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues or such greater or lesser percentage subject to Section 3(D) below. Accrual of such franchise fees shall commence as of the effective date of this Franchise.

B. Payments. Grantee's franchise fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30 and December 31. Each quarterly payment shall be due and payable no later

than forty-five (45) days after said dates. Late payments shall be subject to applicable interest.

C. Acceptance of Payment. No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. The period of limitation for recovery of franchise fees payable hereunder shall be six (6) years from the date on which payment by Grantee was due.

D. Maximum Franchise Fee. The parties acknowledge that, at present, applicable federal law limits the City to collection of a franchise fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time during the term of this Franchise, applicable federal law authorizes an amount in excess of or less than five percent (5%) of Gross Revenues in any twelve (12) month period, Grantee and City shall modify the franchise fee as authorized by applicable federal law, upon ninety (90) days written notice between the parties, provided the City agrees that all other franchised cable companies in the Franchise Area over which the City has jurisdiction will be treated in an equivalent manner. To the extent any change in the maximum allowable franchise fee under federal law is accompanied by other changes that impact provisions of this cable franchise, such other changes shall be the subject of negotiation to modify the agreement in accordance with such change in law.

E. Quarterly Franchise Fee Reports. Each payment shall be accompanied by a written report to the City, containing an accurate statement in summarized form of Grantee's Gross Revenues and the computation of the payment amount.

F. Audits. Once every three (3) years during the term of this Franchise, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. If Grantee cooperates in making all relevant records available upon request, the City will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous three (3) years. In the event the audit reveals a discrepancy between amount that should have been paid by Grantee to the City under the Franchise during the audit period and the amount actually paid by Grantee during such period, the City shall provide Grantee with a copy of the audit findings. Any undisputed amounts due to the City as a result of the audit, together with interest thereon as required by Section 3(H), shall be paid within sixty (60) days following written notice to Grantee by the City. If the audit shows that there has been an underpayment of franchise fees by five percent (5%) or more for the time period covered, then Grantee shall pay the reasonable, documented, out-of-pocket costs of the audit up to Ten Thousand Dollars ($10,000). If the results of an audit indicate an overpayment of franchise fees, the parties agree that any undisputed overpayment shall be offset against future payments if applicable, within sixty (60) days.

If Grantee disputes all or part of the audit findings, then that matter may be referred to non-binding arbitration by either of the parties. Each party shall bear one-half of the costs and expenses of the arbitration proceedings. The decision of the arbitrator(s) shall be subject to judicial review at the request of either party.

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

H. Interest. In the event that any payment is not received by the City by the date due or if an underpayment is discovered as the result of an audit, interest shall be charged from the date due at the rate of fifteen percent (15%) per annum.

I. Payment on Termination. If this Franchise terminates for any reason, Grantee shall file with the City within one hundred twenty (120) days of the date of the termination, a financial statement by a certified public accountant, showing the Gross Revenues received by Grantee since the end of the previous calendar year. Within forty-five (45) days of the filing of the certified statement with the City, Grantee shall pay any unpaid amounts as indicated. If Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the City may do so by utilizing the funds available in any security provided by Grantee, or if there have been franchise fee overpayments, the City shall reimburse Grantee under these same time constraints.

J. Bundled Services. If Cable Services subject to the franchise fees required under this Section 3 are provided to Subscribers in conjunction with Non-Cable Services, such franchise fees shall be calculated only with respect to the Cable Services, as reflected on the books and records of Grantee in accordance with applicable federal or state laws, rules, and regulations, standards or orders.

K. Alternative Compensation. In the event the obligation of Grantee to compensate the City through franchise fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City such other compensation as is required by law.

L. Taxes. The franchise fees shall be in addition to any taxes, levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use, utility and business and occupation taxes.

M. Subscribers' Bills. In no event will Grantee unlawfully evade or reduce applicable franchise fee payments required to be made to the City due to discounted bundled services. Customer billing shall be itemized by service(s), and Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

Section 4. Administration and Regulation.

A. No Rate Discrimination. In accordance with applicable law, Grantee's rates and charges shall be non-discriminatory.

B. Filing of Rates and Charges.

1. Throughout the term of this Franchise, and upon request by the City, Grantee shall provide to the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise.

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

C. Late Fees. If Grantee assesses any kind of fee for late payment, such fee shall comply with applicable law. Grantee's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the income level of the Subscribers. Any late fee shall be allocated according to GAAP and be split across Cable Service and Non-Cable Service proportionally.

D. Determination of Subscribers Located in the Franchise Area. The City shall provide to Grantee a current map and address list of the Franchise Area. The City agrees to update the map as necessary to incorporate any annexations and to provide a copy of the updated map to Grantee. Grantee shall ensure that franchise fee payments submitted to the City are attributable only to those Subscribers in the Franchise Area.

E. Performance Evaluation.

1. Performance evaluation sessions may be held at any time upon request by the City during the term of this Franchise following Grantee's repeated failure to comply with the terms of this Franchise.

2. All evaluation sessions shall be announced at least thirty days (30) in advance in a newspaper of general circulation in the Franchise Area.

3. Topics that may be discussed at any evaluation session include those issues surrounding Grantee's failure to comply with the terms of the Franchise, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision herein and further provided that the City may seek legal or equitable remedies without first holding a performance evaluation session.

4. During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and Franchise compliance documents as the City may require to perform the evaluation.

F. Reserved Authority. The City and Grantee reserve all of their rights and authority arising from the Communications Act and any other relevant provisions of federal, State or local laws.

Section 5. Financial and Insurance Requirements.

A. Indemnification.

1. General Indemnification. Grantee shall indemnify, defend and hold the City and its authorized agents harmless from any claim, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or death to any persons or accident to any property or equipment arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, relocation or any other act done under this Franchise, by or for Grantee, its authorized agents, or its employees, or by reason of any neglect or omission of Grantee, its authorized agents or its employees. Grantee shall consult with the City while conducting its defense of the City.

2. Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall tender the defense of the claim or action to Grantee in a timely manner, which defense shall be at Grantee's expense. The City may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims financially affecting the City without the City's written approval, which shall not be unreasonably withheld.

3. Duty of Defense. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

4. Separate Representation. If separate representation to fully protect the interests of both Parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall select other counsel not in conflict with the City.

B. Insurance Requirements.

1. General Requirement. Grantee must have adequate insurance during the entire term of this Franchise to protect the City against claims for death or injuries to persons or damages to property or equipment which in any way arise from or are connected with this Franchise, or involve Grantee or its agents.

2. Minimum Insurance Limits. Grantee shall maintain the following insurance limits:

   (a) Commercial General Liability: $2,000,000 per occurrence, $3,000,000 general aggregate and $1,000,000 products/completed operations aggregate.

   (b) Automobile Liability: $2,000,000 combined single limit.

   (c) Workers Compensation Insurance limits in accordance with State law requirements.

   (d) Excess or Umbrella Liability: $2,000,000 each occurrence and $5,000,000 policy limit.

3. Endorsements.

   (a) Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

      (i) Grantee's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Grantee's insurance and shall not contribute to it.

      (ii) Grantee's insurance shall not be canceled or the limits reduced, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

      (iii) Grantee's insurance shall name the City as an additional insured.

   (b) If the insurance is canceled or reduced in coverage, Grantee shall provide a replacement policy.

4. Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII" that are authorized to insure in the State.

5. Verification of Coverage. Grantee shall furnish the City with signed certificates of insurance upon acceptance of this Franchise.

6. No Limitation. Grantee's maintenance of insurance policies required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

C. Letter of Credit.

1. If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit in the amount of twenty thousand dollars ($20,000).

2. If a letter of credit is furnished pursuant to Section 5(C)(1), the letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.

3. After the giving of notice to Grantee and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

   (a) Failure of Grantee to pay the City sums due under the terms of this Franchise;

   (b) Reimbursement of costs and expenses borne by the City to correct Franchise violations not corrected by Grantee; and

   (c) Liquidated damages assessed against Grantee as provided in this Franchise.

4. Within ten (10) days following notice that a withdrawal from the letter of credit has occurred, Grantee shall restore the letter of credit to the full amount required by 5(C)(1). Grantee's maintenance of the letter of credit shall not be construed to limit the liability of Grantee to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.

5. Grantee shall first appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. In the event the City Council denies Grantee's appeal or fails to act on Grantee's appeal within sixty (60) days of delivery by Grantee of a written notice of appeal to the City, Grantee shall have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise.

D. Bond(s).

1. Grantee shall provide a performance bond to ensure Grantee's faithful performance of any and all of the terms and conditions of this Franchise. The Franchise performance bond shall be in the amount of twenty-five thousand dollars ($25,000).

2. The City reserves the right, consistent with the City Code, to require project specific construction bonds in addition to the bond required in 5(D)(1).

3. Grantee shall pay all premiums or costs associated with maintaining the bond(s), and shall keep the same in full force and effect at all times during the term of this Franchise.

4. The parties agree that Grantee's maintenance of the bond(s) shall not limit the liability of Grantee to the amount of the bond(s) or otherwise limit the City's recourse to any other remedy available at law or equity.

Section 6. Customer Service Standards. Grantee shall comply with lawful Customer Service Standards as provided in the Cable Ordinance as it exists on the date of adoption of this Franchise, and as may be lawfully amended from time to time by the City thereafter. Grantee reserves the right to challenge any Customer Service Standard that it believes is inconsistent with federal law or the contractual rights granted in this Franchise.

Section 7. Reports and Records.

A. Inspection of Records. The City shall have access to, and the right to inspect, any books and records of Grantee that are not identified as proprietary or confidential which are reasonably necessary to enforce Grantee's compliance with the provisions of this Franchise that directly affect the City, at Grantee's regional office, upon at least thirty (30) days advance notice, during normal business hours, and without unreasonably interfering with Grantee's business operations. The City may, in writing, request copies of any such records or books, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of Grantee. To the extent permitted by applicable law, Grantee shall have the right to designate as “protected” or “privileged” any reports and records produced in compliance with this section for the purpose of protecting them from examination by the general public. Furthermore, in the event the City receives a request under the Government Records Access and Management Act (or similar law) to review or examine such reports or records, the City shall notify Grantee of such request so that Grantee may take such judicial or other action as it deems appropriate to protect such records or reports from disclosure. If any books or records of Grantee are not kept in a regional 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 for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee. Such travel expenses shall not be reimbursed by Grantee more than once per year.

B. Public Records. Grantee acknowledges that information submitted to the City is subject to State public disclosure laws.

C. Copies of Federal and State Documents. Upon written request, Grantee shall submit to the City copies of any pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the City. Grantee shall submit such documents to the City no later than thirty (30) days after receipt of the City's request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

D. Reports of Regulatory Violations. Grantee shall provide copies to the City of any report, order, consent decree or other formal determination of any regulatory agency having jurisdiction over Grantee pertaining to any alleged violation by Grantee of any applicable rule or law of the agency regarding Grantee's provision of Cable Service in the Franchise Area.

E. Map Required. Grantee shall provide to the City upon request a route map that depicts the general location of the Cable System Facilities placed in the Rights-of-Way in either electronic format or hard copy, at Grantee's discretion. The route map shall identify Cable System Facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment and service lines to individual Subscribers.

F. False Statements. Any intentional false or misleading statement or representation in any report required by this Franchise shall be a material breach of this Franchise and may subject Grantee to any remedy, legal or equitable, which is available to the City under this Franchise.

Section 8. Programming.

A. Broad Programming Categories. Grantee shall provide at least the following initial broad categories of programming to the extent such categories are reasonably available:

1. News, weather, sports and information;

2. Education;

3. General entertainment including movies and family oriented programming; and

4. Government.

B. Deletion of Broad Programming Categories. Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without prior written notice to the City.

C. Programming and Customer Satisfaction. During the term of this Agreement, Grantee shall continually offer broad categories of programming sufficient to meet the changing needs and interests of Subscribers in the City, taking into account the costs of meeting those needs and interests, and consistent with federal law.

D. Parental Control Device. Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, trap or filter to enable a Subscriber to control access to both the audio and video portions of any Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Such devices, traps or filters will be provided at no charge to the Subscriber, unless otherwise provided by federal law.

E. Services for the Disabled. Grantee shall comply with the Americans With Disabilities Act and any amendments thereto.

Section 9. Access.

A. Access Channels.

1. In order to ensure availability of public, educational and government programming, Grantee shall continue to provide, without charge to the City, one dedicated Access Channel on the Basic Service Tier (the "Dedicated Access Channel"). Currently this channel is channel 22. This Dedicated Access Channel is shared on a regional basis and currently carries programming for the participating cities within Washington County. In addition, Grantee shall reserve on its Basic Service Tier for the City's future use one (1) additional dedicated Channel for Access (the "Reserve Channel", and together with the Dedicated Access Channel, the "Access Channels").

2. The Parties agree that Grantee shall retain the right to utilize the Reserve Channel, in its sole discretion, during the term of this Franchise until such time as the Reserve Channel is activated in accordance with the terms of this Franchise.

3. Upon the signing of this Agreement, the City hereby notifies Grantee of its intent to provide programming to be carried on the Dedicated Access Channel; such notification shall constitute authorization to Grantee to transmit such programming within and outside of the City.

4. The City may activate the Reserve Channel during the Term by providing Grantee with written notice of the need for additional Access Channel capacity at least one hundred twenty (120) days prior to the date it intends to activate the Reserve Channel, demonstrated by a programming schedule for Access programming on the existing Access Channel, as applicable, consisting of at least forty (40) hours per week, which programming for purposes of this calculation shall not include repeat programming generated

per month or character-generated programming. Such written notice shall authorize Grantee to transmit the Reserve Channel within and outside of the City.

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

6. If Grantee makes a change in its Cable System and related equipment and Facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or method or type of transmission of Access programming or services, Grantee shall take all necessary technical steps, including the acquisition of all necessary equipment, up to the point of demarcation to ensure that the capabilities of the Access Channels and delivery of Access programming are not diminished or adversely affected by such change.

7. Grantee will use reasonable efforts to minimize the movement of the Access Channel assignments. Grantee shall provide to the City a minimum of sixty (60) days' notice prior to any relocation of any Access Channel unless the movement is required by federal law, in which case Grantee will provide the maximum amount of notice possible.

B. Management of Access Channel.

1. The City may authorize Designated Access Providers to control, operate and manage the Access Channels. The City or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise. To the extent permitted by law, the City and/or the Designated Access Providers shall have complete control over the content, scheduling, and administration of the Access Channels and may delegate such functions, or a portion of such functions, to an appropriate designee upon written notice from the City to Grantee. Subject to the provisions of Section 611 of the Communications Act, Grantee shall not exercise any editorial control over Access Channel programming.

2. As of the effective date of this Franchise, Grantee shall maintain all existing return line(s) to facilitate the City's current Access connectivity to Grantee's Headend and hubs. If the City desires to relocate or expand the return line(s) to new location(s) over the term of this Franchise, upon one hundred twenty (120) days written request by the City and at the City's cost for Grantee's

reasonable time and materials, Grantee shall construct the requested return line(s).

C. Access Grant.

1. Annual Access Grant. Upon execution of this Franchise, Grantee shall pay to the City an initial access grant equal to $1.00 per residential subscriber per month (the "Access Grant") for the first partial month of the Franchise term. Thereafter, during the Term Grantee shall pay the Access Grant to the City. Grantee shall pay the Annual Access Grant in quarterly installments based on the number of video Subscribers as of the end of the quarter. The payment shall be due 30 days after the end of the quarter. The City may, upon written notice to Grantee, increase the amount of the Access Grant annually based on the percentage increase in the Consumer Price Index. As used in this provision, the Consumer Price Index shall be based upon the 12-month un-adjusted Consumer Price Index Summary (all items) as established by the United States Department of Labor, Bureau of Labor Statistics. In no event shall the Access Grant exceed $1.25 per month per residential subscriber. (Furthermore, in no event shall the Access Grant be less than $1.00 per month per residential subscriber. In other words, if the Consumer Price Index Summary indicates a reduction, the Access Grant shall not be reduced.) In the event the Franchise term ends on a date other than December 31st, the amount of the Access Grant applicable to such year shall be pro-rated to the last day of the Franchise term. The proceeds of the Access Grant shall be used for Access capital expenditures as permitted by applicable law. The City, or if applicable its Designated Access Providers, will provide to Grantee an annual report regarding the use of such proceeds ("Capital Expenditures Annual Report") within sixty (60) days after the end of each calendar year. Notwithstanding any provision to the contrary herein, Grantee shall not challenge or seek reimbursement for Access Grant moneys previously paid to City pursuant to this provision, and waives any claims or rights Grantee may have to challenge or seek reimbursement for Access Grant moneys previously paid to City, other than for the immediately preceding year only and as specifically provided as follows: Within thirty (30) days after the receipt of the Capital Expenditures Report, if Grantee reasonably believes that the Capital Expenditures Report for the preceding year only is clearly in violation of this Agreement and with then-existing applicable law, Grantee may challenge such expenditures by giving written notice of such challenge to City, or its Designated Access Provider, which notice must provide specific details of such violations and reference to Agreement and/or then-existing applicable law provisions establishing such violations and the amount of Access Grant moneys that apply. If it is determined that such challenged expenditures are inappropriate, Grantee's only recourse shall be a reduced offset to the immediately succeeding year's Access Grant in an amount determined to be applicable to the inappropriate amount from the

previous year's Access Grant. Notwithstanding anything to the contrary herein, Grantee and City shall bear their own attorney fees and costs that may be associated to any challenges pursuant to this provision.

2. Recovery of Grant Payments. To the extent permitted by applicable law, Grantee shall be permitted to pass the cost of the Initial Access Grant and any Annual Access Grant through to Subscribers.

Section 10. General Right-of-Way Use and Construction.

A. Right-of-Way Meetings. Subject to receiving advance notice, Grantee will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Cable System.

B. Joint Trenching. Grantee agrees to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements where technically and economically feasible.

C. Notice to Private Property Owners. Except in the case of an emergency involving public safety, Grantee shall give reasonable advance notice of significant construction work in adjacent Rights-of-Way to private property owners or tenants.

D. Poles and Conduits.

1. This Franchise does not grant, give or convey to Grantee the right or privilege to install its Facilities in any manner on poles or equipment of the City or of any other Person.

2. Grantee and the City recognize that situations may occur in the future where the City may desire to place its own conduit and fiber optic cable in trenches or bores opened by Grantee. Grantee agrees to cooperate with the City in any such construction that involves trenching or boring. Grantee shall allow the City to lay City conduit and fiber optic cable in Grantee's trenches and bores, provided that the City and Grantee enter into a mutually acceptable cost sharing arrangement consistent with State law. The City shall be responsible for maintaining its respective conduit and fiber optic cable, which is buried in Grantee's trenches and bores.

E. Movement of Facilities During Emergencies. During emergencies, except those involving imminent danger to the public health, safety or welfare, the City shall provide notice to Grantee, at a designated emergency response contact number, to allow Grantee the opportunity to respond and remedy the problem without disrupting Cable Service. If after providing notice, Grantee fails to timely respond, the City may move Grantee's Facilities.

F. Movement of Cable System Facilities.

1. Nothing in this Franchise shall prevent the City or public utilities from constructing any public work or capital improvement. Grantee shall pay the costs associated with any requirement of the City to relocate its Cable System Facilities located in the Right-of-Way. Following forty-five (45) days written notice by the City, Grantee shall remove, replace, relocate, modify or disconnect any of its Facilities within any Right-of-Way, or on any other property of the City, except that the City shall provide at least ninety (90) days written notice of any major City capital improvement project which would require the permanent removal, relocation, replacement, modification or disconnection of Grantee's Facilities or equipment from the Right-of-Way. If Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to Grantee. Grantee shall remit payment to the City within thirty (30) days of receipt of an itemized list of those costs.

2. If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder(s), Grantee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity, as long as, the other franchise holder(s) pay for Grantee's time and material costs associated with the project and Grantee is issued a permit, if necessary, for such work by the City.

3. At the request of any Person holding a valid City permit and upon reasonable advance notice, Grantee shall remove, replace, relocate, modify or disconnect any of its Facilities or temporarily raise, lower or remove its Facilities as necessary to accommodate the work under the permit. Unless the project is identified by the City as a City capital improvement project, the cost must be paid by the permit holder, and Grantee may require the estimated payment in advance.

G. Inspection of Facilities. The City may inspect any of Grantee's Facilities or equipment within the Rights-of-Way and on other public property. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to inspect, repair and correct the unsafe condition if Grantee fails to do so, and to reasonably charge Grantee therefor.

H. Stop Work.

1. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as reasonably 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:

(a) Be in writing;

(b) Be given to the Person doing the work and be posted on the work site;

(c) Be sent to Grantee by overnight delivery at the address given herein;

(d) Indicate the nature of the alleged violation or unsafe condition; and Establish conditions under which work may be resumed.

I. Permits.

1. Grantee shall apply for, and obtain, all permits necessary for construction of any of its Facilities prior to beginning work. Grantee shall pay all applicable fees upon issuance of the requisite permits by the City.

2. As part of the permitting process, the City may impose, among other things, such conditions as are lawful and necessary for the purpose of protecting any structures in such Right-of-Way, proper restoration of such Right-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic.

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

J. Location of Facilities. Upon the City's reasonable request, in connection with the design of any City project, Grantee will verify the location of its underground System within the Franchise Area by marking on the surface the location of its underground Facilities.

K. Restoration of Right-of-Way and Other Public Property. If Grantee excavates, disturbs or damages any Right-of-Way or other public property, then Grantee shall be responsible for restoration in accordance with applicable regulations. The City may, after providing notice to Grantee and a reasonable opportunity to cure, or without notice where the excavation, disturbance or damage may create a risk to public health or safety, repair, refill, restore or repave any excavation, disturbance or damage. The cost thereof shall be paid by Grantee.

L. Maintenance.

1. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the Right-of-Way by, or under, the City's authority prior to Grantee's placement of Facilities.

2. Grantee shall repair, renew, change and improve its Facilities to keep them in safe condition.

3. Grantee will maintain membership in good standing with One Call or other similar or successor organization designated to coordinate underground equipment locations. Grantee shall abide by the State's "Underground Utilities" statutes as they relate to cable systems and will further comply with local procedures relating to the one call locator service program.

M. Right-of-Way Vacation. If any Right-of-Way or portion thereof used by Grantee is vacated by the City during the term of this Franchise, Grantee shall, without delay or expense to the City, remove its Facilities from such Right-of-Way, and restore, repair or reconstruct the Right-of-Way where such removal has occurred or, with the approval of the City, abandon its Facilities in place. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City, to restore, repair or reconstruct such Right-of-Way, the City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the City, shall be paid by Grantee within forty-five (45) days of receipt of an invoice and documentation. If funds are available to any Person using the Rights-of-Way for the purpose of deferring the costs of any of the foregoing, the City shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed.

N. Undergrounding of Cable.

1. In areas of the Franchise Area where electrical or telephone utility wiring is aerial, Grantee may construct, operate and maintain the Cable System aerially. Grantee shall utilize existing poles wherever possible.

2. If electric and telephone utility wiring in an area of the Franchise Area is underground at the time of Grantee's initial construction, Grantee shall locate its Cable System Facilities underground at no cost or expense to the City. Excluding City capital improvement projects, if electric and telephone utility wiring in an area of the Franchise Area is subsequently placed underground, then Grantee shall locate its Cable System Facilities underground at no cost or expense to the City. To the extent reasonably practicable, Grantee shall use boring for the undergrounding of Cable across paved streets rather than cutting the paved street.

3. In the event of forced relocations that are part of a City capital improvement project that require conversion of overhead facilities to underground, such

as projects that may include, but not be limited to, road widening, sidewalk installation, or beautification, Grantee agrees to bear the costs of converting Grantee's Cable System from an overhead System to an underground System, unless funds for reimbursement for such conversion are generally available for all users of affected sections of Rights-of-Way. This cost includes the labor and materials to relocate Grantee's Cable System, but does not include costs related to trenching, backfill, or restoration of any Rights-of-Way within the project area as defined by project engineering plans. . To the extent reasonably practicable, Grantee shall use boring for the undergrounding of Cable across paved streets rather than cutting the paved street.

4. In the event of a Special Improvement District (SID) project or Special Assessment Area ("SSA") project that requires relocation of Grantee's Facilities to underground as part of the City's improvement to its infrastructure, Grantee shall locate its Cable System Facilities underground at no cost or expense to the City, unless funds for reimbursement for such relocations are generally available for all users of affected sections of Rights-of-Way. In the event of a requested relocation of Grantee's Facilities as part of a private development or improvement to the City's infrastructure not funded by the City either directly or through a grant, Grantee shall relocate its Facilities underground provided that Grantee is reimbursed by the private entity. If the movement is pursuant to a grant which includes funds for reimbursement of utilities for such movement, Grantee shall be reimbursed to the extent funds are available.

5. Related Cable System Facilities (such as pedestals, equipment cabinets, etc.) must be placed in accordance with applicable City Code requirements.

O. Avoid Interference. In the event of interference with the public health, safety or welfare, the City may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question at Grantee's expense.

P. Tree Trimming. Grantee may trim or prune trees in the Right-of-Way that interfere with the System. Any such trimming or pruning will be performed using standard practices and be in accordance with City regulations.

Q. Standards.

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

2. In the maintenance and operation of its System in the Right-of-Way and other public places, and in the course of any new construction or addition to its Facilities, Grantee shall proceed so as to cause minimal inconvenience to the general public.

R. Work of Contractors and Subcontractors. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law.

Section 11. Cable System Design, Functionality, Technical Standards and Testing.

A. System Design.

1. Grantee's Cable System shall be designed so as to include the following requirements:

(a) The Cable System will use a fiber to the neighborhood node architecture or a technology and architecture providing equivalent functionality, capacity and reliability.

(b) Sufficient fiber to the node shall be constructed to provide bandwidth commensurate with applicable industry standards and consistent with applicable law.

(c) The Cable System shall be designed to provide for Two-Way activated capacity capable of supporting interactive services.

(d) The Headend and any hubsite shall have continuous backup power supplies. Each node and optical transfer node shall have minimum four-hour backup power supplies. Such equipment shall be constructed and maintained so as to cut in automatically upon failure of the commercial utility power, to revert automatically to a standby mode when alternating current power returns, and to comply with all utility and other safety regulations to prevent the alternate power supply from powering a "dead" utility line in order to prevent injury to any person. All backup power supplies shall be monitored, consistent with Grantee's internal practices and applicable law.

2. The foregoing requirements shall be completed in a manner that is in accordance with all applicable laws and FCC technical standards. Grantee may substitute another transmission material and/or modify its design provided that the same technical benefits, reliability, functionality and picture quality are maintained.

B. System Functionality.

1. The Cable System shall deliver a minimum of 50 channels of analog and/or digital programming, provided that Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

2. Grantee shall retransmit all closed captioning programming received by the Cable System so long as the closed caption signal is provided consistent with FCC standards. All local signals received in stereo or with secondary audio tracks (broadcast and Access) shall be retransmitted in those same formats. In the case of AM/FM radio transmission, the above specifications, where applicable, shall apply.

3. The Cable System shall have reliability consistent with applicable law and FCC technical standards.

4. With respect to any interactive services provided by Grantee, Grantee shall provide Two Way capacity sufficient to ensure reliability and quality delivery of the particular service commensurate with applicable industry standards and consistent with applicable law.

5. The technical performance of the Cable System shall meet or exceed FCC technical quality standards regardless of the particular manner in which the signal is transmitted by Grantee. Grantee shall comply with its internal digital video standards unless the FCC adopts digital video standards. If the digital video delivery on the Cable System does not comply with FCC digital video standards according to FCC proof-of-performance tests, after notice and opportunity to correct, the City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

6. The Cable System and equipment is and will continue to have Two-Way active capability as required above in Section 12(A)(1).

7. To the extent required by applicable law and Grantee's contractual arrangements with applicable broadcasters and programmers, equipment shall be installed (a) at the Headend to allow Grantee to cablecast signals in substantially the form received, without material alteration or deterioration; and (b) so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

8. Grantee shall comply with all applicable laws concerning system compatibility with Subscribers' consumer electronics equipment. Grantee shall provide the facilities and equipment necessary to make its services (including its customer services) accessible to persons with disabilities in accordance with applicable State and Federal Law. For example, Grantee shall ensure the availability of TTY or equivalent means to permit communication between the hearing-impaired community and Cable System representatives.

9. Grantee shall take prompt corrective action if it finds that any facilities or equipment on the Cable System do not meet FCC technical standards or do not comply with the requirements of this Section 11.

C. Emergency Alert Capability.

1. Grantee shall provide an operating Emergency Alert System ("EAS") in compliance with FCC standards throughout the term of this Franchise. The City may use the EAS, under procedures established between the City and Grantee which are consistent with Grantee's State and federal EAS requirements, to transmit an emergency alert signal, including the ability to override the audio and video (either full screen, or crawlers) on all Channels throughout the City from the City's emergency operations center or other location as may be designated by the City. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing at least twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

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

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

E. Future System Upgrades for FCC Compliance. Grantee shall provide additional or new facilities and equipment, and otherwise upgrade or rebuild its cable system throughout the Franchise term as required to remain compliant with FCC standards.

F. Cable System Performance Testing. Grantee shall perform the following tests to demonstrate compliance with the requirements of the Franchise:

1. Grantee shall employ accepted industry procedures to assure the selection of quality system components. No component shall be used if it fails to meet manufacturer's specifications.

2. Continuing Tests. Grantee will provide results of any additional System tests to the City upon written request.

3. System Inspections. Based upon customer complaints or for any other reason consistent with Franchise obligations, in its reasonable discretion, the City may inspect Grantee's Cable System, subscriber installations, and Grantee's equipment used in the maintenance of that Cable System to determine compliance with the Franchise Agreement, and applicable

federal, state and local laws. The City shall provide five (5) business days written notice to Grantee of such inspection, which need not include the specific locations to be inspected. Grantee shall be notified in writing of any violations found during the course of inspections. If, based on subscriber complaints or its own investigation, the City reasonably believes that the Cable System may not be operating in compliance with the requirements of the Franchise, it may provide Grantee written details and require Grantee to perform tests and to prepare a report to the City on the results of those tests, including a report identifying any problem found and steps taken to correct the problem. Subject to Grantee's right to dispute such alleged violations, Grantee must bring violations of this Franchise or applicable law into compliance or must take all reasonable and practicable steps toward compliance within thirty (30) days of the date it receives notice. Notwithstanding the foregoing, in the case of violations that result in public health or safety problems Grantee shall act immediately to remedy such violations. Inspection does not relieve Grantee of its obligation to build in compliance with all provisions of the Franchise. This provision is subject to any federal law limitations on the City's authority.

Section 12. Provision of Cable Service.

A. Service Area.

1. Service Area. Grantee shall offer Cable Service to Subscribers in the Franchise Area as shown on Exhibit A and in accordance with this Franchise, except: (a) for periods of Force Majeure; (b) for periods of delay caused by the City; (c) for periods of delay resulting from Grantee's inability to obtain authority to access Rights-of-Way; (d) in areas, developments or buildings where Grantee cannot obtain access on reasonable terms; and (e) in developments or buildings that Grantee is unable to provide Cable Service using standard technical solutions.

B. Service Availability. Grantee shall make Cable Service available to all Dwelling Units and may make Cable Service available to businesses within the Franchise Area in conformance with Section 13(A) and Grantee shall not discriminate between or among any individuals in the availability of Cable Service. Grantee shall not deny access to Cable Services to any group of potential residential Subscribers because of the income of the residents of the local area in which the group resides.

C. Interconnection With Other Cable Systems.

1. Interconnection with Other Systems. Grantee shall take such commercially reasonable technical and construction steps as may be necessary to ensure that its Cable System is capable of being interconnected with any other contiguous cable system or open video system not owned or operated by Grantee or an Affiliate of Grantee if such interconnection is requested by

the City. Interconnection with other cable systems or open video systems may be done by direct cable connection, microwave link, satellite or other appropriate methods. The City shall not direct interconnection except under circumstances where it can be accomplished without undue burden or excessive costs to Subscribers. Grantee shall not be required to interconnect with the other cable system or open video system unless the operator of that system is willing to do so on fair and reasonable terms and is willing to pay its own cost of installation, operation, and maintenance of any cable plant, equipment, and facilities located within its own territory which are required for the interconnection and the building of any cable plant and facilities necessary to meet Grantee's system at an industry standard interconnection point on Grantee's system.

D. Cooperation. The City understands that interconnection requires cooperation from other Cable System operators. The City shall make every reasonable effort to assist Grantee in achieving the cooperation necessary to realize interconnection.

E. Connection of Public Facilities. Grantee, upon request, shall provide without charge within the Service Area, one service outlet activated for Basic Service to each City owned or leased and occupied buildings, schools and public libraries where such service is provided as of the Effective Date of this Franchise. In addition, Grantee shall provide, at no cost to the City or other entity, one outlet of Basic Service to additional owned or leased and occupied City buildings, schools and libraries upon request; provided, however, that if it is necessary to extend Grantee's trunk or feeder lines more than one hundred fifty (150) feet solely to provide service to any such school or public building, the City or other appropriate entity shall have the option either of paying Grantee's direct costs for such extension in excess of one hundred fifty (150) feet, or of releasing Grantee from the obligation to provide service to such building. Furthermore, Grantee shall be permitted to recover, from any school or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet or concealed inside wiring, or a service outlet requiring more than one hundred fifty (150) feet of drop cable. Notwithstanding the above, Grantee shall not be required to serve any public building located within any area or development where Grantee cannot obtain access on reasonable terms.

The Cable Service described herein is a voluntary initiative of Grantee. Grantee must provide one hundred twenty (120) days' notice of where it intends to cease the voluntary connection of public facilities and begin charging for service equipment, so that the City may notify grantee to suspend service or take such other steps as may be required under applicable law.

The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. Such installation shall not interfere with the operation of Grantee's Cable System. In the case of leased facilities leased by the City for administrative functions, the recipient of service is responsible for securing approval for appropriate right of entry suitable to the

Grantee in its reasonable discretion. The Cable Service provided shall only be used for lawful purposes, shall not be used for commercial purposes or to entertain public or private groups and shall not be located in public waiting areas. The intent of the preceding provision is to ensure access to Cable Services for the benefit of the Grantor and educational institutions. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. To the extent not inconsistent with other provisions in this Agreement, the Grantor shall hold the Grantee harmless from any and all liability or claims arising out of the use of Cable Service at City facilities and educational facilities required by this Section. For new hookups, the Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Grantor or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and non-Standard Installation. If additional outlets of Cable Service are provided to such buildings beyond those required herein, the building owner/occupant shall pay the usual installation and service fees associated therewith. Grantor shall notify Grantee if the City ceases to occupy any facility or building where complimentary Cable Service is provided.

Section 13. Franchise Violations.

A. Non-Material Franchise Violations.

1. If the City believes that Grantee has failed to perform any nonmaterial obligation under this Franchise, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

   (a) respond to the City, contesting the City's assertion that a default has occurred, and request a meeting in accordance with Section 13(A)(2), below; or

   (b) cure the default; or

   (c) notify the City that Grantee cannot cure the default within thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with Section 13(A)(2) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

2. If Grantee does not cure the alleged default within the cure period stated above, or denies the default and requests a meeting in accordance with Section 14(A)(1)(a), or the City orders a meeting in accordance with Section 14(A)(1)(c), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than fifteen (15) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

3. If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or breach within thirty (30) days or within such other reasonable timeframe, beyond thirty (30) days as the City shall determine. In the event Grantee does not cure the default within such time to the City's reasonable satisfaction, the City may pursue any other legal or equitable remedy available under this Franchise or applicable law.

B. Material Franchise Violations.

1. The City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the event of a material violation of this Franchise, including:

   (a) If Grantee willfully fails for more than three (3) continuous days to provide Cable Service;

   (b) If Grantee attempts to practice any fraud or deceit upon the City or Subscribers;

   (c)

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

3. The City Council shall conduct a public hearing to determine if revocation of the Franchise is warranted.

   (a) At least thirty (30) days prior to the public hearing, the City Clerk shall issue a public hearing notice that shall establish the issue(s) to

be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City Council shall hear any Persons interested therein; and provide that Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

(b) A verbatim transcript shall be made by a court reporter of such proceeding and the cost shall be paid by Grantee.

(c) Within thirty (30) days after the close of the hearing, the City Council shall issue a written decision regarding the revocation and termination of the Franchise.

4. Grantee shall be bound by the City Council's decision to revoke the Franchise unless an appeal to a court of competent jurisdiction is filed within thirty (30) days of the date of the City Council's decision. Grantee and the City shall be entitled to such relief as the court may deem appropriate. In the event an appeal to a court of competent jurisdiction is filed, the City Council's decision to revoke shall be stayed from taking effect until the court issues a final judgment and any appeal therefrom is finally resolved.

5. Any revocation must be consistent with applicable federal laws and regulations.

C. Termination.

1. If this Franchise expires without renewal or extension, or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Require Grantee to maintain and operate its Cable System on a month-to-month basis until a new cable operator is selected; or

(b) Purchase Grantee's Cable System in accordance with federal law.

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

3. If Grantee fails to complete any removal required by Section 13(C)(2) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the reasonable costs and expenses incurred within thirty (30) days after receipt of an itemized list of the costs and expenses, or the City may recover the costs and expenses through Grantee's security instruments if Grantee has not paid such amount within the foregoing thirty (30) day time period. Any costs and expenses incurred by the City regarding such removal shall include reasonable attorneys' fees and costs and expenses for work conducted by the City staff or its agents.

D. Assessment of Liquidated Damages.

1. Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages to the City. To the extent that the City elects to assess liquidated damages as provided in this Franchise, such damages shall be the City's sole and exclusive remedy for such breach or violation and shall not exceed a time period of one hundred eighty (180) days. Nothing in this subsection is intended to preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach. Prior to assessing any liquidated damages, the City shall give Grantee proper written notice and a thirty (30) day right to cure or such other time as the parties agree.

2. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day of the violation.

3. Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts: two hundred dollars ($200.00) per day for material departure from the FCC technical performance standards; one hundred dollars ($100.00) per day for failure to provide the Access Channels or any equipment related thereto or funding which is required; one hundred dollars ($100.00) per day for each material violation of the Customer Service Standards; fifty dollars ($50.00) per day for failure to provide reports or notices as required by this Franchise; and one hundred dollars ($100.00) per day for any material breaches or defaults not previously listed.

E. No Offset. No cost to Grantee arising from a breach or violation of the Franchise shall be offset against any sums due the City as a tax or franchise fee regardless of whether the combination of franchise fees, taxes and said costs exceeds five percent (5%) of Grantee's Gross Revenues in any 12-month period unless otherwise permitted by law.

Section 14. Franchise Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, as amended, unless the procedures or substantive protections set forth therein shall be deemed to be preempted or superseded by the provisions of any subsequent federal or State law.

Section 15. Franchise Transfer.

A. The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall not be unreasonably withheld. In the event of a change in control, such consent shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise.

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

C. The parties to the sale, transfer or change in control of the Cable System shall make a written request to the City for its approval of a sale or transfer or change in control and furnish all information required by law.

D. The City shall act on the request within the timeframe permitted by law, provided it has received a complete application with all information required by applicable law. If the City fails to render a final decision on the request within such timeframe, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

E. Within thirty (30) days of any transfer, sale or change in control, if approved or deemed granted by the City, Grantee shall notify the City of such sale or transfer of ownership or change in control. In case of a sale or transfer of ownership the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise. In the event of a change in control, in which Grantee is not replaced by another entity, Grantee will continue to be bound by all of the provisions of this Franchise.

F. In reviewing a request for sale or transfer or change in control, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer or change in control upon such terms and conditions as permitted by applicable law. Additionally, such Person shall effect changes as

promptly as practicable in the operation of the Cable System, if any changes are necessary, to cure any violations or defaults.

G. Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System, or any sale or transfer of ownership or change in control of the Grantee, to an intra-company Affiliate, provided that Grantee must reasonably notify the City in advance and the Affiliate must have the requisite legal, financial and technical capability and agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City, provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

Section 16. Notices. Throughout the term of this Franchise, each party shall maintain and file with the other an address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

Grantee's address shall be:

TDS Broadband Service LLC
525 Junction Road
Madison, WI 53717
Attn: Legal Department

The City's address shall be:

Ivins City
85 N. Main St.
Ivins, Utah 84738
Attn: City Manager

Section 17. Miscellaneous Provisions.

A. Discriminatory Practices Prohibited. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment and nondiscrimination provisions of applicable law.

B. Cumulative Rights. All rights and remedies given to the City and Grantee by this Franchise shall be in addition to and cumulative with any and all other rights and remedies now or hereafter available to the parties, at law or in equity. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise any other right or remedy.

C. Costs to be Borne by Grantee. Grantee shall pay for all costs of publication of this Franchise.

D. Attorneys' Fees. If any action or suit arises in connection with this Franchise (excluding Franchise renewal proceedings), the court shall determine which party shall be entitled to recover reasonable attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper.

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

F. Authority to Amend. This Franchise may be amended at any time by written agreement between the parties.

G. Venue. The venue for any dispute related to this Franchise shall be in the United States District Court for the Central District of Utah or in the Fifth Judicial District Court in Washington County, Utah.

H. Governing Law. Subject to the terms of this Franchise, The City and Grantee shall be entitled to all rights and be bound by all changes in applicable federal, State and local laws.

I. Captions. The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

J. No Joint Venture. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

K. Non-Waiver. The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the party hereafter to enforce the same, nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

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

M. Force Majeure. Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Grantee to anticipate and control, including war or riots, acts of terrorism, civil disturbances, earthquakes, floods, severe weather or other natural catastrophes, labor stoppages or work delays caused by waiting for utility providers

to service or monitor their utility poles to which the Cable System is attached, declared local, State or national emergencies, or the unavailability of materials.

N. Time Limits Strictly Construed. Whenever this Franchise sets forth a time for any act to be performed by Grantee or the City, such time shall be deemed to be of the essence, and any failure of Grantee or the City to perform within the allotted time may be considered a breach of this Franchise.

O. Entire Agreement. This Franchise represents the entire understanding and agreement between the parties and supersedes all prior oral and written negotiations and agreements between the parties with respect to the subject matter hereof.

P. Acceptance. After the passage and approval of this Franchise by Resolution by the City Council and receipt by Grantee, this Franchise shall be accepted by Grantee by filing with the City its written acceptance of all of the provisions of this Franchise. If the acceptance is not filed, this Franchise shall then be voidable at the discretion of the City.

[signatures follow]

IN WITNESS WHEREOF, this Franchise is signed by the Parties this _____ day of March, 2023.

CITY OF IVINS, UTAH

_____
Chris Hart, Mayor

ATTEST:

_____
Kari Jimenez, City Recorder

GRANTEE:

TDS BROADBAND SERVICE LLC

By: _____
Name: _____
Title: _____