

**CABLE FRANCHISE ORDINANCE
QWEST BROADBAND SERVICES, INC.**

ORDINANCE NO _____

AN ORDINANCE GRANTING A CABLE FRANCHISE TO QWEST BROADBAND SERVICES, INC D/B/A CENTURLINK TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN MILLCREEK ; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE TELEVISION SYSTEM; AND PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE

WHEREAS, Millcreek is authorized to grant and renew cable Franchises for the installation, operation, and maintenance of cable television systems and to otherwise regulate cable communications services within Franchising Authority's boundaries by virtue of federal and state statutes, by Millcreek's police powers, by Franchising Authority's authority over its public rights-of-way, and by Millcreek's other powers and authority; and

WHEREAS, Qwest Broadband Services, Inc. d/b/a/ CenturyLink, provides cable services and desires to a franchise to construct, operate and maintain a cable television system within Millcreek's boundaries; and

WHEREAS, Millcreek's municipal council (the "*Council*") met in regular session on _____ 2016 to consider, among other things, the adoption of an ordinance granting such a franchise to Qwest Broadband Services, Inc. d/b/a/ CenturyLink ; and

WHEREAS, the Council finds that (a) the development of competitive cable television services is essential and can provide great economic and social benefit to Millcreek's residents, and (b) because of the complex and rapidly changing technology associated with such services, the public convenience, safety and general welfare can be achieved by establishing regulatory powers, and (c) the intent of this ordinance is to attain the best possible public benefit for Millcreek's residents; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of Millcreek's residents to adopt an ordinance granting a non-exclusive franchise to Qwest Broadband Services, Inc. d/b/a/ CenturyLink to operate a cable television system within Millcreek's boundaries.

NOW, THEREFORE, BE IT ORDAINED by the Council as follows:

Section 1. Definitions

For the purpose of this Franchise, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

A. "Act" shall mean the Communications Act of 1934, including the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.

B. "Cable Service" shall have the meaning provided under Federal law and regulations.

C. "Cable System" shall have the meaning provided under Federal law and regulations.

D. "Franchise Authority" shall mean Millcreek a Utah municipality.

E. "Grantee" shall mean Qwest Broadband Services, Inc. d/b/a/ CenturyLink.

F. "Gross Revenues" shall mean all revenue of any kind or nature received directly or indirectly by Grantee, its affiliates, subsidiaries, parent and any person, firm or corporation in which Grantee has a financial interest or which has a financial interest in Grantee arising from or attributable to Grantee's operation of its Cable System to provide Cable Services (as defined from time to time by applicable federal law) within the City, including, but not limited to:

1. Revenue from all charges for services provided to Subscribers;
2. Revenue directly derived and attributable to the sale of commercial advertising upon the Cable System;
3. Revenue from all charges for the leased use of studios;
4. Revenue from all charges for the use of or lease of leased access channels;
5. Monthly recurring Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a Subscriber to receive Cable Services;
6. Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional Users.

"Gross Revenues" shall not include taxes or fees (except the Franchise Fee as defined below) collected by Grantee on behalf of any governmental authority; any increase in the value of stock, security or asset; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary service provided to Grantee's employees; and dividends or other distributions made in respect of any stock or securities; or value received by Grantee or any of its affiliates through cooperative advertising.

"Gross Revenues" shall not include cash, credit, property of any kind or nature, or other consideration received by Grantee's affiliates or any person, firm or corporation ("Related Person") in which Grantee has a financial interest or which has financial interest in a Franchisee for any sales of advertising on the Cable System, services to provide programming on the Cable System, production services, and other services which are Cable Services when such services are provided by a Related Person, which has all the following characteristics: the Related Person is a separate legal entity, with separate employees, with separate financial records (which may be

part of consolidated financial reporting records), and a separate mission; it makes payments to Grantee which meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than Grantee in the same industry as Grantee; and it was established for valid business purposes and not with the intent and purpose of circumventing the Payment. Nothing contained in this exclusion from Gross Revenues shall be interpreted to exclude from Gross Revenues such cash, credit, property of any kind or nature or other consideration which would be considered Grantee's Gross Revenues derived from the operation of the Cable System to provide Cable Services under the Cable Act. Except for Gross Revenue from such sales of advertising on the Cable System, services to provide programming on the Cable System, production services, or telecommunication services which are Cable Services received by such Related Person, this paragraph shall not exclude from Gross Revenues any source of Gross Revenues, which an existing Franchisee itself is receiving at the time it is granted a Franchise under this provision.

G. "Living Unit" means a distinct address as tracked in the QC network inventory database, used by Grantee to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

H. "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind other than the City.

I. "QC" means Qwest Corporation d/b/a CenturyLink ("QC"), an Affiliate of Grantee.

J. "Qualified Living Unit" means any Living Unit designated as qualified for Cable Service in QC's loop qualification network inventory database.

K. "Service Area" shall mean the territory within the boundaries of the City.

L. "Street" and "Public Right-of-Way" shall have the meaning set forth in applicable City Code or rules as defined below.

M. "Subscriber" shall mean an authorized recipient lawfully receiving Cable Service provided by Grantee by means of or in connection with the Cable System, whether or not a fee is paid for such service.

N. "City Code" shall mean the code, rules and regulations adopted by Millcreek, from time-to-time.

O. "Multiple Dwelling Unit" or "M.D.U." means any adjacent building(s) such as apartments under common ownership containing more than four dwelling units used as living quarters.

Section 2. Grant of Franchise

The nonexclusive Franchise is hereby granted to Grantee for the Term of five (5) years, and subject to the terms, conditions, and limitations hereinafter stated, to use the Streets or Public Rights-of-Way of the City now or hereafter laid out or dedicated, and all extensions thereof, and additions thereto, to construct, erect, operate and maintain in, upon, along, across, above, over, and under the aforementioned Streets and/or Public Rights-of-Way in the City, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the City of a Cable System for the reception, sale, and distribution of Cable Service and for any and all other lawful purposes.

Any Affiliate of Grantee directly involved in the offering or delivery of Cable Services in the Service Area, or directly involved in the management or operation of the Cable System in the Service Area, shall comply with the obligations of this Franchise. However, the Parties acknowledge that Qwest Corporation d/b/a CenturyLink ("QC"), an Affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Streets which will be utilized by Grantee to provide Cable Service, including Cable Services utilizing QC's Fiber-to-the-Premises Network or Fiber-to-the-node infrastructure utilizing facilities provided by QC. So long as QC does not provide Cable Services to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Streets shall otherwise be subject to applicable laws and permit requirements. To the extent Grantee uses any third-parties (whether or not affiliated with Grantee) to fulfill its obligations under this Franchise, Grantee will insure such parties comply with the terms and conditions of this Franchise. To the extent Grantee constructs and installs Facilities in the Streets, such installations and facilities will be subject to the terms and conditions contained in this Franchise.

Section 3. Area of Operation

A. Subject to the lawful exercise of the police power heretofore or hereafter granted to the City, Grantee shall have the right to construct, operate, and maintain, in, on, along and under the Streets and Public Rights-of-Way of the Service Area of the City, wires, cables, remote terminal cabinets, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the City of a Cable System at such locations designated by Grantee.

B. Grantee shall provide Cable Services upon request from any Person in the Service Area who resides in a Qualified Living Unit.

C. Except as otherwise provided in this Franchise, Grantee shall provide Cable Services within seven (7) days of a request by any Person who resides in a Qualified Living Unit. A request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.

D. In cases of new construction or property development where utilities are to be placed underground, the developer/property owner shall endeavor to give Grantee thirty (30) days prior written notice of such construction or development, and of the particular date on

which open trenching will be available for Grantee's installation of conduit and/or cable. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring Cable Service to the development shall be borne by the developer/property owner unless agreed to otherwise between Grantee and developer.

E. Grantee's use of Public Rights-of-Way shall be subject to all rules and policies adopted by the City from time to time.

Section 4. Acceptance; Effective Date; Term

A. The Franchise granted herein will take effect and be in full force from and after final passage by the City and shall continue in full force and effect for a period of five (5) years (hereinafter the "Term").

Section 5. Conditions on use of Streets and Roads

A. **Trimming/Cutting Trees.** Grantee, upon consultation with the City, shall have the right to trim and keep clear of its poles, wires, cables, underground conduits, manholes and other conductors and fixtures, the trees in and along the Streets. Grantee shall use its best efforts, including written notice, to notify owners of property adjacent to the trees to be trimmed at least 72 hours prior to Grantee doing the work. For all trimming, Grantee shall use generally accepted pruning standards of modern arboriculture in a manner which is least damaging to the health and aesthetic appearance of the trees, etc., being trimmed.

B. **Restoring Streets.** Grantee shall restore, reconstruct, or repair any Street and Public Right-of-Way, and any sewer, gas, effluent, water main, pipe, or fire alarm disturbed or destroyed by the exercise of any right granted to Grantee by this Franchise in accordance with applicable City Code, as amended. In the event the City determines Grantee has not made such restoration, reconstruction or repair in a reasonably satisfactory manner, the City, after giving Grantee notice and opportunity to correct such failure, shall have the right to carry out such restoration, reconstruction or repair, and Grantee shall reimburse the City in full for all reasonable expenses incurred by the City in carrying out all or part of such restoration, reconstruction or repair.

C. **Safety.** Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and lines, equipment, and connections in, over, under, and upon the Streets, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair. Any opening or obstruction in the streets shall be guarded and protected at all times by placement of adequate barriers, fences, or boardings, the bounds of which will be clearly designated by warning lights.

D. **Compliance with Applicable Laws.** Grantee shall install and maintain its wire, cables, fixtures, and other equipment in accordance with applicable City Code, as amended, any building codes, or other construction standards imposed by the City, and the applicable sections

of the National Electric Safety Code as revised during the Term and in such manner as shall not interfere with any installations of the City or of any public utility serving the City.

E. Temporary Moving of Wires. Grantee shall, on the request of any Person holding a building-moving permit issued by the City, temporarily relocate its facilities to permit the moving of buildings, water, effluent or sewer lines, or Streets and/or Public Rights of Way. The expense of such relocation shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment. Grantee shall be given not less than five (5) business days' notice to arrange for such relocation.

F. Inspection. The City shall have the right to inspect all construction or installation work performed in, over, under and upon the Streets, subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise.

G. Location of Distribution Lines-Poles/Underground Cable. Grantee shall use its best efforts to construct, install and place its cables, wires, drop lines and other facilities underground. Grantee's Amplifier boxes and pedestal mounted terminal boxes may be placed aboveground if existing technology reasonably requires, but shall be of such size and design and shall be so located as to minimize visual and physical impact on adjacent yards and landscapes insofar as it is technically and economically feasible and not unsafe. However, all Grantee's amplifier boxes, pedestal-mounted terminal boxes and all other equipment placed aboveground shall be kept in good repair and replaced as needed. If Grantee has used its best efforts to construct and install its cables, wires, drop lines and other facilities underground, then in any part of the Service Area where there are certain cables, wires and other like facilities of a public utility or public utility district suspended aboveground from poles, Grantee may, if it has approval from the Franchise Authority and the owners of such poles construct and install its cables, wires and other facilities from the same poles in the same manner (similar height, configuration, etc.) as such public utility or public utility district.

H. Moving of Grantee Property. Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee shall at its own expense protect, support, raise, lower, temporarily disconnect, relocate in or remove its facilities from the Public Way. In the event of an emergency, the Franchising Authority shall notify the Grantee, who shall immediately respond to the emergency. Should the Grantee be unable to respond in a timely manner, the Franchising Authority shall take such action as is necessary to meet the emergency at the expense of Grantee. The City shall bear the cost to the extent such request for relocation or disconnection is solely for aesthetic purposes.

Section 6. Construction and Operation

A. All installation and maintenance of electronic equipment shall be in accordance with the applicable sections of the current edition of the National Electric Safety Code and all State as well as all applicable City codes.

B. All working facilities, conditions, and procedures, used or occurring during construction and maintenance of the Cable System shall comply with the standards of the Occupational Safety and Health Administration.

C. Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner and in close coordination with public and private utilities serving the City following accepted construction procedures and practices and working through existing committees and organizations.

D. Any antenna structure used in the Cable System shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation. Grantee shall obtain a special use permit from the City prior to the installation of any such antenna structure.

E. Grantee will not intentionally interfere with television reception of Persons not served by Grantee, nor will the Cable System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the City. Specifically, Grantee shall not interfere, obstruct or hinder in any manner, the City's communications systems, water system, sewer system, fire department system, police department system, public works systems or court system.

F. Grantee shall not be required to make Cable Service available to residents of an M.D.U. project until a mutually acceptable agreement granting Grantee access to the M.D.U. has been executed and delivered by Grantee and the property owner.

G. Grantee will at all times fully comply with all City requests regarding its work within the Public Rights-of-Way.

Section 7. Customer Service

Grantee shall obtain and maintain sufficient telephone lines and staffing so as not to delay unreasonably the answering of any telephone call, and shall adjust its staffing, as necessary, with respect to special events which may reasonably be expected to increase call volume. In any event, Grantee shall comply at all times with all applicable cable customer service regulations as set forth in the Act, including but not limited to the customer service provisions set forth in 47 Code of Federal Regulations Parts 76.309, 76.1602 and 76.1603.

Section 8. Channel Capability

A. Grantee shall use reasonable efforts to provide a minimum of two hundred (200) channels. Grantee shall provide broad categories of services. Suggested broad categories of video programming are:

1. Educational programming;
2. News and information;
3. Sports programming;

4. General entertainment (including movies);
5. Children's programming;
6. Family programming;
7. Culture and performing arts;
8. Science/documentary;
9. Weather information;
10. Ethnic programming; and,
11. Governmental affairs.

Grantee shall carry the signals of local broadcast stations in the Salt Lake City Metropolitan area that have indicated to Grantee their "must carry" designation as well as broadcast stations that have executed "retransmission consent" agreements with Grantee in accordance with FCC regulations and federal law.

B. Upon request, with at least 180 days notice, by the City, Grantee shall make available one (1) channel to be used for educational and governmental cablecast programming. When first-run programming on the first educational and governmental access channel occupies fifty percent of the hours between 11:00 a.m. and 11 p.m., for any twelve consecutive weeks, the City may request the use of one additional channel for the same purpose. The additional channel must maintain programming twenty-five percent of the hours between 11:00 a.m. and 11:00 p.m. for twelve consecutive weeks. If this level of programming is not maintained, the channel will return to Grantee for its use. Grantee also reserves the right to program designated educational and governmental channels during the hours not used by the City or other governmental entities. If programming time is not used by City and is available for sharing, the channels may be shared with other municipalities receiving programming from the common head end receive site location. The City shall agree to indemnify, save and hold harmless Grantee from and against any liability resulting from the use of the aforementioned educational and governmental channels by the City, except for liability resulting from program time shared with other municipalities. Grantee shall not have to provide any channel capacity beyond that provided by any other Franchised cable provider in the City.

C. At any time during the term of this Franchise the City may require that Grantee prospectively provide a "Capital Contribution," during the remaining term of the Franchise, to be used specifically for educational and governmental access. The City shall give Grantee ninety (90) days written notice of such a requirement. The amount of the Capital Contribution payable by Grantee to the City shall not exceed ten cents per month, per Subscriber, to be remitted annually. The payment shall be due no later than forty-five (45) days after the end of the calendar year. All amounts paid as the Capital Contribution may be separately stated on Subscribers' bills as permitted in 47 C.F.R. 76.985. The Capital Contribution will be payable by Grantee to the City after; a) the approval of the City, if required, to the inclusion of the Capital Contribution on Subscribers' bill including any required approval pursuant to 47 C.F.R. 76.933; b) notice to Grantee's Subscribers of the inclusion; and c) the collection of the Capital Contribution by Grantee from its Subscribers. The "Capital Contributions" are not to be

considered in the calculation of Franchise Fees pursuant to this Franchise. Grantee shall never be required to pay a different amount than being collected from the incumbent cable provider for a capital contribution.

D. Grantee may make all PEG channels available on a mosaic display.

Section 9. Conduct of Operations

A. Grantee will render efficient Cable Service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time possible. Grantee will use reasonable efforts to assure that such interruptions will occur during periods of minimum system use.

B. Grantee shall comply with all Federal Communications Commission rules and regulations, both present and future.

Section 10. Indemnification

A. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death of, any person that may occur in the construction, operation or maintenance by Grantee of its Cable System.

B. Grantee shall indemnify, hold harmless and defend the City, its officers, agents and employees from and against and all claims, demands, suits, costs, liens, liabilities, injuries and damages of whatsoever kind resulting directly or indirectly from, or arising out of: 1) any acts or omissions of or by Grantee, its agents, representatives, officers, employees, or subcontractors in connection with Grantee's use of the Public Rights-of-Way within the City; or 2) Grantee's failure to inspect, discover, correct or otherwise address any defect, dangerous condition or other condition created by or resulting from Grantee's use of the Public Rights-of-Way within the City. Grantee agrees that its duty to defend and indemnify the City under this Franchise includes reasonable attorney's fees, litigation and court costs and expert witness fees.

C. Notwithstanding any provision hereof to the contrary, Grantee shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, suit, cost, lien, liability, injury or damage arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers, agents or employees.

Section 11. Insurance

11.1 General Insurance Requirements for all Policies.

A. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date before the effective date of this Franchise, and (ii) be maintained for a period of at least three (3) years following the end of the term of this Franchise or contain a comparable

“extended discovery” clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the City.

B. All policies of insurance shall be issued by insurance companies licensed to do business in the state of Utah and either:

- 1.A. Currently rated A- or better by A.M. Best Company; and
- 1.B. For construction contracts only, the insurer must also have an A.M. Best Company financial size category rating of not less than VII.

—OR—

2. Listed in the United States Treasury Department’s current Listing of Approved Sureties (Department Circular 570), as amended.

C. Grantee shall furnish evidence of insurance, acceptable to the City, verifying compliance with the insurance requirements herein prior to Grantee’s written acceptance of this Franchise. D. In the event any work is subcontracted, Grantee shall require its contractor, at no cost to the City, to secure and maintain all minimum insurance coverages required of Grantee hereunder.

D. Grantee's insurance policies shall be primary and non-contributory to any other coverage available to the City. The workers' compensation, general liability and auto liability policies shall be endorsed with a waiver of subrogation in favor of the City.

E. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, Grantee shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by the City, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to the City.

F. All required policies shall provide that coverage thereunder shall not be canceled or modified without providing (30) days prior written notice to the City.

G. In the event Grantee fails to maintain and keep in force any insurance policies as required herein City shall have the right at its sole discretion to obtain such coverage and charge Grantee for the costs of said insurance.

11.2 Required Insurance Policies. Grantee, at its own cost, shall secure and maintain during the term of this Franchise, including all renewal terms, the following minimum insurance coverage:

A. Workers’ compensation and employer’s liability insurance as required by the State of Utah, and employers liability coverage in the amount of \$1,000,000 per loss. Proof of workers' compensation coverage is required unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations and partnerships. In the event any work is subcontracted, Grantee shall require its contractor(s) similarly to provide workers’

compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

B. Commercial general liability insurance, on an occurrence form, with the City as an additional insured, in the minimum amount of \$2,000,000 per occurrence with a \$3,000,000 general policy aggregate and \$2,000,000 products completed operations policy aggregate. The policy shall protect the City, Grantee, and any contractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Grantee's operations under this Franchise, whether performed by Grantee itself, any contractor, or anyone directly or indirectly employed or engaged by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations. The policy shall be primary and not contributing to any other policy or coverage available to the City whether such coverage is primary, contributing or excess.

C. Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, in the minimum amount of \$1,000,000 per person, \$2,000,000 per accident, \$500,000 per occurrence for property damage, or a single combined limit of \$2,000,000.

Section 12. Unauthorized Connections or Modifications

A. It is unlawful for any Person to make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise with or to any segment of the Cable System for any purpose whatsoever, without the express consent of Grantee.

B. It is unlawful for any Person to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the Cable System for any purpose whatsoever.

C. Any Person convicted of a violation of this section will be subject to the maximum penalty allowed by Federal, State and local law. The City agrees to cooperate with Grantee in the prosecution of any such violations.

Section 13. Franchise Fee

A. Grantee will pay to the City quarterly, within sixty (60) days following the end of each quarter, an amount equal to five percent (5%) of Grantee's quarterly Gross Revenues ("Franchise Fee"). The Franchise Fee will be deemed to reimburse the City for the rights granted herein and/or all costs of regulation and administration of the Franchise.

B. Notwithstanding any provision to the contrary, Grantee shall, in addition to the Franchise Fee described above, pay the required charges, taxes and fees lawfully established in a code or ordinance properly adopted by the City. Grantee shall be entitled to pass such charges, taxes and fees directly to its subscribers in the City.

C. Grantee, upon request of the City, shall install and furnish, at its sole cost, a standard installation and one outlet of basic cable to those administrative buildings owned and

occupied by the City, provided that such City buildings are designated as Qualified Living Units and no other cable service provider is providing Cable Services at such location. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The City shall take reasonable precautions to prevent any use of Grantee's Cable System in a manner that results in any loss or damage to the Cable System. The City shall hold Grantee harmless from any and all liability for claims arising out of the provision and use of Cable Service required by this subsection.

Section 14. Rates

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) in accordance with applicable State and Federal law, and shall be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all subscribers receiving similar cable service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability. Nothing herein shall be construed to prohibit Grantee from:

A. The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns of one (1) year or less;

B. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;

C. The establishment of different and nondiscriminatory rates and charges and classes of service for commercial customers, as well as different nondiscriminatory monthly rates for classes of commercial customers as allowable by federal law and regulations; or

D. The establishment of different and nondiscriminatory rates and charges for residential Subscribers as allowable by federal law and regulations.

Section 15. Records and Reports

A. Copies of all petitions, applications and communications submitted by Grantee and directly related to Grantee's Franchise to the Federal Communications Commission, Securities and Exchange Commission or any other agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to this Franchise, shall be submitted to the City upon written request.

B. The City shall have the right, at its own expense, no more than one (1) time during any calendar year, and upon at least thirty (30) working days prior written notice, to inspect at Grantee's offices during normal business hours, all books and records directly related to this Franchise to ensure compliance with the terms of this Franchise. To the extent such information is protected by State or Federal law, the City will not disclose to the public or to

competitors of Grantee any commercial or financial information reviewed by the City pursuant to this Franchise. If any books or records of Grantee are not kept in a local office and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this ordinance, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

C. Throughout the term of the Franchise, Grantee shall provide the City with an annual report of its operations of the Cable System in the Service Area, including the number of Subscribers, the anticipated construction and maintenance of its facilities and its general plans to increase availability in the following year. Grantee shall not be required to disclose any protected or confidential information as part of this annual report. Grantee also agrees to meet with the City on an annual basis upon fifteen (15) days prior written request from the City. Matters to be discussed include, but are not limited to Customer service, System performance, technical issues and other matters related to Grantee's operation of the Cable System.

Section 16. Franchise Renewal

Any renewal of this Franchise shall be in accordance with the renewal provisions of the Cable Act as codified at the time of the renewal and any relevant provisions of the City Code, as amended.

Section 17. Transfer of Franchise

Grantee shall not transfer this Franchise to another party, person, or entity except to a company controlling, controlled by or under common control with Grantee, without complying with the provisions of the Cable Act.

Section 18. Termination; Cancellation

A. In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right, after thirty (30) days prior written notice to Grantee and after reasonable opportunity of Grantee to cure any alleged Franchise Violation, not to be less than 30 days, to terminate and cancel this Franchise and all rights and privileges of Grantee hereunder in the event that Grantee:

1. Willfully fails to reasonably carry out any provision of this Franchise or any rule, order, or determination of the City pursuant to this Franchise; or
2. Becomes insolvent, unable or unwilling to pay its debts, or is adjudicated bankrupt.

B. Such termination and cancellation shall be by resolution duly adopted after sixty (60) day notice to Grantee and shall in no way affect any of the City's rights under this Franchise or any provision of law.

Section 19. Force Majeure

With respect to any provision of this Franchise, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon Grantee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike, or other events, the occurrence of which was not reasonably foreseeable by Grantee and is beyond Grantee's reasonable control.

Section 20. Miscellaneous

A. The right is hereby reserved by the City to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations, as it shall find to be in the best interests of the City, so long as such actions do not materially affect the rights of Grantee hereunder.

B. If any section, subsection, sentence, clause, phrase or portion of the Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

C. City acknowledges that acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressed or implied, by Grantee of any constitutional or legal right which Grantee may have or may be subsequently determined to have, either by current or subsequent legislation or court decisions. The City acknowledges that Grantee hereby reserves its rights under applicable Federal and State constitutions and law.

D. This Franchise shall be governed by the laws of the State of Utah.

E. All notices or correspondence to be served upon the City or Grantee by the other party shall be in writing and delivered by first class mail, postage prepaid or by facsimile or by a national express mail service.

Notices or correspondence to the City shall be addressed as follows:

Millcreek
3932 South 500 East
Millcreek, UT 84107

With a copy to: John Brems
2798 West Matterhorn Drive
Taylorsville, UT 84129

Notices or correspondence to Grantee shall be addressed as follows:

Qwest Broadband Services, Inc. d/b/a CenturyLink
Attention Public Policy
1801 California Street, 10th Floor

Denver, CO 80202

With a copy to: CenturyLink
Attention: Public Policy
250 E. 200 S, 10th Floor
Salt Lake City, UT 84111

The City or Grantee may designate such other address or addresses from time to time by giving written notice to the other as set forth above.

PASSED AND APPROVED this ____ day of January, 2017.

MILLCREEK :

Jeff Silvestrini Mayor

ATTEST:

Leslie Van Frank, Acting City Recorder