



Sunset City Corporation

200 West 1300 North • Sunset City, Utah 84015 • 801-825-1628

CITY COUNCIL AGENDA REGULAR MEETING

PUBLIC NOTICE IS HEREBY GIVEN that the Sunset City Council will hold a regular meeting at 6:30 p.m. on Tuesday, September 20, 2022 at the Sunset City Office Building, 200 West 1300 North, Sunset, Utah. Any information or items for the Council's consideration must be furnished at least ten (10) working days prior to the scheduled meeting to give the needed time to study the request. Agenda shall be as follows:

REGULAR SESSION

- A. CALL TO ORDER & WELCOME**
- B. INVOCATION AND PLEDGE OF ALLEGIANCE** by Council Member Rigley
- C. APPROVAL OF MINUTES** – September 13, 2022
- D. PUBLIC COMMENTS**

- 1. Update from David Brown from Connex Fiber**
- 2. Consider Resolution 2022-22 Approving Addendum #3 for the Lofts at Falcon Ridge**
- 3. Discuss Renewal of the Comcast Franchise Agreement**
- 4. Mayor, Council and Department Head reports**
- 5. Adjourn Regular Session**

In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the Sunset City Offices, (801) 825-1628, at least three (3) working days prior to this meeting.

Posted and e-mailed to local newspaper – September 16, 2022



Nicole Supp, Recorder

Minutes of a regular meeting held September 13, 2022 at Sunset City Hall, 200 West 1300 North, Sunset, Utah; Mayor Pro-Tem Scott Wiggill presiding.

SPECIAL SESSION

Mayor and Council Present:

Scott Wiggill
Chad Bangerter
Nakisha Rigley
Nancy Smalling

Mayor Pro-Tem
Council Member
Council Member
Council Member

City Employees Present:

Nicole Supp
Jason Monroe

Recorder
Public Works Director

Excused:

D Howard Madsen
Beverly Macfarlane
Brett Jamison

Mayor
Council Member
Police Chief

Others Present:

Hope Thompson
Mark Clifford
Joe Leeflang

Sunset Resident
JAG Properties
Alvey Properties

The regular session was called to order at 6:32 p.m. by Mayor Pro-Tem Scott Wiggill.

Council Member Bangerter gave the invocation and led the Pledge of Allegiance.

Special Meeting:

Approval of Minutes: Council Member Bangerter made a motion to approve the meeting minutes for August 02, 2022 as presented and August 16, 2022 as presented. Council Member Smalling seconded the motion. The motion passed unanimously.

Approval of Vouchers: Council Member Bangerter made a motion to approve the voucher for LSI Contractors, LLC in the amount of \$57,679.25 for work completed at the Veterans Park. Council Member Rigley seconded the motion. The motion passed unanimously.

Public Comments: No public comments.

1. **Consider Resolution 2022-27 Approval of Development Agreement for Alvey Townhomes:** Joe Leeflang introduced himself as the person representing the Alvey Townhome development. He requested approval of the Development Agreement. Council Member Bangerter shared with Mr. Leeflang he would like him to maintain the property and keep it nice and clean. Council Member Smalling noted she lives near the property and in the past has seen it be overgrown and unkempt. She would like to see the maintenance of the

property to be managed as well. Mr. Leeftang assured Council he would be making improvements to the property. Council Member Bangerter clarified the underground work has already been completed. Mr. Leeftang concurred.

Mayor Pro-Tem Wiggill asked for a motion to approve Resolution 2022-27 approval of development agreement for Alvey Townhomes. Council Member Rigley made a motion to approve Resolution 2022-27 and Council Member Smalling seconded the motion. The motion passed unanimously with a roll call vote from Council Members Bangerter, Rigley and Smalling voting yes.

2. **Consider Allowing Stout Construction to place slats in North Fence on Sunset Townhome Property:** Mark Clifford remarked on item number two notifying Council the development has decided to do the 6' vinyl fence on the north side of the Sunset Townhome property and no longer is asking for a change to the site plan. Mr. Clifford advised there will be a fencing company out next week to complete the work. Council Member Bangerter asked since JAG will be putting up a fence next to the neighbor's fence who will be maintaining the land in between the two fences. Mr. Clifford agreed it was a valid question and will take into consideration on what should be done. Council Member Bangerter also raised the question about how the owners who's property comes up against theirs will feel having the fence up against their existing fence and suggested JAG speak with those property owners. Mr. Clifford asked if the City could provide the information on the owners. Treasurer/Office Manager Youngdell specified administration could provide names but Davis County would need to be contacted for additional information. Council Member Bangerter said the space in between the fences was his only concern and even suggested a concrete mow strip to prevent weeds from growing. He thanked Mr. Clifford for honoring the site plan and going with the 6' vinyl fence.
3. **Consider Resolution 2022-26 Approval of Development Agreement between JAG Properties and Sunset City for the Sunset Townhomes:** Mayor Pro-Tem and Director Monroe stated they have not reviewed the agreement. Recorder Supp notified them it was in the agenda packet. Director Monroe asked how the city attorney had already reviewed the agreement. Recorder Supp reported the development agreement has been in the process for several weeks. Director Monroe asked if it was directly sent to him and Recorder Supp said it was not directly sent to him but was in the agenda packet for review. Director Monroe stated he had no comments since he had not reviewed the agreement. Council took a few minutes to review the agreement. Council Member Bangerter asked Recorder Supp if the agreement was ready for approval. Recorder Supp agreed it was ready and the attorney has looked and approves of the agreement. Recorder Supp notified Council the agreement should have been done prior to the almost completion of the development; however, she could not find an agreement. She said the agreement has been a long process trying to complete, the attorney has said he would have like to see a more in depth agreement but considering the development is almost finished the agreement will suffice and be fine for the City. Council Member Rigley questioned the rocks required for the landscape. Mr. Clifford addressed the landscaping, saying the landscaper said the mulch would sluff off of the slope so he made the executive decision to go with the rocks. Mayor Pro-Tem Wiggill reminded Mr. Clifford why

mulch was suggested and appropriate for the townhomes landscaping. He voiced his concern over the children throwing the rocks and it becoming an issue. Mayor Pro-Tem Wiggill stated he was disappointed JAG did not come back before Council to discuss. He observed how nice the townhomes look even with the rocks but pointed out the significance of notifying Council of important changes. Council Member Bangerter informed Mr. Clifford if the rocks become a problem for the City, they will be notified it is an issue and needs to be resolved. He then asked how many units have been sold. Mr. Clifford said five units have been sold so far. Mayor Pro-Tem Wiggill commented on how nice the townhomes look. Council Member Smalling voiced her concern with the school aged children throwing the rocks but advised Mr. Clifford if there are to be any more changes JAG needs to come back before Council.

Mayor Pro-Tem Wiggill asked for a motion to approve Resolution 2022-26 approval of the development agreement between JAG Properties and Sunset City for the Sunset Townhomes. Council Member Bangerter made a motion to approve and Council Member Rigley seconded the motion. The motion passed unanimously with a roll call vote from Council Members Bangerter, Rigley and Smalling voting yes. Mayor Pro-Tem Wiggill advised Mr. Clifford he needs to let someone in the office know what they decided to do with the fence.

4. **Consider Resolution 2022-23 Adopting a General Service Contract between Rocky Mountain Power and Sunset City for Service at the Veterans Memorial Park:** Director Monroe notified Council the service contract is a generalized agreement anytime there is new service put in place. Mayor Pro-Tem Wiggill asked if power was already in place and Director Monroe agreed.

Mayor Pro-Tem Wiggill asked for a motion to approve Resolution 2022-23 adopting a general service contract between Rocky Mountain Power and Sunset City for service at the Veterans Memorial Park. Council Member Smalling made a motion to approve and Council Member Bangerter seconded the motion. The motion passed unanimously with a roll call vote from Council Members Bangerter, Rigley and Smalling voting yes.

5. **Consider Resolution 2022-24 Adopting a Cost Sharing Agreement between Davis and Weber Canal Company for Improvements Related to the 1300 N Project:** Director Monroe reported in 1954 the City agreed to put in piping and a bridge over the pre-existing canal. In this past agreement the City assumed all responsibility to replace, repair and maintain the pipes and bridge. In doing the 1300 North Project with Davis and Weber Canal Company they are going to the vault system so the pipes will be buried at the City's cost. Council Member Bangerter asked how much the cost sharing agreement is for. Director Monroe stated \$160,000.00. He explained their contractor will remove and put in our new waterline as well as build the road, sidewalk, curb and gutter. Council Member Bangerter remarked on how residents were upset with a \$13 increase a month on their taxes but the City gets hit with a \$160,000 hit and there is nothing to do but pay for the improvements because the agreement was signed before anyone in Council was born. Council Member Smalling mentioned going forward will the City be presented with a situation like this again. Director Monroe stated when the attorney reviewed the document he mentioned the Council looking

at those older past agreements and updating them. All Council Members agreed some of the City's past agreements should be looked at to be updated. Council Member Bangerter asked Council if they thought this resolution should be tabled until further notice. Director Monroe indicated the agreement is legal and it would be Council's decision if they want to table the resolution and look at a later time. Mayor Pro-Tem Wiggill expressed the Council may not know which agreements need to be looked at unless they are brought to their attention. He said he personally is open to agreeing to the resolution today and moving forward taking a harder look at updating agreements. All Council Members agreed.

Mayor Pro-Tem Wiggill asked for a motion to approve Resolution 2022-24 adopting a cost sharing agreement between Davis and Weber Canal Company for improvements related to the 1300 North Project. Council Member Bangerter made a motion to approve and Council Member Smalling seconded the motion. The motion passed unanimously with a roll call vote from Council Members Bangerter, Rigley and Smalling voting yes.

6. **Consider Resolution 2022-25 Adopting Match Agreement between Wasatch Front Regional Council for Assistance with Form-Based Code:** Council Member Bangerter asked Director Monroe his thoughts on the Form-Based Code. Director Monroe said he believes it is 100% needed for the City. He expressed he feels it makes the code more generalized and makes it harder for Developers to come in and want to do work because it makes things harder for them but feels it is necessary. Council Member Bangerter asked if the code would be tied to any other city or state. Director Monroe said no. He then asked who would be changing our code. Treasurer/Office Manager Youngdell indicated Wasatch Front Regional Council have technical writers who will be changing the code for us with help from the Planning Commission. The City is required to do a \$5,000.00 match. Mayor Pro-Tem Wiggill said he agrees it is important for our office staff to have working codes because they are so busy; it will be nice for them to be updated.

Mayor Pro-Tem Wiggill asked for a motion to approve Resolution 2022-25 adopting a match agreement between Wasatch Front Regional Council for assistance with Form-Based Code. Council Member Smalling made a motion to approve and Council Member Rigley seconded the motion. The motion passed unanimously with a roll call vote from Council Members Bangerter, Rigley and Smalling voting yes.

Council Member Bangerter asked for an update on the Veterans Memorial Park. Director Monroe said the monument rocks were delivered today. The flag poles were also delivered and put in the correct order by Council Member Smalling. In front of the poles will be a sidewalk, they will tie in the curb and gutter and then landscaping and the walking path will begin. Council Member Bangerter asked if the City will be opening up the back entrance once the asphalt is put in. Director Monroe said he will be closing it off indefinitely; access will be through the main entrance. Mayor Pro-Tem Wiggill asked what the footings outside were for. Director Monroe said they are for the dumpsters.

Treasurer/Office Manager Youngdell announced there is a blue grass jazz band playing at Central Park tomorrow at 7:30pm for anyone who was interested in going. She also mentioned the Fire District has set up their open house for October 3rd, 2022.

Council Member Smalling shared the Fire District just got a new fire truck and will be having a push ceremony where they push the truck into the station on Thursday at 5:30pm. On the Fire District's Facebook page they have announce it's a "baby girl" and they are looking for a name for it. Mayor Pro-Tem Wiggill reiterated the ceremony will take place on Thursday the 15th at 5:30pm at the station in West Point.

Council Member Rigley thanked everyone for their support and help with the Mental Health Awareness fair. She noted the City was able to donate \$73.00 to each of the sponsors. She thanked Director Monroe, Treasurer/Office Manager Youngdell and Recorder Supp for helping with the fair. Council Member Rigley conveyed the Youth Council is looking to have a Community Halloween Party on October 21st. They are hoping to have a Halloween movie, donuts and hot chocolate. Director Monroe notified Council if they choose to show a movie he has to get copy rights. Council Member Rigley asked how much it costs to get the rights. Director Monroe said it is around \$400.00 Council Member Rigley suggested music and maybe turning it into a fundraiser to support them going to the day at the legislature. Director Monroe suggested selling Swigg and Fizz cards for a fundraiser. Council Member Rigley described a community cookbook the Youth Council came up with. Where they would collect recipes from Sunset residents and make a cookbook to sell to the community. Mayor Pro-Tem Wiggill remarked on the Mental Health Awareness fair and gave kudos to Council Member Rigley for doing a great job.

Council Member Rigley made a motion to adjourn. Council Member Smalling seconded the motion. The motion passed unanimously.

The meeting adjourned at 7:24 p.m.

Approved – September 20, 2022

D Howard Madsen, Mayor

Nicole Supp, Recorder

RESOLUTION NO. 2022-22

A RESOLUTION APPROVING ADDENDUM #3 TO THE DEVELOPMENT AGREEMENT FOR THE LOFTS AT FALCON RIDGE

Whereas, Sunset City Corporation, a body Corporate and Politic of the state of Utah (hereinafter "Sunset") and Falcon Hill Development, LLC, a Utah Limited Liability Company (hereinafter "Falcon Hill") (collectively the "Parties") entered into a Development Agreement on or about the 19th day of September, 2019; and

Whereas, on or about the 1st day of October, 2019, the Parties executed the first addendum to the Development Agreement; and

Whereas, on or about the 13th day of January, 2022, the Parties executed the second addendum to the Development Agreement; and

Whereas, on or about the 3rd day of May, 2022, and on or about the 2nd day of August, 2022 the Sunset City Council met in regular sessions and discussed allowing changes to the development agreement upon meeting certain expectations.

Whereas, changes to the agreement includes: increasing the number of units mix/density, the Developer may develop the units as either apartments, or sell the units as condominiums, the Developer shall eliminate the need for shared parking between residential and commercial uses; and

Whereas, to provide the Parties more clarity as to a specific aspect of the development of the Lofts at Falcon Ridge, it has become necessary of the Parties to execute this third addendum to the Development Agreement.

Whereas, the exception for those amendments specifically and particularly noted in the Addendum #3, the remaining terms and provisions of the Development Agreement, including Addendum #1 and Addendum #2 will remain in full force and effect for the Lofts at Falcon Ridge Development.

Now, Therefore, be it resolved by the Sunset City Council that the attached Agreement be approved and that the Mayor and Recorder are hereby authorized and directed to execute and deliver the same.

Approved and adopted by the Sunset City Council this 20th day of September, 2022.

D Howard Madsen, Mayor

Attest:

Nicole Supp, Recorder

THE LOFTS AT FALCON RIDGE
DEVELOPMENT AGREEMENT
ADDENDUM #3

THIS ADDENDUM #3 TO THE DEVELOPMENT AGREEMENT (the "Addendum") is made this 6th day of September, 2022 (the "Effective Date"), by and between Falcon Hill Development, LLC, (hereinafter referred to as "**Falcon**"), whose address is 784 Parkway Drive, North Salt Lake, Utah 84054, and Sunset City Corporation, a body Corporate and Politic of the State of Utah, (hereafter referred to as "**Sunset**").

WHEREAS, Falcon and Sunset entered into a Development Agreement Addendum on or about the 19th day of September, 2019; and

WHEREAS, On or about the 1st day of October, 2019, Falcon and Sunset executed the first addendum to the Development Agreement; and

WHEREAS, On or about the 13th day of January, 2022, Falcon and Sunset executed the Development Agreement Addendum #2; and

WHEREAS, On or about the 3rd day of May, 2022, Sunset City Council met in regular session and agreed to allow changes to Falcon's unit mix/density and construct the units as apartments, subject to certain conditions, thus necessitating certain changes to the Development Agreement.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated into the operative provisions of the Agreement by Reference.

2. Recitals Paragraph D. Paragraph D of the Recitals portion of the Development Agreement shall be amended and restated in its entirety as follows: "Pursuant to the City's approval of the General Development Plan on 6th day of September 2022, the Plan consists of Building 1: 42 Residential Units and 6 Commercial Units; Building #2: 71 Residential and 6 Commercial Units; and Building #3: 71 Residential and 6 Commercial Units. A copy of the approved General Development Plan/Construction Drawings (as presently constituted) is attached hereto as **Exhibit "B."**

3. Paragraph 4.e. Paragraph 4.e. of the Development Agreement shall be amended and restated in its entirety as follows: "Covenants and Restrictions. The Developer may develop the units as either apartments (and hold the units out for rent), or sell the units as condominiums. In the event of apartments, CCR's need not be recorded against those units. In the event Developer decides to construct condominiums, Developer hereby agrees, that prior to the sale of any units, to record against the title to such Final Plat, condominium covenants, conditions and restrictions ("CC&Rs").

The Developer hereby agrees to use its best efforts to enforce the CC&Rs during all such periods during which the Developer has control of the CC&Rs. Prior to recording the CC&Rs, Developer shall submit the same to the City for approval, which approval shall not be unreasonably withheld or unreasonably delayed. In the event that approval has not been granted by the city within 45 days of submittal to the City, Developer shall have the right to record the draft CC&Rs as submitted. In the event of any occurrence on the property which affects or threatens the health, safety or welfare of the City or its residents, the City shall notify the Developer or the Homeowners Association (HOA), of such condition. If the condition is not remediated within ten (10) days or less if the condition constitutes a bona fide emergency, the City may enter upon the property and remediate the condition and assess the cost to the HOA."

4. Paragraph 4.k. Paragraph 4.k. of the Development Agreement shall be amended and restated in its entirety as follows: "Sales. Developer may at his option rent the Units as apartments or sell them as condominiums. In the event of sales, Developer's sales of owner-occupied condominium units shall conform to FHA requirements. In the event of market downturn, Developer shall be able to rent the condominium units until such time as Developer shall have determined, in his sole discretion, that the market has recovered sufficiently to resume selling the condominium units once again."

5. Paragraph 4.l. Paragraph 4.l. of the Development Agreement shall be amended and restated in its entirety as follows: "Parking & Shared Use. Developer shall eliminate the need for shared parking between the residential and commercial uses. Pursuant to paragraph 10-5F-4A of the BMU ordinance, Developer is entitled to count "available on-street parking" toward his total parking requirement."

6. No Other Changes. No other alteration, change or amendment to the Contract has been made, discussed or contemplated by this Addendum.

7. Ratification. Except for those amendments specifically and particularly noted herein, the remaining terms and provisions of the Development Agreement, including Addendum #1 and Addendum #2 remain in full force and effect.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date(s) indicated below.

SUNSET CITY:

a body Corporate and Politic of the State of Utah

ATTEST:

By its: _____,
Date: _____

Nicole Supp
City Recorder

FALCON HILL DEVELOPMENT, LLC:

Printed: _____
Date: _____

New (proposed)

**FRANCHISE AGREEMENT BETWEEN THE CITY OF SUNSET, UTAH AND
COMCAST OF WASATCH, INC.**

2022

This Franchise Agreement ("Franchise") is between the City of Sunset, Utah hereinafter referred to as the "Franchising Authority" and Comcast of Wasatch, Inc., hereinafter referred to as the "Grantee".

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

SECTION 1 - Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.
- B. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- C. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- D. "Broadcast Channels" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.
- E. "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.
- F. "Cable Act" means the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 USC 521 (Supp.)) as amended by the Cable Television Consumer Protection and

Competition Act of 1992, as further amended by the Telecommunications Act of 1996 and as further amended or superseded.

G. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

H. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

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

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

K. "FCC" means Federal Communications Commission or successor governmental entity thereto.

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

M. "Franchise" means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System within the Franchise Area.

N. "Franchising Authority" means the City of Sunset, within the State of Utah, or the lawful successor, transferee, or assignee thereof.

O. "Grantee" means Comcast of Wasatch, Inc. or the lawful successor, transferee, or assignee thereof.

P. "Gross Revenue" means any and all revenue in whatever form, from any source, directly received by the Grantee or Affiliate of the Grantee, according to generally accepted accounting principles (GAAP) consistently applied, that would constitute a Cable Operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Services in any manner that requires use of the Public Ways in the Service Area. Gross Revenues include, but are not limited to, basic, expanded basic, and pay service revenues, revenues from installation, rental of converters, the applicable percentage of the sale of local and regional advertising time, and any leased access revenues.

Gross Revenues do not include (i) revenue from sources excluded by law; (ii) revenue derived by Grantee from services provided to its Affiliates; (iii) late payment fees; (iv) charges other than those described above that are aggregated or bundled with amounts billed to Cable Service Subscribers such as charges for Broadband or Telephone services; (v) fees or taxes which are imposed directly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency including the FCC User Fee; (vi) revenue which cannot be collected by the Grantee and are identified as bad debt, provided, that if revenue previously representing bad debt is collected, this revenue shall then at time of collection be included in Gross Revenues for the collection period; (vii) refundable deposits, investment income, programming launch support payments, or advertising sales commissions; and (viii) Internet services to the extent that such service is not considered to be a Cable Service as defined by law.

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

R. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity but not the Franchising Authority.

S. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over wires, cables, conductors, ducts, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

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

U. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

V. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

W. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

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

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

SECTION 2 - Grant of Franchise

2.1 Grant.

The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

2.2 Other Ordinances.

The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

Each and every term, provision or condition herein is subject to the provisions of State law, federal law, and City ordinances and regulations enacted pursuant thereto. Notwithstanding the foregoing, the Franchising Authority may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

2.3 Competitive Equity.

A. Overview. 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 Franchising Authority; and changes in the scope and application of the traditional regulatory framework governing the provision of video series 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 the residents; promote local communications infrastructure investments and economic opportunities in the Franchising Authority; 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. Furthermore, if the Franchising Authority authorizes or permits a competitor to Grantee to operate within the Franchise Area, it shall do so on condition that such competitor or entity indemnify and hold harmless the Grantee for and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, conducting inspections and generally in creating infrastructure improvements for the other entity.

B. New Video Service Provider. Notwithstanding any other provision in 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 Franchising Authority, or (ii) otherwise begins to provide video services to subscribers in the Franchising Authority (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 Franchising Authority 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.

C. No Written Agreement between Franchising Authority and Third Party VSP. 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 VSP's, taking into account the terms and conditions under which other VSP's are allowed to provide video services to subscribers within the boundaries of the Franchising Authority.

D. Effect of this Section on the Overall Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the Franchising Authority under any provision under this Section 2.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

E. VSP Defined. 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 regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet Protocol based services.

2.4 Term.

The Franchise granted hereunder shall be for an initial term of Ten (10) years commencing on the effective date of the Franchise as set forth in subsection 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3 - Standards of Service

3.1 Conditions of Occupancy.

The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways.

If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, or Grantee's contractor, subcontractor or supplier, Grantee shall, within a reasonable time, replace and restore such Public Way at Grantee's expense to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation for the Franchising Authority.

Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall at its own expense protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services. Grantee shall not be required to pay for the relocation of Cable System facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, in cases where the original location of the facilities was approved by Franchising Authority through the permitting process.

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, if such action by the Franchising Authority would otherwise have been at Grantee's expense.

The Grantee shall in all cases have the right of abandonment of its property, and unless otherwise agreed to in writing, shall in the event of relocation or revocation of this Franchise Agreement, take all necessary steps to remove all aerial infrastructure associated with the Cable System within a reasonable time and shall restore any effected Public Ways to the

condition that existed at the time immediately preceding the removal of the property. Grantee shall be responsible for any and all costs and fees associated with the removal, disassembly, deconstruction, demolition, displacement, resale or relocation of such abandoned property and associated restoration costs. In the event that Grantee still desires to use any portion of the aerial Cable System for other non-video related services, then Grantee shall have the right to maintain those aerial lines subject to a mutually agreed upon agreement governing that future use. If public funds are available to any person using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, then the Franchising Authority shall make application for such funds on behalf of the Grantee.

3.4 Relocation for a Third Party.

The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery.

The Grantee shall have the authority to trim trees or other natural growth in the public way in order to access and maintain the Cable System and shall reasonably replace all trees and shrubs damaged as a result of any construction and/or maintenance of its system undertaken by Grantee. Nothing herein shall give the Grantee the right to trim trees not within Public Ways without the written permission of the Landowner or without the permission of the Franchising Authority upon showing of public need.

3.6 Safety Requirements.

Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 Aerial and Underground Construction.

Prior to construction, in each case, all applicable permits shall be applied for and granted and all fees shall be paid.

In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System

underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality.

In any region(s) of the Franchise Area where the transmission of distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall, consult with the City Engineer to determine whether the construction will be aerial or underground, and wherever possible, depending on the season, location, connection route and pole condition, construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, underground. If the reason for not putting the facilities underground is seasonal, subject to Franchising Authority waiver as weather and other conditions may require, the Grantee shall make reasonable efforts to move such facilities underground as weather permits, but no later than June 30 of the next summer. The Grantee shall have final and total discretion with regard to all decisions about whether any particular facility will be aerial or underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals or other related equipment.

The Franchising Authority recognizes that there are seasonable limitations to the Grantee's ability to comply with this Subsection during the winter months, therefore, this requirement is waived during any period in which the Grantee is unable to comply due to frozen ground or other weather conditions, but shall be subject to the June 30 requirement described above.

3.8 Access to Open Trenches.

The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench.

3.9 Extensions of the Cable System.

Nothing in this Agreement requires Grantee to build to all areas of the Franchising Authority. Grantee retains the discretion to determine the scope, location, and timing of the design and construction of its network, as well as the windows during which residential Subscribers may enroll for services, so long as such decisions are consistent with this Section. Grantee, at its sole discretion, may determine separately defined geographic areas within the Franchise Area where its System will be deployed, services will be offered, or facilities will be upgraded.

3.10 Subscriber Charges for Extensions of the Cable System.

Nothing in this Agreement requires Grantee to build to all areas of the City. Grantee retains the discretion to determine the scope, location, and timing of the design and construction of its network, as well as the windows during which residential Subscribers may enroll for

services, so long as such decisions are consistent with this Section. Grantee, at its sole discretion, may determine separately defined geographic areas within the Franchise Area where its System will be deployed, services will be offered, or facilities will be upgraded.

3.11 Technical Standards.

The Grantee is responsible for ensuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

3.12 Emergency Use.

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards, rules and regulations. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

3.13 Reimbursement of Costs.

If funds are available to any Person using the Public Way for the purpose of defraying the cost of any act contemplated in this Agreement, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed.

3.14 Customer Service Standards.

The Franchising Authority hereby adopts the customer service standards set forth in Part 76, § 76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

3.15 Fees and Charges to Customers

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

3.16 Customer Bills and Privacy

Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 3.15 above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(C) of the Cable Act (47 U.S.C. 542(c)). The Grantee shall also comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 4 - Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of annual Gross Revenue (as defined in subsection 1.1 of this Franchise) received by the Grantee from operation of the Cable System to provide Cable Service in the Franchise Area; provided however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the Franchise Area. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. Payments shall be made by Grantee to the Franchising Authority on a quarterly basis, within sixty (60) days after the close of the preceding calendar quarter. Any payments due under this Agreement which are not paid when due shall accrue interest at a rate of 1.5% per month, 18% per annum, until such payments are made. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

C. The Franchising Authority agrees that all amounts paid by the Grantee as Franchise Fees may be passed through to customers and identified as a separate line item on the bill in accordance with 47 U.S.C. 542 added to the price of Cable Services and collected from the Grantee's customers as "external costs" as such term is used in 47 C.F.R. 76.22. In addition, all amounts paid as Franchise Fees may be separately stated on customers' bills as permitted in 47 C.F.R. 76.985.

4.2 Rates and Charges.

The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626 (a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626 (b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and Franchising Authority are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and Franchising Authority shall continue to comply with all obligations and duties under the Franchise.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Conditions of Sale.

If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 Transfer of Franchise.

The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 5 - Oversight and Regulation by Franchising Authority

5.1 Books and Records

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

5.2 Franchise Fees Subject to Audit.

A. Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

B. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

C. Any "Finally Settled Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records. The Grantee agrees to reimburse the Franchising Authority for all reasonable costs of an audit, not to exceed \$5,000, if the audit discloses the Grantee has paid ninety-five percent (95%) or less of the compensation due the Franchising Authority for the period of such audit.

SECTION 6 - Insurance and Indemnification

6.1 Insurance Requirements.

The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon commencement of this Franchise Agreement, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

6.2 Indemnification.

The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its elected officials, officers, employees, agents and volunteers from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System and which arise out of the Grantee's acts or omissions pursuant to or related to this Franchise Agreement and to pay all reasonable costs incurred by the Franchising Authority in defense of such claims, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the

Franchising Authority within thirty (30) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority to the extent of any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.3 Bonds and Other Surety

Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of the Grantee are sufficient for compliance with the terms of the Franchise and the enforcement thereof. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. The Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that a bond or other surety is required in the future, the Franchising Authority agrees to give the Grantee at least 60 days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

6.4 Assumption of Risk

The Grantee undertakes and assumes for its officers, agents, employees, contractors and subcontractors, all risk of dangerous conditions, if any, on or about any Franchising Authority owned or controlled property, including Public Ways.

SECTION 7 - Enforcement and Termination of Franchise

7.1 Notice of Violation.

In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond.

The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default

and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing.

In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

7.4 Enforcement.

Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

7.5 Revocation.

Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination 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 revoke the Franchise.

At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority. In the event of revocation, the Grantee shall, in all cases, have the right of abandonment of its property.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 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, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

SECTION 8 - Miscellaneous Provisions

8.1 Actions of Parties.

In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 Entire Agreement.

This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

8.3 Notice.

Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

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

City of Sunset
Attn: Mayor
200 W 1300 N
Sunset, Utah 84015

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

Comcast of Wasatch, Inc.
Attn: Government Affairs
9602 South 300 West
Sandy UT 84070

with a copy to:

Comcast Corporation
Legal Department
1701 John F Kennedy Blvd.
Philadelphia PA 19103

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

8.4 Descriptive Headings.

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

8.5 Severability.

If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 Effective Date.

The effective date of this Franchise is the _____ day of _____ 202__, pursuant to the provisions of applicable law. This Franchise shall expire on the _____ day of _____ of 203__ unless extended by the mutual agreement of the parties.

IN WITNESS WHEREOF, the City has entered into this Franchise Agreement on the date first considered above.

City of Sunset, Utah

Signature: _____
D Howard Madsen, Mayor

ATTEST:

Nicole Supp
City Recorder

Accepted this ____ day of _____, 202_, subject to applicable federal, state and local law

Comcast of Wasatch, Inc.

Signature:

By: _____
Title: _____

old

FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Sunset, hereinafter referred to as "the Franchising Authority" and Comcast of Wasatch Inc., hereinafter referred to as "the Grantee."

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

SECTION 1 Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- B. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- C. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
- D. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- E. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

F. "FCC" means Federal Communications Commission, or successor governmental entity thereto.

G. "Franchising Authority" means the City of Sunset, or the lawful successor, transferee, or assignee thereof.

H. "Grantee" means Comcast of Wasatch, Inc., or the lawful successor, transferee, or assignee thereof.

I. "Gross Revenue" means any and all revenue in whatever form, from any source, directly received by the Grantee or Affiliate of the Grantee that would constitute a Cable Operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Services in any manner that requires use of the Public Ways in the Service Area. Gross Revenues include, but are not limited to, basic, expanded basic and pay service revenues, revenues from installation, and the rental of converters.

Gross Revenues do not include any fees or taxes which are imposed directly or indirectly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency. Gross Revenues do not include franchise fees, or revenue which cannot be collected by the Grantee and are identified as bad debt; provided, that if revenue previously representing bad debt is collected, this revenue shall be included in Gross Revenues for the collection period. Gross Revenues do not include revenues from the sale of local and regional advertising time, or any leased access revenues.

J. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

K. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances,

attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

L. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

M. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

N. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

SECTION 2

Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

2.2 Authority Over Non-Cable Services. To the extent allowed by law, the Franchising Authority shall retain the authority to regulate and receive compensation for Non-Cable Services. If the Grantee is allowed by law and chooses to provide Non-Cable Services, the Grantee and the Franchising Authority will negotiate the terms and fees in accordance with applicable law.

2.3 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

2.4 Level Playing Field. The Franchising Authority shall not authorize or permit any Person providing video programming services to enter into the Franchising Authority's Public Ways in any part of the Service Area on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise,

in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

2.5 **Term.** The Franchise granted hereunder shall be for an initial term of fifteen (15) years commencing on the effective date of the Franchise as set forth in subsection 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3 **Standards of Service**

3.1 **Conditions of Occupancy.** The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 **Restoration of Public Ways.** If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 **Relocation for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

3.4 **Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery. A Certified Arborist must do all trimming on behalf of the Grantee except in the case of an emergency. Grantee shall have the authority to trim trees upon and overhanging the streets and Public Ways so as to prevent the branches of such trees from coming into contact with the Cable System

3.6 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

3.8 Access to Open Trenches. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench.

3.9 Required Extensions of the Cable System. Whenever the Grantee receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least 12 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3.10 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals

the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 12. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 Cable Service to Public Buildings. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, library(ies) fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the 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 Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

3.12 Technical Standards. The Grantee is responsible for insuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

3.13 Emergency Use.

A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

B. The Franchising Authority shall permit only appropriately trained and authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

3.14 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the

3.16 Educational and Government (EG) Access Channel.

A. Grantee's Provision of Education and Government Access Channel. Upon request by the Franchising Authority, the Grantee shall make available one (1) channel to be used for educational and governmental cablecast programming. The Grantee also reserves the right to program the designated educational and government channel during the hours not used by the Franchising Authority or other governmental entities. If programming time is not used by Franchising Authority and is available for sharing, the channel may be shared with other municipalities receiving programming from the common head end receive sight location. The Franchising Authority shall agree to indemnify, save and hold harmless the Grantee from and against any liability resulting from use of the aforementioned educational and governmental channel by the Franchising Authority, except for liability resulting from program time shared with other municipalities.

B. Educational and Government Access Capital Contributions. At any time during the term of this Franchise the Franchising Authority may require that the Grantee prospectively provide a "Capital Contribution," paid annually during the remaining term of the Franchise, to be used specifically for educational and governmental access as provided for in Paragraph 3.15 A. ("Grantee's Provision of Educational and Government Access Channels"). The Franchising Authority shall give the Grantee ninety (90) days notice of such a requirement. The amount of the Capital Contribution payable by the Grantee to the Franchising Authority shall not exceed One Dollar and Twenty Cents (\$1.20) per year per primary connection. The Franchising Authority agrees that all amounts due the Franchising Authority by the Grantee as the Capital Contribution may be added to the price of cable services, prorated monthly, and collected from the Grantee's Subscribers as "external costs," as such term is used in 47 C.F.R. 76.922. In addition, 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 Franchising Authority after; a) the approval of the Franchising Authority, if required, to the inclusion of the Capital Contribution on Subscribers' bills 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 the Grantee from its Subscribers. The "Capital Contributions" are not to be considered in the calculation of Franchise Fees pursuant to this Franchise

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee of five percent (5 %) of annual Gross Revenue (as defined in subsection 1.1 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due quarterly and payable within sixty (60) days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

4.2 Rates and Charges. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 5

Books and Records

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

SECTION 6

Insurance and Indemnification

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority

for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

SECTION 7

Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

7.5 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising

Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination 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 revoke the Franchise.

At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 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, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

SECTION 8

Miscellaneous Provisions

8.1 **Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

8.3 **Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

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

City of Sunset
200 West 1300 North
Sunset UT 84015

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

Comcast
9602 South 300 West
Sandy UT 84070

with a copy to:

Comcast Corporation
1500 Market Street
Philadelphia PA 19102
Attn: Legal Department

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

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

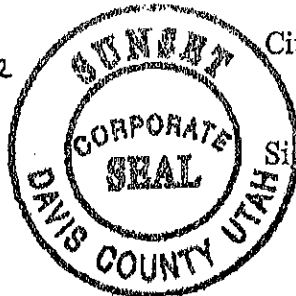
8.5 Severability. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 Effective Date. The effective date of this Franchise is the 28th day of February, 2004, pursuant to the provisions of applicable law. This Franchise shall expire on the 27th day of February, 2019 unless extended by the mutual agreement of the parties.

Considered and approved this 20th day of January, 2004.

ATTEST:

Susan R. Hale
City Recorder



City of Sunset

Signature: *Janice Galbraith*

Janice Galbraith
Mayor

Accepted this 18th day of February, 2004, subject to applicable federal, state and local law.

Comcast of Wasatch, Inc.

Signature: *Gary Waterfield*

Gary Waterfield
Area Vice President