



CITY COUNCIL AGENDA – REVISED ON 3/3/17
Monday, March 6, 2017

6:30 p.m. **Closed session as provided by Section 2.2-3712 of the Virginia Code**
Second Floor Conference Room (Consultation with legal counsel regarding Ragged Mountain Natural Area)

7:00 p.m. **Regular Meeting - CALL TO ORDER**
Council Chambers

PLEDGE OF ALLEGIANCE
ROLL CALL

AWARDS/RECOGNITIONS ANNOUNCEMENTS GFOA Distinguished Budget Award; 125th Anniversary of Ebenezer Baptist Church

CITY MANAGER RESPONSE TO MATTERS BY THE PUBLIC

MATTERS BY THE PUBLIC Public comment is provided for up to 12 speakers at the beginning of the meeting (limit 3 minutes per speaker.) Pre-registration is available for up to 9 of these spaces, and pre-registered speakers are announced by noon the day of the meeting. An unlimited number of spaces are available at the end of the meeting.

1. CONSENT AGENDA* (Items removed from consent agenda will be considered at the end of the regular agenda.)

5-0 Szakos/Fenwick

- a. Minutes for February 21
- b. APPROPRIATION:
- c. APPROPRIATION:
- d. **RESOLUTION:**

BAMA Works Fund Grant for Family Advocate Program - \$9,000 (1st of 2 readings)
Local Gov't Arts Challenge Grant to VA Discovery Museum - \$5,000 (1st of 2 readings)
Support for Charlottesville Area Alliance (1st of 1 reading)

2. PUBLIC HEARING / RESOLUTION*

Matters by the Public – Procedures – passed with amendments. Szakos/Galvin passed 4-0; Galvin/Bellamy passed 4-0; Bellamy/ Fenwick passed 4-0.

3. REPORT RESOLUTION*

Landmark Hotel – John Dewberry – passed with amendments Galvin/Fenwick 4-0.

4. REPORT

School Board's Adopted FY 2018 Budget – **15 minutes**

5. REPORT

City Manager's Proposed FY 2018 Budget - **15 minutes**

6. REPORT

Recommended Changes to Debt Policy Language – 10 minutes Szakos/Galvin Passed 5-0

7. RESOLUTION*

Sidewalk Waiver Request – 1421 Dairy Road (1st of 1 reading) – Passed 5-0 Bellamy/Galvin

8. RESOLUTION*

Charlottesville High School – Critical Slopes Waiver (carried) – **Bellamy/Szakos**

9. ORDINANCE*

Changes to Business License Fees and Technology Zone Credits (carried) – **Fenwick/Bellamy**

10. ORDINANCE*

Cable Television Franchise Agreement with Comcast (2nd of 2 readings) – Passed 5-0

OTHER BUSINESS
MATTERS BY THE PUBLIC

**ACTION NEEDED*

RESOLUTION
Support for Charlottesville Area Alliance

WHEREAS, the Charlottesville Area Alliance (CAA) is a collective of organizations who aim to lead the advancement of goals making the Region 10 an age friendly community, being mindful of the unique needs of those aging in this regional community and taking action when needed; and

WHEREAS, the Charlottesville Area Alliance (CAA) includes The Alzheimer's Association, Jefferson Area Board on Aging, The Senior Center, JAUNT Inc., Westminster Canterbury of the Blue Ridge, and Thomas Jefferson Planning District Commission as the initial lead organizations; and

WHEREAS, The CAA's primary purpose is to provide leadership for and to develop an age-friendly community through educating, advocating, engagement, planning, and evaluation, bringing organizations together to create an age-friendly community by developing a common understanding of the needs and issues, developing policy recommendations, and joining together to encourage the implementation by government, non-profit organizations, the general public and businesses; and

WHEREAS, the vision of the CAA is that the Greater Charlottesville area will be the most Age-Friendly community in the country; and

WHEREAS, the mission of the Charlottesville Area Alliance is to lead the advancement of an age friendly community; and

WHEREAS, the CAA has identified five goal areas of work: 1) Assessment/Monitoring; 2) Planning; 3) Advocacy; 4) Education & Public Relations; 5) Engagement; and

WHEREAS, the CAA will utilize the World Health Organization's measurement/indicators of Outdoor Spaces & Buildings, Transportation, Housing, Social Participation, Respect & Social Inclusion, Civil Participation & Employment, Communication & Information, and Community & Health Services; and

WHEREAS, the City of Charlottesville supports the participation of staff in efforts to improve our community for citizens of all ages;

WHEREAS, the city's strategic plan goal # 2 – a healthy and safe city – includes support for the World Health Organization's definition of an age-friendly city;

NOW THEREFORE, the City of Charlottesville hereby endorses the organization of the Charlottesville Area Alliance and its goals.

Approved by Council
March 6, 2017



Acting Clerk of Council

RESOLUTION
City Council Meeting Procedures

BE IT HEREBY RESOLVED, that the attached City Council Meeting Procedures be adopted and put into place.

Signed this 6th day of March 2017.

Approved by Council
March 6, 2017

A handwritten signature in black ink, appearing to read "Saw Brad", is written over a horizontal line.

Acting Clerk of Council

Charlottesville City Council Meeting Procedures

These *Charlottesville City Council Meeting Procedures* are designed to help City Council conduct its affairs in a timely and efficient manner, while encouraging a robust and meaningful dialogue with members of the community.

A. Meetings

Regular meetings of the City Council are scheduled for 7:00 p.m. on the first and third Mondays of each month (or the following day if that Monday is a legal holiday).

Regular meetings shall be of two types. The first meeting of the month, the "Business Meeting", will be focused on information, education, and public engagement and shall include reports properly before the Council. The second type, the "Working Meeting", will also include work sessions and reports from the City Manager.

B. Agenda and Materials

1. The City Manager shall prepare the proposed agenda including a consent agenda and regular agenda items for the Mayor's consideration nine business days before the meeting. The agenda of every regular Council meeting is approved by the Mayor. Any Council member desiring to add items to the proposed agenda must submit them to the City Manager and the Mayor ten business days before the meeting. Citizens who wish to suggest an item for consideration on the agenda should submit them to the [Clerk of Council](#). The City Manager, in consultation with the Mayor, shall provide background materials for the Council and the public.
2. Agenda and background materials for upcoming City Council meetings shall be made available for public review in the Clerk of Council's Office and on the [City's website](#) concurrent with Council's receipt of the same, and no later than Wednesday before the meeting.
3. Any materials in addition to the background materials shall be distributed to the Council by the Clerk of Council no later than three (3) days before the regular City Council meeting or any joint meeting with Albemarle County, Planning Commission, advisory group or additional work-session outside of the Regular Meeting Schedule. Council may defer any item for which all relevant information has not been provided in a timely manner.
4. Agenda topics without background materials for upcoming City Council business meetings, working meetings or work sessions shall be made available, when possible, to City Council three (3) months in advance.

C. Mayor as Presiding Officer

1. The Mayor shall preside at all meetings of City Council, enforce the rules of the Council, and preserve order and decorum at Council meetings. The Vice Mayor shall preside in the Mayor's absence.
2. The Mayor shall administer Robert's Rules of Order. The City Attorney shall serve as the Parliamentarian for the purposes of Robert's Rules of Order.
3. During a City Council meeting the Mayor shall have control of the Council Chambers and the connecting halls and corridors, and any other venue where a Council meeting is being held.

In case of a disturbance or disorderly conduct that disrupts the meeting, the Mayor may take measures the Mayor deems appropriate, including but not limited to suspending the meeting until order is restored, and ordering areas to be cleared by the Sergeant-at-Arms.

4. No person shall address City Council until leave to do so has been granted by the City Council or until invited to do so by the Mayor. (*City Code sec. 2-71.*)

D. Matters by the Public & Public Hearings

1. Time shall be reserved during each regular City Council meeting for “Matters by the Public”. Public comment shall also be allowed during specific agenda items if a public hearing has been scheduled and designated on the agenda. Members of the public may request one of fifteen (15) speaking slots for the first session of Matters by the Public by e-mail, telephone, or in person with the Clerk by 9:00 a.m. on the day of the meeting. Through this process, ten (10) slots will be allotted by email, telephone, or in person, and five (5) slots will be allotted for individuals who sign up to speak at the City Council Meeting. Individuals who wish to speak during a scheduled public hearing should provide their name and address to the Clerk of Council in accordance with the process established by Council.
2. The City Manager shall prepare a response to Matters by the Public, as directed by the Mayor, to be delivered by the City Manager at the meeting immediately following the present meeting.
3. In the interest of focusing the City’s response to public comments on engagement, policy, and action items as determined by the City Manager, Members of Council in general shall defer to the City Manager’s response to public comments and not respond to public comments as a whole. However, at the discretion of the Mayor, Members of Council may be recognized to respond to individual public comments.
4. The purpose of Matters by the Public is to state a position, provide information to City Council, comment on the services, policies and affairs of the City, or present a matter that, in the speaker’s opinion, deserves the attention of City Council.
5. Speakers may speak for a maximum of three minutes and shall begin by identifying their name and address. Speakers may only speak once during each public comment session. Remarks must be addressed directly to Council and not to City staff, the audience, other speakers or the media. When speaking during a public hearing, speakers shall limit their remarks to those relevant to the pending agenda item.
6. If a speaker is not present when his or her name is called, he or she will not be allowed to speak. Speakers may not concede their allotted time; the person whose name is written on the speaker sheet must be the person who begins speaking, although they may be accompanied by others to the podium and may share their time with them.
7. Written materials presented at Matters by the Public must be given to the Clerk prior to speaking and will be distributed to the Council. For distribution of hard copies to Councilors, eight copies should be provided; however, electronic distribution is preferred and may be sent to Council@charlottesville.org. Power point presentations cannot be accommodated during Matters by the Public.

8. To provide an additional mechanism to communicate with Council, a "[Matters by the Public online comment form](#)" is provided on the City website for electronically submitting comments. These comments are distributed to all Council members.
9. Improper comments and disorderly conduct are not permitted. Persons appearing before the Council may not use this platform to:
 - a) Campaign for public office;
 - b) Promote private business ventures;
 - c) Use profanity or vulgar language or gestures;
 - d) Threaten violence toward Council, City staff or members of the public;
 - e) Engage in behavior that intimidates others;
 - f) Interrupt other speakers or engage in behavior that disrupts the meeting
 - g) Defamatory attacks on individuals or groups.
10. Any speaker who violates the rules will be called to order by the Mayor. If the remarks or conduct persists, the Mayor shall order the speaker to cease speaking and be seated. If the order is not heeded, the Mayor shall direct the Sergeant-at-Arms to escort the individual from the meeting room.
11. The Mayor may also order the expulsion of any person for a serious violation of these rules, disruptive behavior, or any words or action that incite violence or disorder, subject to appeal to City Council. Any person so expelled shall not be readmitted for the remainder of the meeting from which expelled.
12. Any person who has been so expelled may also be barred by the Mayor from attendance at future Council meetings for a specified and reasonable period of time, subject to appeal to Council or motion passed by Council.

E. Consent Agenda

1. The consent agenda may be used for eligible items and may include, but is not limited to, routine and noncontroversial appropriations, grant applications, contracts, resolutions, ordinances, second readings, and the minutes.
2. After the consent agenda is read by the Clerk of Council any item may be removed at the request of any two Council members. Any item removed from the consent agenda shall be added to the end of the regular agenda for discussion. Those items not removed from the consent agenda shall be acted upon by a single vote of Council.

F. Regular Agenda Items

1. General
 - a) Regular agenda items shall be heard in the order in which they appear on the agenda. With the consent of two other Councilors, the Mayor may postpone or take out of sequence agenda items from the order listed on the agenda.

- b) With the exception of work sessions, the total time allocated to any agenda item that does not include a scheduled public hearing shall not exceed thirty (30) minutes, unless the Mayor, in consultation with the City Manager, determines otherwise.
- c) Opening presentations for regular agenda items shall be limited to ten (10) minutes, unless the Mayor, in consultation with the City Manager, determines otherwise.
- d) Staff or an appropriate designee will present to Council, after which Councilors may ask clarifying questions of staff if necessary. If a public hearing is scheduled, it will take place before a motion is on the floor.

2. Motions and Debate

- a) As stated by Robert's Rules of Order, Council may only discuss an agenda item after a motion is made, unless provided otherwise by the Mayor. Any member of the Council making a motion shall address the Mayor and receive recognition before speaking. The person making the motion is entitled to first hold the floor for debate. Discussion and debate shall be limited to the merits of the immediately pending motion. No member may speak a second time on the same motion if any other member who has not already spoken on the motion desires the floor. The Chair must recognize any member who seeks the floor. The Mayor shall state when a motion has been made and seconded before any debate is in order. All questions shall be stated and put by the Mayor and the Mayor shall declare all votes. The Mayor may not close debate as long as any member who has not exhausted his or her right to debate desires the floor, unless a vote to call the question passes. In making a motion, a member shall be limited to 5 minutes. In comments and amendments, a member shall be limited to 3 minutes. In asking questions of speakers, Council members shall be limited to 3 minutes. This section 2(a) does not apply to work sessions.
- b) In debate, speakers shall be collegial in their language, shall avoid all reference to personalities, and shall never allude to the motives of Council members. No member shall interrupt another without the consent of the member who has the floor, except when making a point of order.

3. Voting

- a) The Mayor shall call the question. If any member abstains from voting the reason for the abstention shall be included in the minutes of the meeting. The Mayor shall announce that the motion is adopted or failed.
- b) In the event that the Mayor determines that a proposal is perfectly clear to all present and requires no discussion, the Mayor may determine unanimous consent without a motion having been introduced.

G. Recess

1. During regular meetings, Council will take a brief recess every two hours.
2. The Council's goal at regular meetings is to adjourn no later than 11:00 p.m.

H. Closed Meetings

Closed meetings generally take place at 6:00 p.m. before the regular Council meeting; exceptions will be publicly noticed. The only items Council may consider in closed meetings are those permitted by the Virginia Freedom of Information Act and identified in the motion convening the closed meeting.

I. Other

1. In the interests of efficient management, if Council members seek answers from City staff, they should generally attempt to do so through the City Manager. In any event, when asking questions of staff, Council members should advise City Manager of same.
2. Members of the City Council, including the Mayor, shall represent the official policies or positions of the City Council to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, Council members shall explicitly state they do not represent their body or the City, nor will they allow the inference that they do. No member of City Council may purport to speak on behalf of the City on matters that have not been voted on by Council or that do not represent official City policy unless authorized by the City Manager.
3. If a Councilor chooses to convene a public meeting that employs any City resources (including meeting spaces and staff attendance), and that might be attended by two or more other Councilors, he or she shall advise other Councilors at least one day in advance of the time and place of the meeting.
4. Council members shall respect and adhere to the council-manager structure of Charlottesville City government as outlined in the Charlottesville City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by City staff, Boards and Commissions, and the public. Except as provided by the City Code, Council members shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.
5. Each Councilor (or his/her designee) shall report to Council on his/her committee, board, commission and task force assignments once/ year.

II. Miscellaneous

1. Meetings of City Council shall be governed according to Robert's Rules of Order, except where provided otherwise by the Virginia Code or the Code of the City of Charlottesville, these City Council Meeting Procedures, or other procedures or guidelines adopted by City Council.
2. No rule of procedure adopted by the City Council can be suspended except by the consent of four Council members. Suspension of the rules may be made by a motion. (*City Code section 2-66.*)
3. Special meetings, work sessions and closed meetings may be held in addition to the schedule of regular meetings adopted at the first regular meeting in January. Special

meeting notification requirements are governed by the Virginia Code.

4. For special meetings, the purpose and nature will dictate whether public comment will be allowed. Public comment is frequently not allowed at certain special meetings, such as City Council work sessions, while other special meetings, such as the citizen's budget forum and Town Hall meetings, are held for the express purpose of hearing from members of the public. If public comment is allowed at a special meeting, the same public participation rules applicable to a regular City Council meeting will apply.
 5. Persons with disabilities may request reasonable accommodations by contacting ada@charlottesville.org or (434) 970-3182. Persons are encouraged to make requests in advance.
 6. All regular City Council meetings are broadcast live on Charlottesville's TV-10 and include closed captioning. Streaming video of the meetings is available for viewing [online](#) at the time of the meeting and as an archived video on the next business day following a meeting. Archived meetings can be downloaded in audio or video format from the [City website](#). [Charlottesville TV 10](#) runs repeats of the most recent meeting throughout the month on Mondays, Wednesdays, and Fridays at 7:00 p.m. and Tuesdays, Thursdays, and Saturday mornings at 9:00 a.m. until the next meeting is held. A DVD copy of the meeting may be requested the week after the meeting; a nominal fee may apply. Contact the Clerk of Council at clerk@charlottesville.org or (434) 970-3113 to inquire.
 7. City Council Meeting Procedures will be posted on the City's website.
 8. These rules are adopted by the Council pursuant to Section 12 of the Charter of the City of Charlottesville and supersede prior rules. These rules do not create substantive rights for third parties or participants in proceedings before City Council, and City Council reserves the right to suspend or amend the rules in the manner provided in the City Code. The failure of City Council to strictly comply with these rules of public participation shall not invalidate any action of City Council.
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Passed by Council March 6, 2017

RESOLUTION

Approving Agreement of Assistance for Hotel Project at 201 E. Main Street

WHEREAS, in 2008, construction commenced on a project, that was to be known as the Landmark Hotel, at 201 East Main Street in a former bank building fronting the downtown mall; and

WHEREAS, in 2009, amid the recession, the project's financing was called into question ultimately resulting in work ceasing and leaving the building unfinished; and

WHEREAS, over the past eight years the City has heard growing concern from residents, businesses and visitors regarding the eyesore and safety concern this long-delayed project has created in the downtown area; and

WHEREAS, given these unique circumstances, members of the City Council, City staff and representatives of Dewberry Capital (manager for Deerfield Square Associates II, LLC, and owner of record of the property at 201 E. Main Street) have recently engaged in discussions to identify the best options available to move the project to completion as quickly as possible; and

WHEREAS, these conversations resulted in a request from Dewberry Capital for assistance from the City; and

WHEREAS, after discussion and considerable negotiation City staff is willing to recommend to Council the following components:

City agrees to:

1. City agrees to lease 75 City owned parking spaces in the Water Street Parking Garage for an initial term of 5 years. (If desired, an additional 75 spaces can be leased for a second five year period or the City can conduct a request for proposal process in which terms greater than five years are possible.) In year one, the lease shall be structured so that rent will be equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$40,000. In year two, the minimum is increased to \$60,000. In subsequent years, the rent will be equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$80,000 annually. The effective date of the lease will coincide with the issuance of a certificate of occupancy for the hotel. The lease will terminate by mutual agreement of both parties or if the hotel ceases to operate for more than 90 days.
2. The City in conjunction with the Charlottesville Economic Development Authority agrees to provide a performance grant, to the developer, equal to 50% of the incremental real estate tax generated by the project (above the base value) for ten years to assist in retiring the debt service. Base value as of 2017 is \$6,642,500. The actual amount of the grant will be determined annually by the assessed value beginning the year following the completion date. The initial estimated annual grant amount is approximately \$110,000, although that may increase or decrease depending on the annual assessment and tax rate.

In order to trigger the performance grant the project must receive a certificate of occupancy and generate in year one a minimum of \$150,000 in lodging tax receipts. In year two the minimum is increased to \$225,000 and in years three – ten to \$300,000. The developer must also make a minimum capital investment of \$20 million in the construction of the project.

Dewberry Capital (as Developer) agrees to:

1. Developer agrees to provide the city with a report, prepared and sealed by a qualified professional consultant licensed to practice in Virginia, confirming the structural integrity of the building and make a reasonable good faith effort to improve the structure's current appearance by July 1, 2017.
2. Developer agrees to provide the City with an official project pro forma showing all sources and uses of funds, construction costs, upfit costs and anticipated operating costs. Developer agrees that the primary lender be a bona fide institutional lender and have experience in hotel financing and will provide such qualifications to the City upon request.
3. Developer agrees to expeditiously pursue all necessary City permits and approvals needed to construct the hotel and will not request any reduction in fees related to such.
4. Developer agrees to allow the city to approve any change in management of the hotel during the term of the agreement.
5. Developer commits to a minimum employment level of 60 positions for local residents during the term of the agreement.
6. For purposes of the agreement the completion date will be July 1, 2020. If a certificate of occupancy has not been issued by the completion date the total grant amount allowable will be reduced by 2% for each month that completion is delayed beyond the completion date. If a certificate of occupancy has not been issued by July 1, 2021, this agreement will terminate and the owner of the property will then use its best efforts to sell the property to another owner / developer who will either complete the project or diligently pursue another development on the property. For purposes of the agreement the completion date will be July 1, 2020. If a certificate of occupancy has not been issued by the completion date the total grant amount allowable will be reduced by 2% per month. If a certificate of occupancy has not been issued within 12 months of the agreed upon completion date the agreement will terminate.
7. Developer agrees to remit all required City taxes in a timely manner during the grant period, agrees not to contest any increase in assessed value for the property during the grant period. Developer agrees to pay legal fees associated with preparing and reviewing the agreement, in an amount not to exceed \$10,000.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that these terms are acceptable in concept and shall form the basis of a lease agreement for parking spaces and a performance agreement between the parties;

BE IT FURTHER RESOLVED, that the Council of the City of Charlottesville, Virginia directs the City Manager and his staff to prepare the necessary documents to effect such an agreement and schedule such for council consideration as soon as is practicable.

Adopted by Council
March 6, 2017



Acting Clerk of Council

RESOLUTION
Approving a Sidewalk Waiver Request for
1421 Dairy Road (Dairy Road Frontage)

WHEREAS, application has been made by T. J. Southmayd, the owner of property located at 1421 Dairy Road, identified on City Tax Map 41 as Parcel 15.2 (“Subject Property”), seeking a waiver of the sidewalk requirement set forth within City Code Sec. 34-1124 in connection with the construction of a single-family detached dwelling on the Subject Property; and

WHEREAS, the Subject Property has frontage on both Rugby Road and Dairy Road, but the property owner is seeking a sidewalk waiver only for the Dairy Road frontage; for the Rugby Road frontage, the property owner is electing to contribute to the sidewalk improvement fund in lieu of constructing a sidewalk, as permitted under City Code Sec. 34-1124(b)—as a practical matter, the requested waiver, combined with the contribution to the sidewalk fund, will relieve the property owner from having to construct any sidewalks along any public street frontage at this location; and

WHEREAS, City staff has submitted a report to Council containing staff’s comments and recommendations regarding the sidewalk waiver request, and Council has reviewed the staff recommendations and the information and materials submitted with the application; and

WHEREAS, City Council has considered the factors set forth within City Code Section 34-1124(b) and has determined that the sidewalk waiver request should be approved; now, therefore

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia that the sidewalk improvements required by City Code Section 34-1124(b) with respect to the Dairy Road frontage on the Subject Property are hereby waived.

Adopted by Council
March 6, 2017



Acting Clerk of Council

2017 CABLE FRANCHISE RENEWAL

By and between

City of Charlottesville, Virginia

And

Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia,
LLC

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ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF CALIFORNIA/MARYLAND/PENNSYLVANIA/VIRGINIA/WEST VIRGINIA, LLC TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF CHARLOTTESVILLE, SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHT OF WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE.

THIS CABLE FRANCHISE AGREEMENT (the “Franchise Agreement”) is entered into by and between the City of Charlottesville, Virginia (“City”), and Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC (“Comcast”) as of _____ (the “Effective Date”).

WHEREAS, Comcast requested to renew their nonexclusive Franchise (the “Prior Franchise”) with the City to own, construct, reconstruct, install, maintain, operate, dismantle, test, upgrade, repair, use, and/or remove a Cable System (as hereinafter defined) in the City; and

WHEREAS, the construction, installation, reconstruction, maintenance, operation, testing, upgrade, repair, use, and/or removal of such a system involves the occupation and placement of private commercial facilities along, under, over, above, through or across the Public Rights-of-Way or public land within the City; and

WHEREAS, the City has considered Comcast’s performance under the Prior Franchise, and the quality of service during the term of the Prior Franchise, has identified and negotiated for the future needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Comcast, and Comcast’s plans for ongoing construction, operation and maintenance of the Cable System; and

WHEREAS, the City has determined such to be adequate, and to meet the foregoing requirements of 47 U.S.C. § 546 and

WHEREAS, the City held a full public hearing affording due process to all parties to discuss and consider the terms and conditions of the negotiated agreement between the City and Comcast set forth herein; and

WHEREAS, based on Comcast’s representations in this Franchise Agreement and subject to the terms and conditions set forth herein and the provisions of the Charlottesville City Code Chapter 6, the grant of a new nonexclusive Franchise to Comcast, to supersede the Prior Franchise, is consistent with the public interest; and

NOW, THEREFORE, in consideration of the City’s authority to grant a new Cable Franchise Agreement:

The City of Charlottesville does hereby ordain that it is in the public interest to permit the use of Public Right of Ways and easements for the construction, maintenance, and operation of a cable television system under the terms and conditions of this Franchise and that the public purpose of enhancement of the communication within the City, the expansion of communication opportunities outside the City, and the provisions programming of a truly local interest are achieved by the Franchise Agreement and the Agreement is hereby adopted this _____ day of _____, 2016.

SECTION 1 - Definitions

For the purpose of this Franchise Agreement, all terms used herein shall have the meanings ascribed to them in Title 15.2, Chapter 21 of the Code of Virginia and the Communications Act of 1934, 47 U.S.C. §§ 521 et seq., as amended from time to time unless otherwise defined herein.

- 1.1. “**Act**” means the Communications Act of 1934.
- 1.2. “**Affiliate**” in relation to any person, means any person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee, excluding any entity related to the operations of NBC Universal.
- 1.3. “**Applicable Laws**” means any applicable lawful federal, state or local law.
- 1.4. “**Basic Cable Service**” means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §§ 522(3) or 543(b)(7).
- 1.5. “**Cable Act**” means the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 - 631.
- 1.6. “**Cable Operator**” means any Person or group of Persons that (i) provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or (ii) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.
- 1.7. “**Cable Service**” means the one-way transmission to Customers of (i) Video Programming or (ii) other programming service, and Customer interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).
- 1.8. “**Cable System or System**” means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Customers within the Franchise Area, except that such definition shall not include: a facility that serves only to retransmit the television signals of one or more television broadcast stations; a facility that serves only Customers without using any Public Right-of-Way; a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 USC 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Customers, unless the extent of such use is solely to provide Interactive On-demand Services; any facilities of any electric utility used solely for operating its electric systems; or an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.
- 1.9. “**Channel**” or “**Cable Channel**” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC.
- 1.10. “**City**” means City of Charlottesville, a municipal corporation, in the State of Virginia, acting by and through its City Council, or its lawfully appointed designee.
- 1.11. “**City Council**” means the governing body of the City of Charlottesville, Virginia.
- 1.12. “**Complaint**” means any verbal or written inquiry, allegation or assertion made by a Subscriber to Grantee which raises an objection to Grantee’s performance under the Franchise. Notwithstanding the forgoing, an inquiry shall not be deemed a Complaint if it is resolved between the Grantee and a subscriber in one

conversation, phone call or other interface or if the inquiry is related solely and specifically to Grantee's rates or programming decisions (unless the inquiry alleges some malfeasance or negligent act).

- 1.13. "**Converter**" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.
- 1.14. "**Customer(s)**" means the City or any Person who is lawfully receiving, for any purpose or reason, Cable Service via the Grantee's Cable System, whether or not a fee is paid for such service.
- 1.15. "**Drop**" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- 1.16. "**Effective Date**" means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term of Franchise" Section herein.
- 1.17. "**FCC**" means the Federal Communications Commission or successor governmental entity thereto.
- 1.18. "**Force majeure**" means an event or events reasonably beyond the ability of Grantee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Grantee's facilities are attached or to be attached or conduits in which Grantee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.
- 1.19. "**Franchise**" means an initial authorization, or renewal thereof, issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system, a telecommunications system, or other facility in the public rights-of-way, including either a negotiated cable franchise or an ordinance cable franchise.
- 1.20. "**Franchise Agreement**" or "**Agreement**" means this Agreement and any amendments or modifications hereto.
- 1.21. "**Franchise Area**" means the territorial boundary of the City, and shall also include any subsequent additions thereto, by annexation or other legal means. This shall not include certain of the property within the territorial boundary of the City belonging to the Rector and Visitors of the University of Virginia, over which, by law, the County of Albemarle retains jurisdiction.
- 1.22. "**Franchising Authority**" means the City of Charlottesville.
- 1.23. "**Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17.
- 1.24. "**Grantee**" means Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC.
- 1.25. "**Gross Revenue**" means all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by the Grantee and derived from the operation of its Cable System to provide Cable Service in the Franchise Area; however, "Gross Revenue" shall not include:

- (i) refunds or rebates made to Customers or other third parties;
- (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the Cable System, but not including revenue received from home shopping channels for the use of the Cable Service to sell merchandise;
- (iii) any tax, fee, or charge collected by the Grantee and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group;
- (iv) program launch fees;
- (v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing;
- (vi) a sale of Cable Service for resale or for use as a component part of or for the integration into Cable Service to be resold in the ordinary course of business, when the reseller is required to pay or collect Franchise fees or similar fees on the resale of the Cable Service;
- (vii) revenues received by any Affiliate or any other Person in exchange for supplying goods or services used by the Grantee to provide Cable Service; and
- (viii) revenue derived from services classified as Noncable Service under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the Grantee to Noncable Service in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

- 1.26. **“Installation”** means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
- 1.27. **“Interactive On-Demand Services”** means a service providing Video Programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing Video Programming prescheduled by the programming provider.
- 1.28. **“Normal Business Hours”** means those hours during which most similar businesses in the community are open to serve Customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.
- 1.29. **“Normal Operating Conditions”** means those service conditions which are within the control of the Cable Operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Cable Operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- 1.30. **“Other Programming Service”** means information that a cable operator makes available to all Subscribers generally.
- 1.31. **“Person(s)”** means any natural person(s) or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.
- 1.32. **“Public Right-of-Way(s)”** or **“Public Way(s)”** mean the surface of, and the space above and below, any public street, avenue, highway, boulevard, concourse, driveway, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, alley, right-of-way, including, but not limited to easements dedicated for compatible use
- 1.33. **“Public Property”** means any real property, other than a Street, owned by any governmental unit.
- 1.34. **“Franchise Area”** means the entire geographic area within the City as it is now constituted or may in the future be constituted.

- 1.35. “**Service Interruption**” means the loss of picture or sound on one or more cable channels.
- 1.36. “**Standard Installation**” means any residential Installation which can be completed using a Drop of one hundred fifty (150) feet or less.
- 1.37. “**Street**” means the surface of and the space above and below any public Street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held by the City which shall entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
- 1.38. “**Subscriber**” means any Person who lawfully receives Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.
- 1.39. “**Transfer**” means any transaction in which (i) an ownership or other interest in the Grantee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Grantee is transferred; or (ii) the rights and obligations held by the Grantee under the Franchise are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Grantee to the parent of the Grantee or to another Affiliate of the Grantee; (b) transfer of an interest in the Franchise or the rights held by the Grantee under the Franchise to the parent of the Grantee or to another Affiliate of the Grantee; (c) any action that is the result of a merger of the parent of the Grantee; (d) any action that is the result of a merger of another Affiliate of the Grantee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Grantee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.
- 1.40. “**Video Programming**” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2 - Grant of Authority

- 2.1. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise, subject to the terms and conditions of this Franchise Agreement, the Code of Virginia, the City Code, the Cable Act, and all other Applicable Law. The Franchise will be for the period specified in Section 2.2 below, during which time the Grantee will receive the right and obligation to construct, reconstruct, operate and maintain a Cable System within the Public Ways within the Franchise Area to provide Cable Service. This Franchise Agreement neither authorizes the Grantee to use the Public Ways for purposes of providing any service other than Cable Service, nor prohibits the Grantee from doing so. The Grantee’s authority to provide noncable service shall be subject to Applicable Law. No privilege or power of eminent domain is bestowed by this grant, nor by the Agreement.
- 2.2. **Term of Franchise.**
- The term of the Franchise granted hereunder shall be no more than ten (10) years, and shall commence upon the Effective Date of _____ and shall expire on _____, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.
- 2.3. **Reservation of Authority.**

Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.

Nothing in this Franchise Agreement shall:

- A. abrogate the right of the Franchising Authority to perform any public works or public improvements of any description,
- B. be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority, or
- C. be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways.

All rights and privileges granted herein are subject to the police powers of the City and its rights under Applicable Laws and regulations to exercise its governmental powers to their full extent. The City reserves the right to exercise its governmental powers over Cable Systems granted by the Cable Act.

2.4. Grant Not Exclusive.

The Franchise and the right it grants to use and occupy Public Ways shall not be exclusive. The City specifically reserves the right to grant, at any time, additional franchises for a System in accordance with Applicable Laws, and other Franchises for similar uses or for other uses of Public Ways, or any portions thereof, to any Person. The City reserves the public right of ways for its own purposes.

2.5. Additional Franchises.

The City shall at all times abide by all Applicable Laws with respect to the granting of any additional cable television franchises within the City.

2.6. Nature of Franchise.

Upon acceptance, the Grantee's nonexclusive Franchise for the occupation and use of the Streets and Public Right-of-Ways within the City for the construction, operation, maintenance, upgrade, repair and removal of the System in accordance with the provisions of this Franchise shall be deemed to have been renewed. This Franchise shall authorize the Grantee to provide Cable Services as defined in this Franchise Agreement and as authorized by the Cable Act and to lease excess capacity upon its System to other third parties as it may contemplate from time to time.

2.7. Authority for Use of Streets.

- A. For the purpose of constructing, operating, and maintaining a System in the City, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets and Public Right-of-Ways within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.
- B. Thirty (30) days in advance of any reconstruction or rebuild of the System, Grantee shall, in each case, file plans with the City and receive written approval of such plans, which approval shall not be unreasonably withheld. Failure of City to take action on such plans within thirty (30) days of receipt of such plans shall be deemed approval of such plans.
- C. Grantee shall construct and maintain the System so as not to interfere with other uses of Streets. Grantee shall endeavor to make use of existing poles and other facilities available to Grantee where feasible.

Grantee shall widely publicize proposed construction work prior to commencement of that work. Except in cases of an emergency, Grantee shall individually notify in writing all residents reasonably affected by proposed underground work not less than forty-eight (48) hours prior to commencement of that work. Such notice shall include the Grantee's telephone number and the department to call regarding questions about the construction.

- D. Notwithstanding the above grant to use the Streets, no Street shall be used by Grantee if the City, reasonably determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used.

2.8. Competitive Equity.

2.8.1. Purposes. The Grantee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

2.8.2. New Video Service Provider. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i.) enters into any agreement with the Franchising Authority to provide video services to subscribers in the Franchise Area, or (ii.) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority. If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.

2.8.3. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchising Authority agrees that, notwithstanding any other provision of law, upon Grantee's written request the Franchising Authority shall: (i) permit the Grantee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchising Authority and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Franchising Authority. Notwithstanding any provision of law that imposes a time or

other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

2.8.4. Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers under Section 2.8 herein shall supersede this Agreement, and the Grantee, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

2.8.5. Video Service Provider. The term "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

SECTION 3 - Construction and Maintenance of the Cable System

3.1. Permits and General Obligations.

The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. The Grantee shall comply with all Applicable Law regarding its construction and maintenance of the Cable System.

3.1.1. Construction Code and Permits.

- A. Grantee shall obtain all required permits from the City before commencing any work requiring a permit, including the opening or disturbance of any Street, Public Property or public easement within the City. Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in the City.
- B. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of Applicable Laws.
- C. Nothing contained in this Franchise shall be construed to give or to withhold from Grantee the authority to enter upon or work on private property in areas not encumbered with public easements without the permission of the property owner.

3.1.2. Repair of Streets and Property. Any and all Streets or Public Property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's construction.

3.1.3. Use of Existing Poles. Grantee shall not erect, for any reason, any pole on or along any Street in an existing aerial utility System without the advance written approval the City. Grantee shall exercise its best efforts to negotiate the lease of pole space and facilities from the exiting owners for all aerial construction.

3.1.4. Undergrounding of Cable. Cable shall be installed underground at Grantee's expense where both the existing telephone and electrical utilities are already underground. Grantee may place cable underground in newly platted areas in concert with both the telephone and electrical utilities. In the event that telephone or electric utilities are reimbursed by the City or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as the telephone or electric utilities. In the event that the Grantee is required to place existing aerial plan underground, the

Grantee reserves its right to pass those costs through to Customers if and to the extent allowed by applicable law.

3.1.5. Reservation of Street Rights.

- A. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work.
- B. All such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.
- C. If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any Street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk or water main, street or any other public improvement, thirty (30) days' notice shall be given to Grantee by the City and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee in such manner as shall be directed by the City so that the same shall not interfere with the said public work of the City, as determined by the City, and such removal or replacement shall be at the expense of Grantee herein. Should, however, any utility company, pursuant to any contract dated after the date of acceptance of this Franchise, be reimbursed for relocation of its facilities as part of the same work that requires Grantee to remove its facilities, Grantee shall be reimbursed upon the same terms and conditions as such utility.
- D. Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, re-grading or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water System.

3.1.6. Trimming of Trees. Grantee shall have the authority to trim trees upon and hanging over Streets, Public Rights-of-Way, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee; provided, however, all trimming shall be done, at the expense of Grantee, in a safe and orderly manner and in accordance with the pruning standards currently in effect for heritage trees, as referenced in the City's Tree Preservation Ordinance, and all local ordinances which may, from time to time, be amended, including the City Zoning Ordinance and Charlottesville City Code Chapter 18, Article II, Sections 18.5 through 18.20, notwithstanding anything to the contrary.

3.1.7. Street Vacation or Abandonment. In the event any Street or portion thereof used by Grantee shall be vacated by the City or the use thereof discontinued by Grantee, during the term of this Franchise, Grantee shall, at Grantee's expense, forthwith remove its facilities therefrom unless specifically permitted by the City to continue the same, and on the removal thereof restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area where such removal has occurred to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City to remove the facilities or to repair, restore, reconstruct, improve or maintain such Street portion, the City may do such work or cause it to be done, and the cost thereof as found and declared by the City shall be paid by Grantee as directed by the City and collection may be made by any available remedy.

3.1.8. Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the Streets of the City, upon two (2) weeks' notice by the City to Grantee, Grantee shall move at the expense of the Person requesting the temporary removal such of his facilities as may be required to facilitate such movements. Any Service disruption provisions of this Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities results in temporary Service disruptions.

3.2. Cable System Infrastructure Tests and Inspections.

- A. The Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the FCC and this Franchise Agreement, and to ensure that the Cable System components are operating as expected.
- B. In the event there is a consistent pattern demonstrated by Subscriber Complaints that evidences a potential problem with the Cable System, upon the City's request, Grantee shall conduct tests upon the City's request to ensure that its Cable System is functioning in compliance with applicable federal and state laws and regulations, and make the results of such test available to the City to verify such compliance. If any such test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from City, shall take corrective action, retest the locations and advise the City of the action taken and results achieved.
- C. The City may conduct inspections of construction areas and customer installations for the purpose of assessing compliance with the Grantee's construction and installation requirements, this Agreement and applicable law generally. Inspection does not relieve the Grantee of its obligation to build in compliance with all provisions of the Franchise.
- D. Specific testing and inspection requirements in this Agreement, including but not limited to those of Sections 3.2(A) through 3.2(C), shall not be read to preclude the City from exercising its general rights to inspect and require information.

3.3. Publicizing Proposed Construction Work.

The Grantee shall notify the public prior to commencing any proposed construction that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally. The Grantee shall publicize proposed construction work at least two (2) weeks prior to commencement of any proposed non-emergency construction work by causing written notice of such construction work to be delivered to the Franchising Authority and by notifying those Persons most likely to be affected by the work in at least one (1) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, or by publication in local newspapers.

SECTION 4 - Service Obligations

4.1. General Service Obligations.

The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile when measured from the nearest technically feasible connection point of the existing Cable System. Subject to this density requirement, Grantee shall offer Cable Service to all new homes or previously un-served homes located within 150 feet of the Grantee's distribution cable. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee shall continue to provide Cable Service to those homes

currently being served within the Franchise Area. The Grantee may impose an additional charge in excess of its regular installation charge for any Service installation requiring a drop or line extension in excess of the above standards. Such additional charge shall be paid by the developer or landowner or Customer requesting Cable Service in an area that does not meet the density and distance standards.

4.2. Public, Educational and Governmental Access Channels.

Use of channel capacity for public, educational and governmental (“PEG”) access shall be provided on the most basic tier of service offered by Grantee in accordance with the Cable Act, § 611, and as further set forth below. Grantee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Grantee shall not exercise editorial control over any public, educational, or governmental use of channel capacity, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity.

4.2.1. Public Access. A “Public Access Channel” is a channel designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis. A Public Access Channel may not be used to cablecast programs for profit, nonpolitical or commercial fundraising in any fashion.

4.2.2. Educational Access. An “Educational Access Channel” is a channel designated for noncommercial use by educational institutions such as public or private schools, community colleges, and universities, but not “home schools.”

4.2.3. Government Access. A “Governmental Access Channel” is a channel designated for noncommercial use by the Franchising Authority.

4.2.4. Maintenance of Upstream Link for PEG. Grantee shall maintain existing upstream link connecting the PEG origination building, located at City Hall 605 E. Main Street, Charlottesville Virginia, with the Grantee’s head-end for the transmission of programming on the public, educational, and government access channels. After construction of the link, the City shall bear the cost of any maintenance or relocation of the facility.

4.2.5. SD PEG Channels.

- A. The Grantee shall continue to make available for use by the City without charge, a minimum of one (1) activated Channel for non-commercial Governmental programming (hereinafter government access channel) and shall make available, without charge, a minimum of one (1) activated Channel for non-commercial public access programming (hereinafter community access channel) and shall make available a minimum of one (1) activated Channel for non-commercial educational programming for educational institutions within the Franchise Area, including Piedmont Virginia Community College and the University of Virginia (hereinafter educational access channel). Additionally, at such time as one (1) of the current PEG access channels is programmed with original and first repeat, non-character generated, non-alphanumeric, locally produced programming for a minimum of eight (8) hours per day for five (5) days per week for eight (8) consecutive weeks, Grantee shall provide the City with one (1) additional PEG access channel for government, community and/or education access. At such time as a second current access channel is programmed with original and first repeat, non-character generated, non-alphanumeric, locally produced programming for a minimum of eight (8) hours per day for five (5) days per week for eight (8) consecutive weeks Grantee shall provide the City with one (1) additional PEG access channel for government, community and/or education access. Grantee

shall be given one hundred eighty (180) days advance written notice before such channel must be made available.

- B. Grantee shall also provide Channel capacity on the System available for lease in accordance with 47 U.S.C. § 532.
- C. Grantor shall establish rules pertaining to the administration of the specially designated access Channels required in this section.
- D. The City may, at its choosing, provide staff to promote the access channels and access programming and provide, on a regular basis, technical assistance and guidance to access users who may require help and support in utilizing the access equipment and facilities.
- E. The Grantee shall monitor the PEG Access Channels for technical quality consistent with applicable FCC technical standards for standard definition broadcast and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels for standard definition broadcast.

4.2.6 Access Equipment and Facilities.

- A. Any and all payments, costs and expenses made by Grantee pursuant to this Section shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542) and such payments shall not be deemed to be: (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by Grantee pursuant to Section 7 hereof, or (ii) part of the compensation to be paid to the City by Grantee pursuant to Section 7 hereof.
- B. The City shall also have the unilateral right to create, support, assist, or otherwise help to establish a non-profit separate access organization to provide non-commercial access programming. Nothing in this Section shall prohibit a private Person or entity from creating an independent non-profit access organization nor prohibit the City from providing funding in support of such access organization.
- C. All existing public access equipment, including but not limited to all equipment located at current and former public access centers and studios located at 1000 Rio Road and City Hall 605 East Main Street, is hereby deemed the property of the City of Charlottesville, notwithstanding any other documentation or agreement to the contrary.

4.2.7 PEG Access Support Fee.

- A. Grantee shall continue to provide to City a "PEG Access Support Fee" of thirty five cents (\$0.35) per subscriber per month. The PEG Access Support Fee may be used by City solely to fund public, educational and Government Access-related capital expenditures, unless and until changes to federal and State law allow for the PEG Access fee to be used for other expenditures, in which case the City may use such fees in accordance with changes in the law. Any and all payments by Grantee to City used for capital needs to support PEG access shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act 47 U.S.C. § 542).
- B. The PEG Access Support Fee shall be paid by the Grantee to City on a quarterly basis, together with a brief report from Grantee evidencing the amount remitted. City shall use the PEG Access Support Fee only for PEG Access costs as permitted by Applicable Laws and shall not use the fee

for any other purposes. Grantee has the right to collect this fee from Subscribers as permitted by law.

- C. City may, at any time, discontinue the imposition of the PEG Access Support Fee or reduce the amount of the fee to be paid by Grantee.
- D. The City acknowledges that, pursuant to Applicable Laws, certain franchise related costs, such as PEG contributions, are entitled to be passed through by the Grantee to the subscribers. The City will not challenge such pass-through so long as it is done in accordance with Applicable Laws.

4.3. Emergency Alert System.

Grantee shall maintain compliance with the Emergency Alert System requirements of the FCC and, the Virginia Emergency Alert System where applicable, in order that emergency messages may be distributed over the System.

4.4. No Discrimination.

Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied, unless such Person has engaged in theft of Grantee's Cable Services, vandalism of its property or harassment of its representatives. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.5. Prohibition Against Reselling Service.

No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

4.6. Technical Standards.

The Cable System design, construction, and operation shall meet or exceed the technical standards set forth in 47 C.F.R. Part 76, as may from time to time be amended, and any other applicable technical standards. The results of grantee's tests required to be performed by the FCC shall be delivered to the City upon request.

4.7. Leased Access Channels.

The Grantee shall provide leased access channels as required by federal law.

4.8. Home Wiring.

The Grantee shall comply with 47 C.F.R. §§ 76.800-806 regarding cable inside wiring.

4.9. Programming.

The Grantee shall offer to all Customers a diversity of video programming services in accordance with federal law and in accordance with the meaning of 47 USC § 544(b)(2)(B).

4.10. Programming Decisions.

All programming decisions not related to PEG channels or broad diverse categories of programming shall be at the sole discretion of Grantee. In all cases Grantee shall provide a minimum of thirty (30) days advance written notice of any programming changes to all Subscribers and to the City.

SECTION 5 - Fees and Charges to Customers

5.1. Notice of Changes.

Not less than thirty (30) days prior to the effective date of any change in any fee, charge, deposit, term or condition (or such shorter period as may, upon a showing of good cause, be approved by the City), the Grantee shall provide written notice of the change to the Grantor and each affected Subscriber and other person utilizing the affected service. The Grantee shall not make any change in any rate unless it has provided the notice required in Section 5.2 of this Franchise.

Notwithstanding the foregoing, the City reserves the right to regulate the rates for Basic Service if provided the authority to do so under any change to federal and state law, after affording Grantee due process. Grantee shall maintain on file with the City at all times a current schedule of all rates and charges.

5.2. Non-Regulated Rates.

Prior to implementing any rate increase for Cable Service not requiring City approval, Grantee shall give the following notice:

- A. At least thirty (30) days advance written notice to the City; and
- B. At least thirty (30) days advance written notice to Subscribers of said Service.

5.3. Charges for Disconnection or Downgrading of Service.

- A. Grantee may only impose a charge for the downgrade or disconnection of Service to any Subscriber that is not prohibited by federal law and that is reasonably related to the cost incurred for a downgrade or disconnection of Service or is limited to a fee where the Subscriber has agreed to the fee by contract with Grantee to such charges. Grantee agrees that it will not impose any fee that has the effect of discouraging a downgrade in service unless such fee is reasonably related to Grantee's costs associated with providing the downgrade.
- B. If a Subscriber requests disconnection from Service prior to the effective date of an increase in rates, the Subscriber shall not be charged the increased rate if Grantee fails to disconnect Service prior to the effective date. Any Subscriber who has paid in advance for the next billing period and who requests disconnection from Service shall receive a prorated refund of any amounts paid in advance.

SECTION 6 - Customer Protection Standards; Customer Bills; and Privacy Protection

6.1. Consumer Protection and Service Standards.

In accordance with applicable law, Grantee shall maintain a convenient local customer service and bill payment location for receiving Subscriber payments, handling billing questions and equipment replacement. Grantee shall also provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:

6.1.1. Cable System office hours and telephone availability.

- A. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
 - i. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - ii. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
- B. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
- C. Both parties agree that the Grantee's equipment that measures compliance with this service obligation commingles data from other local Franchise Areas. Both parties acknowledge and agree that such commingled data shall be deemed valid as to the City.
- D. Under Normal Operating Conditions, the Customer will receive a busy signal less than three percent (3%) of the time.
- E. The customer service center and bill payment locations will be open at least during Normal Business Hours.
- F. Grantee shall provide the City with current contact information for a Director of Government and Community Affairs or similar representative and update such contact information regularly to handle customer service concerns that are referred by the City.

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

- A. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.
- B. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours (or within the timeframe agreed upon by the Customer) under Normal Operating Conditions.
- C. The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the Customer).
- D. Absent extraordinary circumstances, Grantee may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment.

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

6.2. Subscriber Service Information.

Pursuant to FCC rules, Grantee shall provide to the City, all new Customers, and, at least once a year, to existing Customers, written subscriber service information, which shall include, but not be limited to, the following:

- A. Products and services offered;
- B. Prices and options for programming services and conditions of subscription to programming and other services;
- C. Installation and service maintenance policies;
- D. Instructions on how to use the cable service;
- E. Channel positions of programming carried on the system; and
- F. Billing and complaint procedures, including the address and telephone number of the local cable office.

6.3. Subscriber Billing Practices.

- A. Grantee shall notify each of its Subscribers, through the written service information, of its billing practices. The service information shall describe Grantee's billing practices including, but not limited to, the following: frequency of billing; time periods upon which billing is based; advance billing practices; security deposit requirements; charges for late payments or returned checks; payments required necessary to avoid account delinquency; availability of credits for Service outages; procedures to be followed to request Service deletions including the notice period a Subscriber must give to avoid liability for such Services and procedures to be followed in the event of a billing dispute.
- B. Grantee shall notify all affected Subscribers not less than thirty (30) days prior to any change in the billing practices and such notice shall include a description of the changed practice.
- C. The Subscriber bill shall contain the following information presented in plain language and format:
 - i. Name and address of Grantee;
 - ii. The period of time over which each chargeable Service is billed including prorated periods as a result of the establishment and termination of Service;
 - iii. Each rate of charge levied;
 - iv. The amount of the bill for the current billing period, separate from any balance;
 - v. Grantee's telephone number and a statement that the Subscriber may call this number with any questions or Complaints about the bill; and
 - vi. A specific due date for Subscribers whose accounts are current which shall be at least twenty (20) days from the mailing of the bill. The due date for delinquent accounts may be listed as "upon receipt" for payments that are past due.

- D. The account of a Subscriber shall not be considered delinquent until at least twenty (20) days after the mailing of the bill. In no event shall Grantee issue a statement that a first time bill is due upon receipt. The following provisions shall apply to the imposition of late charges on Subscribers:
- i. Grantee shall not impose a late charge on a Subscriber unless a Subscriber is delinquent, Grantee has given the Subscriber written notice of the delinquency in a clear and conspicuous manner, and the Subscriber has been given at least eight (8) days from time of mailing of the notice to pay the balance due.
 - ii. A charge of not more than 10% of the bill may be imposed as a one-time late charge. This amount shall be exclusive of any interest that may be charged.
 - iii. No late charge may be assessed on the amount of a bill in dispute where a Subscriber has notified Grantee within thirty (30) days of receipt of original bill unless the disputed charged has been deemed reasonable by the Grantee.
 - iv. Any charge for returned checks shall be reasonably related to the costs incurred by Grantee in processing such checks.
 - v. Any collection fee for funds collected at a Subscriber's residence upon Service disconnection shall not be considered a late fee.

6.4. Parental Control Option.

Grantee shall provide parental control devices to all Subscribers who wish to be able to cut out any objectionable Channel(s) of programming from the Cable Service entering the Subscriber's home.

6.5. Subscriber Complaints.

Grantee shall maintain and provide at least annually upon request to the City a log of all subscriber Complaints indicating the action taken by Grantee.

6.6. Rights of Individuals Protected.

Grantee shall comply with all privacy provisions of Section 631 of the Cable Act, 47 U.S.C. § 543.

SECTION 7 - COMMUNICATIONS TAX AND FRANCHISE FEE

7.1. Communications Tax.

Grantee shall comply with the provisions of Section 58.1-645 *et seq.* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"). Sections 7.2 through 7.8 of this Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a Franchise Fee for purposes of 47 U.S.C. § 542 / 641 as amended, is imposed on the sale of Cable Services by the Grantee to Customers in the City.

7.2. Payment of Franchise Fee to City.

7.2.1. In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a Franchise Fee for purposes of 47 U.S.C. § 542/ 641, as amended, Grantee shall pay to the City a Franchise Fee of five percent (5%) of annual Gross Revenue, beginning on the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Sections 7.2 through 7.8 of this Agreement shall take effect. Payments due the City under this provision shall be computed at the end of each quarter year for that quarter year. Payments shall be due and payable for each quarter or a portion of a quarter year on January 15, April 15, July 15 and October 15.

7.2.2. Not Franchise Fees.

- A. Unless expressly stated herein, Grantee acknowledges and agrees that no payment or contribution shall offset the Franchise Fee.
- B. Grantee expressly acknowledges and agrees that, as applicable, except for the compensation payments expressly required by Section 7.2.1 hereof, and consistent with the requirements of Section 4.2.7A of this Agreement, each of the payments or contributions made by, or the Services, equipment, facilities, support, resources, or other activities to be provided by the Grantee, are within the exclusions from the term “Franchise fee” set forth in Section 622(g)(2) of the Cable Act (47 U.S.C. § 542(g)(2)).

7.3. Supporting Information.

Each payment shall be accompanied by a brief report showing the basis for the computation, a breakdown by major revenue categories (such as basic service, premium service, etc.), and such other relevant facts as may be reasonably required by the City, including the completion of a Franchise Fee Payment Worksheet, subject to the proprietary information provisions of Section 8.8. The brief report and Franchise Fee Payment Worksheet shall be submitted to the City with information and statistics for only the System serving the City of Charlottesville and shall not include any statistics which reflect a larger scope of operations that include the County of Albemarle or other similarly situated regions.

7.4. Limitation on Franchise Fee Actions.

No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise where the City gives the Grantee notice in writing contesting any amount paid within five (5) years of the receipt of the disputed payment. All amounts shall be subject to audit and recomputation by the City.

7.5. Bundled Services.

If Cable Services subject to a Franchise Fee, or any other fee determined by a percentage of the Cable Operator’s Gross Revenues in a locality, are provided to Customers in conjunction with other services: the Franchise Fee shall be applied only to the value of these Cable Services, as reflected on the books and records of the Cable Operator in accordance with rules, regulations, standards, or orders of the Federal Communications Commission or the State Corporation Commission, or generally accepted accounting principles. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between the respective services that constitute the bundled transaction.

7.6. Audit.

7.6.1. Subject to the proprietary information provisions of Section 8.8 of this Franchise Agreement, the City, or such Person or Persons designated by the City, shall have the right to inspect and copy records and the right to audit and to recompute any amounts determined to be payable under this Franchise, without regard to by whom they are held. If an audit discloses an overpayment or underpayment of Franchise Fees, the City shall notify the Grantee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The City, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party.

7.6.2. Subject to the proprietary information provisions of **Section 8.8** of this Franchise Agreement, the Grantee shall be responsible for providing to the City all records necessary to confirm the accurate payment of Franchise Fees. The Grantee shall maintain such records for five (5) years. To the extent the City hires an

independent auditor to verify the accuracy of Grantee's Franchise Fee payments and finds the payments accurate to within five percent (5%) of funds due the City or in all cases in which the discrepancy favors Grantee, the City shall pay the auditor's full costs and expenses. To the extent it is reasonably necessary for the City to send an auditor to a location outside of the City or Albemarle County to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by such auditor. Such costs may not exceed five thousand dollars (\$5,000). In the event the independent auditor determines that a discrepancy which favors City in excess of five percent (5%) exists, Grantee shall pay the auditor's full costs and expenses. within thirty (30) days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit report. In all cases, Grantee shall promptly pay all outstanding Franchise Fees subject to the terms and conditions of this Franchise. The auditor shall not be compensated on a success based formula, e.g., payment based on a percentage of any underpayment, if any.

No acceptance of any payment by the City shall be construed to as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under this Franchise where the City gives Grantee notice of in writing contesting any amount paid within five years of receipt of the disputed payment. All amounts paid shall be subject to audit and recomputation by the City.

- 7.7.** With each Annual Report required pursuant to **Section 8.9**, Grantee shall provide the City with a certification of the Gross Revenues for the preceding year prepared by a responsible financial representative of the Company. This certification shall be used to determine the exact amount of payments due the City and to correct any overpayments or underpayments by Grantee. This certification shall include statistics for only the System serving the City of Charlottesville and not any statistics which reflect a larger scope of operations that include the County of Albemarle or other similarly situated regions. To the extent it is reasonably necessary for City to send representatives to a location outside of the City or Albemarle County to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by City representatives; such costs not to exceed a maximum of five thousand dollars (\$5,000).
- 7.8.** In the event any payment is not made on the due date, simple interest on the amount due shall accrue from such date at the annual rate of six percent (6%).
- 7.9. No Limitation on Taxing Authority.**
- A. Nothing in this Agreement shall be construed to limit any authority of the City to impose any tax, fee, or assessment of general applicability. By way of illustration and not limitation, to the extent permitted by Applicable Law, the City may impose a tax, fee, or other assessment on any Person (other than the Grantee) with respect to Cable Service or other communications service provided by such Person over a Cable System for which charges are assessed to Customers but not received by the Grantee.
 - B. The Franchise Fee payments required by this Section shall be in addition to any and all taxes, fees or charges which the Grantee shall be required to pay to the City or to any state or federal agency or authority, except to the extent that such taxes, fees or charges must be considered Franchise Fees pursuant to 47 U.S.C. § 542 (g).
 - C. Grantee expressly acknowledges and agrees that the compensation and other payments to be made pursuant to this Section 7.2 of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Grantee shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Grantee.
 - D. Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Franchise from or against any

City or other governmental taxes of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers or income taxes) or other fees or charges which the Grantee is required to pay to the City or other governmental agencies.

SECTION 8 - Oversight and Regulation by Franchising Authority

8.1 Open Books and Records.

The City shall have the right to inspect, seven (7) days after Grantee's receipt of written notice at any time during Normal Business Hours at the System office all books, records, maps, plans, financial statements, Complaint logs, performance test results, record of requests for Service and other like materials of Grantee which are reasonably necessary to monitor compliance with the terms of this Franchise. To the extent it is reasonably necessary for City to send representatives to a location outside of the City of Charlottesville or Albemarle County to inspect Grantee's books and records, Grantee shall be responsible for all travel costs incurred by City representatives. Such costs may not exceed five thousand dollars (\$5,000).

8.2. Technical Standards.

The Grantee shall comply with all applicable technical standards of the FCC regulations in 47 CFR Part 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards as provided by Applicable Law. The Franchising Authority shall have the right to obtain, upon written request, a copy of the tests and records pursuant to the FCC's rules.

8.3. Operational Records.

The Grantee shall maintain the records required to compute all operational and customer service compliance measures outlined in this Franchise to demonstrate that the measures are being met. Failure to maintain the records as required herein shall subject the Grantee to the penalties established in this Franchise Agreement.

8.4. Records Required.

Grantee shall at all times maintain and upon written request provide the following:

- A. Records of all written complaints for a period of one year after receipt by Grantee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Grantee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;
- B. Records of outages and-Service Interruptions for a period of one year after occurrence, indicating date, duration, area, and the number of Customers affected, type of outage, and cause;
- C. Records of service calls for repair and maintenance for a period of one year after resolution by Grantee;
- D. Records of installation/reconnection for a period of one year after the request was fulfilled by Grantee.

8.5. Federal Communications (FCC) Testing:

Within fourteen (14) days of a written request by the City, Grantee shall make available the results of its FCC proof of performance tests required by the FCC's rules.

8.6. File for Public Inspection.

Throughout the term of this Franchise Agreement, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

8.7. Periodic Inspection.

The City and Grantee shall, at the request of the City, undertake an inspection of the System to ascertain the System performance at randomly selected Subscriber Drops selected by the City for the purposes of determining compliance with the terms and conditions of this Franchise Agreement and applicable law. The request for such an inspection will be made on the basis of Complaints received or other evidence indicating non-compliance with the terms and conditions of this Franchise or applicable law.

- A. The City shall give written notice to Grantee of the City's intention to undertake an inspection of the System and the name of that Person who will participate for the City.
- B. Grantee shall, within two (2) days of receipt of the City notice, select one Person who will participate for Grantee and so notify the City.
- C. The representatives of the City and Grantee shall, within three (3) days of the selection of the Grantee representative, select a third representative, who shall be subject to a confidentiality agreement.
- D. The representatives shall commence the inspection of the System at the head-end by viewing all programmed Channels or a representative portion thereof and, by a decision of the majority, determine whether the quality of the signals meets all applicable technical standards outlined within this Franchise and Applicable Laws.
- E. The representatives shall then view the System performance at appropriate Subscriber Drops. The representatives shall view all or a representative portion of the program Channels at each location and, by a decision of the majority, determine whether the quality of the signals meets all applicable technical standards outlined within this Franchise and Applicable Laws.
- F. The representatives shall prepare and submit to the City and Grantee a written report of its findings any appropriate recommendation.
- G. Grantee shall report to the City, at a regular or specially scheduled meet of the City, its findings as to the status of the System, and whether it agrees with the findings of the representatives. Should Grantee agree that corrective action is required, it will report as to the status of corrective measures planned and undertaken currently. Should the representatives find that Grantee has operated the System properly and no legitimate basis for the Complaints exists within the control of Grantee, then the City shall provide Grantee with written notice that it has investigated the matter and that the Grantee is absolved from any wrongdoing in that matter. Nothing herein shall prevent Grantee from providing City with such additional evidence or information as Grantee deems relevant.

8.8. Proprietary Information.

8.8.1. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to submit information to the City that it reasonably deems to be proprietary or confidential in nature, nor submit to the City any of its or an affiliate's books and records not relating to the provision of Cable Service in the Franchise Area, except as provided herein. Such confidential information shall be subject to the following, to be applied as is most practicable for the purposes of this Agreement:

- A. To the extent an exemption under the Virginia Freedom of Information Act permits the City to maintain the confidentiality of submitted information and the Grantee submits such information to the City, the City shall maintain the confidentiality of such information and not disclose it to any public request;
- B. To the extent the information provided to an accountant, attorney, consultant, or any other agent of the City (“City Consultant”) would not be subject to public disclosure under the Virginia Freedom of Information Act and the City instructs the Grantee to provide such information to the City Consultant as may be required by this Agreement, the Grantee shall provide such information to the City Consultant and the City shall not take possession of the information nor engage in any act that would jeopardize the confidentiality of such information; or
- C. Grantee must provide the following documentation to the City:
 - i. Specific identification of the information;
 - ii. Statement attesting to the reason(s) the Grantee believes the information is confidential; and
 - iii. Statement that the documents are available at the Grantee’s designated offices for inspection by the City.

8.8.2. At all times, the City shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans, or other City-requested documents that are provided pursuant to this Franchise Agreement to the extent they are designated as such by the Grantee. Nothing in this Section shall be read to require the Grantee to violate Federal or State Law protecting Customer privacy.

8.9. Annual Reports.

Upon written request at least ninety (90) days in advance, Grantee shall file with the City a copy of the following information regarding the System, in such a format as can be specifically allocated to the Franchise Area that is legally included within the City of Charlottesville:

8.9.1. Service Availability Report. Upon written request, and subject to federal law, after the end of the calendar year, Grantee shall submit a written report to the City which lists the addresses where cable service was made available during the preceding year, and a description of the Services then being offered at the end of the fiscal year.

8.9.2. Customer Service Reports. A compilation summarizing the Complaints received during the reported year, by category, and a discussion of any unresolved Complaints which shall include:

- A. A report showing the number of services calls received by type;
- B. A report showing the number of outages that exceed one hour in duration.
- C. A report showing the grantee’s performance with respect to Section 6 of this franchise agreement, signed by an officer or employee certifying its performance with these customer service standards. Included in this report will be the following information;
 - i. Percentage of telephone calls that were answered within thirty (30) seconds;
 - ii. Percentage of telephone calls received that were abandoned before being answered by a live operator;
 - iii. Average hold time for telephone calls received;
 - iv. Percentage of time when all incoming trunk lines were in a busy condition;
 - v. Percentage of standard installations performed within seven (7) business days; and

vi. Percentage of repair calls for Service Interruptions responded to within 24 hours.

8.9.3. Communications with Regulatory Agencies. Copies of all petitions, applications, communications and reports submitted by Grantee or on behalf of or relating to Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the System authorized pursuant to this Franchise shall be available for City inspection. Copies of responses from the regulatory agencies to Grantee shall likewise be made available.

8.9.4. Financial Statement. A financial statement including an income statement, statement of operating expenses in detail, a cash flow statement and a balance sheet prepared in accordance with generally accepted accounting principles and certified by a financial representative of Grantee. Grantee's SEC Form 10-K shall suffice for such purposes.

8.9.5. Subscriber Service information. A current copy of the Subscriber Service information required in accordance with Section 6.2. hereof.

8.9.6. Principals. A current list of names and addresses of each principal. For the purposes of this requirement the term "principal" means any Person, firm, corporation, partnership or joint venture, or other entity who or which owns or controls five percent (5%) or more of the voting stock (or any equivalent interest of a partnership or joint venture of Grantee).

8.10. Additional Reports.

Grantee shall prepare and furnish to the City, within a reasonable time, such additional reports with respect to its operation, affairs, transactions or property, which are reasonably necessary for the administration and enforcement of this Franchise.

8.11. Maps.

Grantee shall maintain at all times a current map or set of maps drawn to scale showing the Grantee's System in the streets and other public places, and upon written request and contingent upon the City's agreement to hold this information confidential, will provide the City with access to such maps, during Normal Business Hours, at the local office defined under Section 6.1.

8.12. Periodic Evaluation and Renegotiation Sessions.

The field of cable communications is a rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of communication between the parties, and to help achieve a continued advanced and modern System, the following evaluation provisions will apply:

- A. The City and Grantee, upon request of the City, shall hold annual evaluation sessions during the term of this Franchise.
- B. Topics which may be discussed at any evaluation and session include, but are not limited to, Channel capacity, the System performance, programming, access, municipal uses of cable, Complaints, customer service, telephone answering performance, judicial rulings, FCC rulings and any other topics the City or Grantee deem relevant.
- C. During an evaluation session, Grantee shall fully cooperate with the City and shall provide without unreasonable cost such information and documents, including, but not limited to, telephone response information, as the City may request.

SECTION 9 - Transfer or Change of Control of Cable System or Franchise

9.1. Removal After Revocation or Expiration.

- A. At the expiration of the present and all subsequent renewal terms for which the Franchise is granted, or upon its revocation, as provided for, the City shall have the right, consistent, however, with Grantee's rights under Section 12.6 of this Agreement, to require Grantee to remove, at Grantee's expense, all or any portion of the System from all Streets and Public Property within the City. In so removing the System, Grantee shall refill and compact at its own expense, any excavation that shall be made and shall leave all Streets, Public Property and private property in as good a condition as that prevailing prior to Grantee's removal of the System, and without affecting, altering or disturbing in any way electric, telephone or utility, cables wires or attachments. The City, or its delegation, shall have the right to inspect and approve the condition of such Streets and Public Property after removal. The performance bond, insurance, indemnity and penalty provision of the Franchise shall remain in full force and effect during the entire term of removal.
- B. If, in the sole discretion of the City, Grantee has failed to commence removal of the System, or such part thereof as was designated within thirty (30) days after written notice of the City's demand for removal is given, or if Grantee has failed to complete such removal within one (1) year after written notice of the City's demand for removal is given, the City shall have the right to exercise the following option:
 - i. Cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in the Franchise or from Grantee directly.
- C. Notwithstanding any other provision of the franchise, subject to Grantee's rights under applicable federal law (47 U.S.C. §541) upon the lawful termination of this cable Franchise, the Grantee may continue to operate other services on its System, and shall not be required to remove facilities necessary to provide these other services not related to the provision of cable services.

9.2. Sale or Transfer of Franchise.

- A. This Franchise shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or properly therein, pass to or vest in any Person without full compliance with the procedure set forth in this section.
- B. The provisions of this section shall only apply to the sale or transfer of all or a majority of Grantee's assets, merger (including any parent and its subsidiary corporation), consolidation, or sale or transfer of stock in Grantee so as to create a new controlling interest. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer. No transfer of this shall occur without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned. No transfer to the parties to the sale shall be made to a Person, group of Persons, or Affiliate that is not legally, technically, and financially qualified to operate the Cable System and satisfy the obligations hereunder.
- C. In accordance with applicable federal law, in reviewing a request for sale or transfer pursuant to paragraph (A) above, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party, and Grantee shall assist the City in so inquiring. The City shall not unreasonably delay or withhold its approval. In no event shall a transfer or assignment of ownership or control of the franchise be approved without the transferee becoming a signator to this Franchise. For purposes of this section 9.2, no assignment, transfer, or sale shall occur when the Franchise is transferred

or sold to a company owned, managed, or controlled by fifty-one percent (51%) of the stock of Grantee, or any of its subsidiaries, or the assets or stock of the company are transferred to a financial institution as security for refinancing purposes.

- D. The City hereby reserves all rights under Applicable Laws to seek reimbursement of reasonable costs and expenses incurred (including, but not limited to, attorneys and other consultants), up to five thousand dollars (\$5,000), in connection with any sale or transfer of the System and/or Franchise. Such reimbursements, if found to be consistent with Applicable Law, shall not be deemed to be “Franchise Fees” within the meaning of the Cable Act (47 U.S.C. § 542). Grantee also hereby reserves its rights under Applicable Laws with respect to this issue.
- E. In the event of a transfer, the City reserves the right to require a Corporate Guarantee in the form of Exhibit A upon a subsequent grantee.
- F. The City shall comply with lawful statutes and regulations in effect at the time of sale or transfer regarding time limits applicable to consideration of a transfer application. (Currently 47 CFR §76.502 and Va. Code §15.2-2108.28)

SECTION 10 - Insurance and Indemnity

10.1. Liability Insurance.

- A. Grantee shall maintain, throughout the term of the Franchise, the following types of insurance for any liability with regards to damages outlined in Section 10.2:
 - i. **Statutory Workers’ Compensation** coverage or Employer’s Liability coverage, as required by the laws of the Commonwealth of Virginia. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.
 - ii. **Commercial General Liability insurance** with a coverage limit no less than two (2) million dollars per occurrence and four (4) million dollars aggregate per accident.
 - a. This insurance will include coverage for claims of Bodily Injury, Property Damage, Personal and Advertising Injury, and Products and Completed Operations, which may arise from operations under the agreement, whether such operations are performed by the Grantee or by any subcontractor or independent contractor on behalf of the Grantee.
 - b. The Commercial General Liability insurance shall name the City and its officials, officers, employees, and agents as “additional insured” by endorsement, and shall be primary and non-contributory.
- B. At the time of acceptance, Grantee shall furnish the City with a certificate evidencing that the insurance policies have been obtained in accordance with the requirements above. The Grantee shall also provide the endorsement page(s) evidencing that the City, its officials, officers, employees, and agents have been included as additional insured parties on the General Liability policy. In addition, it shall be the obligation of the Grantee promptly to notify the City of any pending or threatened litigation that would be likely to affect its insurance coverage.

10.2. Indemnification, Damages, and Defense.

Grantee shall indemnify the City, its officers, boards, committees, commissions, elected officials, employees and agents for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the Cable System or as to any other action of Grantee with respect to this Franchise Agreement. The City shall give the Grantee timely written notice of its obligations to indemnify and defend the City within ten (10) days of receipt of a claim or action pursuant to this section.

SECTION 11 - System Description and Service

11.1. System Capacity.

Grantee shall continue to own, operate, maintain, and make available a System providing a minimum of 860 MHz capacity. During the term of this Agreement, the Grantee's Cable System shall make Video Programming available to its Customers in the Franchise Area and shall meet all FCC technical standards as established in 47 CFR Part 76.

Grantee agrees that it shall not enter into a franchise with another locality within the franchise area which contains terms and provisions regarding PEG access or the System upgrade/rebuild that when compared to the City Franchise are more favorable to the other locality. In the event Grantee enters into such a franchise which contains terms that are more favorable to the other locality than those available to the City under this Franchise, the City shall have the option to substitute the more favorable provisions franchise with those in the City Franchise. Grantee shall have the right to appear before City Council to present any information Grantee deems relevant to the City's consideration of the provisions in question. When considering such issues the City shall weigh the overall requirements of each franchise and the respective benefits and burdens of each. If Grantee disagrees with the determination of the City Council, Grantee shall have the right to appeal to a court having competent jurisdiction in the City of Charlottesville.

11.1.1. Interconnection.

- A. The System shall be designed so that it may be interconnected with other Cable Systems.
- B. The City may request Grantee to negotiate interconnecting the System with other adjacent Systems in the general area. Grantee shall keep the City informed of the progress of any negotiations.

11.2. Provision of Service.

- A. After Service has been established for any area, Grantee shall provide Service to any household requesting Service within that are in a reasonable and timely manner.
- B. The Grantee shall continue to provide, at no cost to the Franchising Authority, basic Cable Service and Standard Installation at one outlet to each public building identified below and, upon written request from the City, one additional public building location per year, located in the Franchise Area within one hundred twenty five feet of the Grantee's distribution cable. It is the intent of the parties that the Grantee shall continue to provide the same general quality and quantity of programing to the free service drops as was made available on the Effective date of this Franchise. Each of these Installations shall include a signal Drop, one outlet, and one Converter (or such other terminal equipment as may be necessary to provide an electronic interface with a television receiver). The public buildings to be provided this Service shall include the following:

- i. All state accredited K-12 public school buildings;
 - ii. The following locations in the City Hall complex, located at 605 East Main Street, Charlottesville, VA 22902, or other City owned buildings:
 - (a) City Hall – General Registrar;
 - (b) City Hall – Neighborhood Development Services;
 - (c) City Hall – City Manager’s Office (four connections);
 - (d) City Hall – Police Department (two connections);
 - (e) City Hall – Mayor’s Office;
 - (f) City Hall – Sheriff;
 - (g) City Hall – Information Technology;
 - (h) City Hall – City Attorney Library;
 - (i) City Hall – Basement Conference Room;
 - (j) Tonsler Park Community Center, 501 5th Street, SW;
 - (k) Carver Recreation Center, 233 4th Street, NW;
 - (l) Public Works Admin. Bldg., 305 4th Street, NW, (three connections);
 - (m) Key Recreation Center, 800 E. Market Street;
 - (n) City of Charlottesville Parks and Recreation Smith Aquatics & Fitness, 100-A Cherry Ave;
 - iii. City of Charlottesville Community Attention Homes, 907 E. Jefferson Street & 414 4th Street, NE;
 - iv. The Jefferson-Madison Regional Library Main branch, 201 East Market Street ;
 - v. The Jefferson-Madison Regional Library Gordon Avenue branch, 1500 Gordon Ave;
 - vi. The City police department and substations located at 724G Prospect Ave., 531 2d St. S.E. Suite 12A, Frank Ix Bldg. (NSB); and Forrest Avenue 705 Dale Avenue; and
 - vii. City of Charlottesville Parks and Recreation Meadow Creek Golf Course Club House, 1400 Pen Park Road.
- C. Should City construct or move any of the aforementioned facilities beyond three hundred (300) feet of the existing System, as upgraded, Grantee shall not be required to absorb the Installation costs for such facilities until such time as Grantee extends its System to accommodate same.

11.3. Technical Standards.

The System shall be designed, constructed and operated so as to meet those technical standards promulgated by the FCC relating to Cable Systems contained in Part 76 of the FCC’s rules and regulations as may, from time to time, be amended. Upon written request, the results of tests required by the FCC will be delivered to the City within thirty (30) days of the completion of testing.

11.4. Special Testing.

- A. The City shall have the right to inspect all construction and installation work performed pursuant to the provisions of the Franchise in order to ensure compliance with the terms and conditions of the franchise agreement and all other applicable laws. Any such inspection shall not interfere with the Grantee’s operations, except in emergency situations. Except for emergency situations, the City shall provide the Grantee with timely notice of any such inspection(s). The Grantee shall have the right to have a representative present at any such inspection. Both parties shall make a good faith effort to work with each other to schedule any such inspections at a mutually convenient time.
- B. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring inspection to discuss the need for such and, if possible, visually inspect those locations which may be the focus of concern. If, after such meetings and inspections, City wishes to commence inspection, the tests shall be conducted at City’s expense by a qualified engineer selected by City. Grantee shall participate and cooperate in such testing and shall not assess City or

Subscribers any fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing.

11.5. Signal Quality.

The System shall produce a picture and signal quality that is consistent with FCC rules contained in Part 76 of the Code of Federal Regulations as may, from time to time, be amended.

11.6. Semi-Annual Testing.

Grantee shall conduct semi-annual technical performance tests in compliance with FCC requirements and upon request the City shall be provided with copies of test results. If a test fails to meet the performance standards, Grantee shall restore the system to the FCC requirements at Grantee's expense within a reasonable period of time

11.7. Standby Power.

The head-end and all hubs serving the City shall employ a back-up generator and Uninterruptible Power Supply (UPS) with sufficient capacity to provide twenty four (24) hours power in the event of a commercial power outage or other primary power system failure. The distribution system shall employ standby power at all power supply locations capable of providing up to two hours power to the distribution system in the event of a commercial power outage or other primary power failure.

SECTION 12 - Enforcement of and Termination of Franchise; Foreclosure, Receivership, and Abandonment

12.1. Notice of Violation or Default.

In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the nature of the alleged non-compliance or default.

12.2. Grantee's Right to Cure or Respond.

The Grantee shall have the right to respond to written notice of a violation. The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice: (A.) to respond to the Franchising Authority, contesting the assertion of non-compliance or default; or (B.) to cure such default; or (C.) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

12.3. Public Hearing.

In the event the Grantee fails to respond to the Franchising Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to evaluate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

12.4. Enforcement.

12.4.1. Subject to applicable federal and state law, in the event the Franchising Authority determines after a public hearing, that the Grantee has violated any material provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief;
- B. Seek penalties in accordance with Section 12.9 hereof; or

12.4.2 Revocation. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, in the event of a substantial default that:

- A. Grantee breaches any material provision of this Franchise; or
- B. Grantee is adjudicated guilty of practicing fraud or deceit upon the City; or
- C. Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt and the Grantee's creditors or Trustee in Bankruptcy do not agree to fulfill and be bound by all requirements of this Franchise by the City; or
- D. Grantee materially misrepresents a material fact in the application for or negotiation of, or renegotiation of, or renewal of, the Franchise and such misrepresentation was relied upon by the City to its detriment.
- E. In the case of a substantial default as found in 12.4.3, the Franchising Authority must initiate revocation proceedings in accordance with the revocation procedures established in Section 12.4.4.

12.4.3. Revocation Procedures.

- A. The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Grantee, including but not limited to the grounds listed in Section 12.4.2 or two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise.
- B. At the designated public hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Virginia, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days.
- C. Upon completion of the public hearing if the Franchising Authority determines there is a violation, breach, failure, refusal or neglect by Grantee, the Franchising Authority may direct

Grantee to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as City may direct. The issue of revocation shall automatically be placed upon the City Council agenda at the expiration of the time set by it for compliance. The City then may terminate Franchise forthwith upon finding that Grantee has failed to achieve compliance or may further extend the period, in its discretion. Or, at Grantee's option, after the full public proceeding is held and the City determines there was a violation, breach, failure, refusal or neglect, then the City may declare, by resolution, the Franchise revoked and cancelled and of no further force and effect.

- D. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to the courts having jurisdiction over the City of Charlottesville, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as applicable laws and/or this agreement may require.

12.5. Technical Violation.

The Franchising Authority agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

- A. in instances or for matters where a violation or a breach of the Franchise by the Grantee was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or
- B. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

12.6 No Removal of System.

Grantee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Grantee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof in accordance with 47 U.S.C. §621 (b).

12.7 Security Fund

- A. At the time this Franchise is accepted, Grantee agrees to provide and deposit with the City, and maintain through the term of this Franchise, a performance bond in the form of a performance bond with a company which is qualified to write bonds in the Commonwealth of Virginia established in favor of the City in the amount of Fifty Thousand Dollars (\$50,000.00) for the faithful performance by it of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the System. Such security fund whether a letter of credit or performance bond shall be subject to the approval of the City and such approval shall not be unreasonably withheld.
- B. The performance bond shall be effective throughout the term of the Franchise, including the time for removal of all of the facilities provided for herein, and shall be conditioned that in the event that the Grantee shall fail to comply with any one or more provisions of the Franchise, the City shall recover from the surety of such bond all damages suffered by the City as a result thereof. Said bond shall be a continuing obligation of the Franchise, and thereafter until the Grantee has satisfied all of its obligations to the City that may have arisen from the grant of the Franchise or from the exercise of any privilege herein granted. In the event that the City recovers from said surety, the Grantee shall

take immediate steps to reinstate the performance bond to the appropriate amount required herein. Neither this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall limit the liability of the Grantee under the Franchise Agreement.

- C. The performance bond shall contain the following endorsement (or the substantive equivalent thereto): “It is hereby understood and agreed that this performance bond may not be cancelled by the issuer, nor may the intention not to renew be stated by the issuer, until thirty (30) days after receipt by the City of a written notice stating such intention to cancel or not to renew.”

12.8. Penalties.

12.8.1. Penalties from Security Fund. In addition to any other remedies provided herein, penalties for violations of this Franchise are set forth below. As a result of any acts or omissions by Grantee pursuant to the Franchise, the City may charge to and collect the following penalties:

- A. For failure to complete or commence construction in accordance with the Franchise unless the City approves the delay, the penalty shall be Two Hundred Dollars (200.00) per day for each day, or part thereof, such failure occurs or continues.
- B. For failure to provide data, documents, reports or relevant information to the City during a renewal process or the System review, the penalty shall Two Hundred and No/100 Dollars (\$200.00) per day.
- C. For failure to comply with any material provision of this Franchise, for which a penalty is not otherwise specifically provided, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day.
- D. For failure to test, analyze and report on the performance of the System following a request by the City, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day.
- E. For failure of Grantee to comply with operation or maintenance standards, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day.
- F. For failure to comply with all conditions of the City permits to disturb Streets, fix Streets, or other terms or conditions of the City, the penalty shall be Two Hundred and No/100 Dollars (\$200.00) per day. This penalty shall be offset by any penalties collected by the City for the violation of any such City Code provisions.

12.8.2. Procedure for Imposition of Penalties.

- A. Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have twenty (20) days subsequent to receipt of the notice in which to correct the violation. Grantee may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.
 - i. The City shall hear Grantee’s dispute at a regularly or specially scheduled meeting. Grantee shall have the right to subpoena and cross-examine witnesses. The City shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

- ii. If after hearing the dispute the claim is upheld by the City, Grantee shall have ten (10) days from such a determination to remedy the violation or failure. At any time after that ten (10) day period, the City may assess penalties.
 - iii. Upon receipt of written notice from Grantee that the violation has been corrected or remedied, the City's right to assess penalties shall be suspended. Following receipt of such notice, the City shall have the right to conduct an independent investigation of any alleged violations and should it find, in its sole determination, that such violations have not been completely corrected, it shall have the right to collect penalties as described herein.
- B. The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to correct the alleged violation is of such a nature or character to require more than ten (10) days within which to perform provided Grantee commences the corrective action within the ten (10) day period and thereafter uses reasonable diligence to correct the violation.
 - C. The City shall stay or waive the imposition of any penalties set forth above for any failure or delay that is a result of an act of God or upon a finding that the failure or delay is due to circumstances beyond the reasonable control of Grantee.

12.9. Rights Cumulative.

The rights reserved to the City herein are in addition to all other rights of the City, whether reserved herein or authorized by Applicable Law. The receipt of any damages recovered by the City thereunder, shall not be construed to excuse the faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages.

12.10. Foreclosure.

Upon the foreclosure or other judicial sale of the System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

12.11. Receivership.

The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- A. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and
- B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

12.13. Abandonment.

Grantee may not abandon any portion of the System thereof without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages actually sustained by the City resulting from the abandonment.

SECTION 13 - Miscellaneous Provisions

13.1. Compliance with Laws.

Grantee and the City shall conform to all Applicable Laws and rules regarding cable television as they become effective, unless otherwise stated. Grantee shall also conform with all the generally applicable City ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. Any such City Ordinances, resolutions, rules or regulations that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement. This Franchise Agreement reflects the entire agreement of the parties and subsequent City rules and regulations that are in conflict with this Franchise Agreement cannot amend or change the obligations of Grantee herein without the mutual agreement of the parties pursuant to a formal amendment to the Franchise Agreement.

13.2. Compliance with Federal State and Local Laws.

- A. If any federal or state law or regulation requires or permits Grantee to perform any Service or act or shall prohibit Grantee from performing any Service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, Grantee will use its best efforts where appropriate to notify the City of the point of conflict believed to exist between such law or regulation.
- B. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.
- C. Notwithstanding anything to the contrary, in the event that any court, agency, commission, legislative body or other authority of competent jurisdiction (i) declares Sections 4.2.5 or 4.2.6 invalid, in whole or in part, or (ii) requires Grantee either to (a) perform any act which is inconsistent with any of the said sections or (b) cease performing any act required by said sections, Grantee shall immediately notify the City. Such notice shall state whether Grantee intends to exercise its rights pursuant to such declaration or requirement.

13.3. Franchise Renewal.

This Franchise may be renewed in accordance with Applicable Laws.

13.4. Continuity of Service Mandatory.

Upon expiration or termination of this Franchise, the City may require Grantee to continue to operate the system for an extended period of time not to exceed six months. Grantee shall, as trustee for its successor in interest, continue to operate the System under the terms and conditions of this Franchise. In the event that Grantee does not operate the System, the city may take such steps as it deems necessary to assure continued service to Subscribers.

13.5. Work Performed by Other for Grantee.

- A. All provisions of this Franchise shall remain the responsibility of Grantee, and Grantee shall be responsible for and hold the City harmless for any claims or liability arising out of work performed by subcontractors of the Grantee.
- B. All provisions of this Franchise shall apply to any subcontractor or others performing any work or Services pursuant to the provisions of this Franchise.

13.6. Nonenforcement by City.

Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance within a reasonable period of time not to exceed three (3) years.

- 13.7. No Evasion and Time of Essence.** Unless specifically referenced herein, in determining whether Grantee has substantially complied with this Franchise, the parties agree that time is of the essence. Grantee's failure to meet the obligations herein including providing information requested by Grantor in a timely manner shall constitute a material breach.

The Grantee shall not take any action to evade any provision of this Agreement. This provision shall be read to prohibit, among other things, the Grantee from requiring any Customer to waive any right (including without limitation privacy rights) as a condition of obtaining Cable Service.

13.8. Force Majeure.

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of the Franchise), provided that the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Agreement without unduly endangering the health, safety, and integrity of the Grantee's employees or property, or the health and integrity of the public, Public Way, public property, or private property, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative, or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary where such unavailability is reasonably beyond the Grantee's ability to anticipate or control.

13.9. Each Party Bears Its Own Cost.

Unless otherwise expressly provided in this Agreement, all acts that the Grantee is required to perform must be performed at Grantee's own expense. Unless otherwise expressly provided in this Agreement, all acts that the City is required to perform must be performed at the City's own expense.

13.10. Governing Law.

This Franchise Agreement shall be deemed to be executed in the Commonwealth of Virginia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Virginia, as applicable to contracts entered into and performed entirely within the Commonwealth and the venue for any litigation with respect thereto shall be in the Circuit Court for Charlottesville, Virginia, or the Federal District Court with jurisdiction over Charlottesville.

13.11. No Third-Party Beneficiaries.

Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.12. No Waiver of Rights.

Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, either party may have under federal or state law unless such waiver is expressly stated herein.

13.13. Captions and References.

The captions and headings of Sections throughout this Agreement are intended solely to facilitate reading and reference to the Sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

13.14. Calculation of Time.

Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

13.15. Entire Agreement.

This Franchise Agreement, including any Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

13.16. Severability.

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If the Grantee believes that the terms of the Franchise Agreement or any City law or regulation conflict with any state or federal law or regulation, the Grantee shall notify the Franchise Authority immediately upon learning of the conflict.

13.17. Modification.

No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by Applicable Law.

13.18. Binding Acceptance.

This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, and the promises and obligations herein shall survive the expiration date hereof.

13.19. Time of Acceptance.

A. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein. Grantee shall provide all Services and offerings specifically set forth herein to provide Cable Services within the City.

B. With its acceptance, Grantee shall also deliver any security deposit, insurance certificates, performance bonds and the Guaranty.

13.20. Publication; Effective Date. This Franchise shall be signed by the City Manager or acting City Manager and attested by the City Clerk. The Franchise shall be published in accordance with the requirements of City and state law and shall take effect upon acceptance by Grantee.

13.21. Notice. All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered Personally to the Person designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

To the Franchising Authority:

City Manager
City of Charlottesville
Room 214, City Hall
605 E. Main St.
Charlottesville, VA 22902

With a copy to:
City Attorney
City Hall
605 E. Main St.
Charlottesville, VA 22902

To the Grantee:

Comcast
5401 Staples Mill Road
Richmond VA 23228
Attn: Director, Government Affairs

And to:
Comcast Cable Communications, Inc.
7850 Walker Drive, 2nd Floor
Greenbelt, MD 20770
Attn.: VP, Government Affairs

And to:
Comcast Cable Northeast Division
676 Island Pond Rd.
Manchester, NH 03109
Attention: Government Affairs Department

Such addresses may be changed by either party upon notice to the other party given as provided in this section. The Grantee shall at all times keep the City advised as to which individual(s) are authorized to act on behalf of the Grantee and whose acts will be considered to bind the Grantee.

REMAINDER OF PAGE LEFT BLANK UNTIL SIGNATURE PAGE.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the last date set forth below:

City of Charlottesville:

By: _____

Print Name: _____

Title: _____

Date: _____

Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC:

By: _____

Print Name: Mary McLaughlin

Title: Regional Senior Vice President

Date: _____

Adopted by Council
March 6, 2017



Acting Clerk of Council