

Ordinance No. 960613-A

AN ORDINANCE GRANTING TO TIME WARNER ENTERTAINMENT COMPANY L.P., A FRANCHISE FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, OPERATING AND USING A CABLE SYSTEM IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE CITY OF AUSTIN TO PROVIDE CABLE SERVICE; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF SUCH; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGULATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE PROVISION OF PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS AND AN INSTITUTIONAL NETWORK; PROVIDING FOR THE COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS FRANCHISE; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS OF TRANSFER; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE; PROVIDING FOR CONSEQUENCES OF FRANCHISE VIOLATIONS; PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Time Warner Entertainment Company, L.P. ("Grantee") has requested a franchise from the City to provide Cable Services, Information Services, and Other Services(defined below); and

WHEREAS, as a condition of receiving this franchise, Grantee has agreed to abide by the City's current and future policies, ordinances and regulations regarding infrastructure usage, and street-cuts and rights-of-way; and

WHEREAS, the City desires to ensure that the quality and level of services offered to its citizens by Grantee are consistent with the then current industry standards for Cable Systems prior to granting the six (6) year extension provided for hereunder; and

WHEREAS, the City desires to promote the economic development of its local music industry and intends to develop a channel devoted to Austin music; NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

SECTION 1. DEFINITIONS

For the purpose of this Franchise the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meaning set forth in the

Communications Act of 1934 as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, if not defined there, shall be given their common and ordinary meaning

1.1. “Affiliate” means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Grantee; (ii) each Person in which the Grantee has, directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, limited partner holding an interest of five percent (5%) or more, joint venturer or joint venture partner, of the Grantee; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common Control with, the Grantee; provided that “Affiliate” shall in no event mean any limited partner holding an interest of less than five percent (5%) of the Grantee, or any creditor of the Grantee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management, or common Control with, the Grantee.

1.2. “Allocation Percentage” means the number of Franchise Area Subscribers divided by the number of total System Subscribers.

1.3. “Cable Service” means (A) the one-way transmission to subscribers of video programming or information that Grantee makes available to all subscribers generally, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or information.

1.4. “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Rights-of-Way (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to subscribers.

1.5. “Channel” means a portion of the electromagnetic frequency spectrum which is capable of delivering both the audio and video portions of a television signal, At the time of enactment of this Franchise, such capability generally requires a 6 MHz capacity, but this is subject to changes in technology.

1.6. “City” means the City of Austin, a home-rule municipality incorporated under the laws of Texas.

1.7. “City Council” means the elected governing body of the City of Austin, Texas.

- 1.8. “City Requirements” means all laws, rules, regulations, policies and directives of general application of the City of Austin, in effect at present or to be adopted in the future by the City Council.
- 1.9. “Converter” means an electronic device which converts cable channel frequencies which are not normally receivable by some television sets to an appropriate channel which permits a Subscriber to view signals included in the service being delivered, according to a designated tuning or channel selector dial.
- 1.10. “Control” or “Controlling Interest” means actual working control in whatever manner exercised.
- 1.11. “Days” means calendar days unless otherwise specified.
- 1.12. “Director” means the Director of Financial and Administrative Services Department of the City, or any successor, or his or her designee.
- 1.13. “Direct Cost” means all expenses associated with a specific activity or function, excluding overhead.
- 1.14. “FCC” refers to the Federal Communications Commission.
- 1.15. “Franchise” means this contract between the City and Grantee.
- 1.16. “Franchise Area” means all of the geographic area within which the City of Austin owns or controls the Public Rights-of-Way, at present or in the future, located within the full-purpose annexed areas of the City of Austin.
- 1.17. “Grantee” means Time Warner Entertainment Company, L.P., a Delaware limited partnership authorized to do business in the State of Texas and doing business as Austin CableVision, or any successor.
- 1.18. “Gross Revenue” means any and all consideration of any kind or nature, including without limitation, cash, credits, property and in-kind contributions (services or goods) received by Grantee or Affiliates which is derived from (or by way of clarification and not expansion, attributable to or arising from) the operation of Grantee’s Cable System, provision of Information Services, and any lease or license of Grantee’s Transmission Network. It is the intent of the parties to include in the term Gross Revenue all consideration to Grantee and Affiliates to the fullest extent allowed by law. For purposes of this definition, the term “Affiliate” is limited to an entity acting as a provider of a service authorized by this Franchise.

Gross Revenue includes by way of illustration and not limitation, all fees charged Subscribers for any and all services provided by Grantee over the Cable System, provision of Information Services, and any lease or license of Grantee's Transmission Network, and all compensation received by Grantee or Affiliates from any source which is derived from the operation of the Cable System, such as compensation for billing services provided to third parties using the billing functions of the Cable System, sales or commissions for any product or services derived from the operation of the Cable System, sales or commissions which are paid to Grantee as compensation for promotion or exhibition of any products or services on the Cable System, and sales or commissions derived from the sale or rental of Cable System's Subscriber list.

Gross Revenue does not include any revenue not actually received, even if billed (e.g., bad debt).

Gross Revenue includes an allocated portion of all revenue derived by Grantee or Affiliates pursuant to regional or national compensation arrangements for any service or activity derived from the operation of a Cable System in the Franchise Area, e.g. advertising and sale or rental of Subscriber lists. The allocation shall be based on the number of subscribers in the Franchise Area divided by the total number of subscribers relevant to such regional or national arrangements.

Revenue of an Affiliate derived from the operation of the Cable System, provision of Information Services, and any lease or license of Grantee's Transmission Network shall be Gross Revenue to the extent the treatment of such revenue as revenue of Affiliate and not Grantee has the effect of avoiding the payment of franchise fees which would otherwise be paid to the City. In no event shall revenue of an Affiliate be Gross Revenue to the Grantee if such revenue is otherwise subject to franchise fees to be paid to the City.

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

1.20. "Institutional Network" means a communication network, which is described in Section 7, constructed and operated by Grantee and used for non-commercial purposes by entities designated by the City, under the terms of agreements entered into with the City.

1.21. "Normal Operating Conditions" is defined as being those service conditions which are within the control of the Grantee. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increase, regular peak or seasonal demand periods, and maintenance or upgrade of the System, except for unscheduled and/or emergency equipment replacement, testing required by the FCC or this Franchise and cutovers performed in connection with the Rebuild. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil

disturbances, power outages, telephone network outages, programmer originated interruption, and severe weather. The definition of Normal Operating Conditions is relevant in assessing compliance with telephone answering time, installations, service calls, and repair of Service Interruptions.

1.22. “Office of Cable & Regulatory Affairs” means the division of the Financial Services Department , its designee, or any successor thereto, that is responsible for administration and enforcement of this franchise.

1.23. “Person” means any corporation, partnership, proprietorship, individual or organization or any natural person, excluding any governmental entity.

1.24. “Public, Educational, Governmental Access Channel,” “Access Channel”, or “PEG Access Channel” means the Channel(s) on the Cable System which are reserved for non-commercial public, educational and governmental uses, in accordance with applicable law and with the rules and procedures established by the City.

1.25. “Public Rights-of-Way” means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of a Cable System and/or Transmission Network. No reference in this Franchise to a “Public Right-of-Way” shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of a Cable System and/or Transmission Network, and the Grantee shall be deemed to gain only those rights which the City has the right and power to give.

1.26. “Rebuild” means the upgrade process by which Grantee brings its Cable System into compliance with the standards set forth in Section 9 and Exhibit C hereof.

1.27. “Residential Dwelling Unit” means each home, house, building, or other structure that normally accommodates the living quarters of one (1) family, and each apartment, condominium, or co-operative unit that normally accommodates the living quarters of one (1) family in any multiple-unit building or complex of multiple-unit buildings; provided, however, that if the Grantee has not been granted the authority by an owner or association of owners to extend its facilities to individual apartments, condominiums, and co-operative units within the interior of such multiple-unit buildings or complex of multiple-unit buildings, then any such multiple-unit building or complex of multiple-unit buildings shall be considered a single Residential Dwelling Unit.

1.28. “Service Interruption” or “Outage” is defined as being a Cable System malfunction resulting in the loss of picture or sound on one or more channels affecting more than one

Subscriber. The definition of Service Interruption or Outage affects the timing of when the Grantee must respond to a Service problem.

1.29. "Standard Drop" means the cable up to a maximum length of one hundred twenty-five (125) feet that connects the antenna terminal on a Subscriber's radio or television set, computer terminal, or other terminal, to the nearest feeder cable of the Cable System.

1.30. "Standards" refers to Consumer Service Standards described in Exhibit A.

1.31. "Subscriber" means any person within the City who receives any Cable Service or Information Service delivered by the Cable System.

1.32. "Transmission Network" means the set of transmission paths, property, facilities and associated transmission, reception, control and switching equipment within the Public Rights-of-Way and used to provide services authorized by this Franchise.

SECTION 2. GRANT OF FRANCHISE

2.1. There is hereby granted, subject to Grantee's acceptance of the terms of this Franchise as provided herein and the City's prompt receipt of monetary compensation, to Time Warner Entertainment Company, L.P., hereinafter called "Grantee," for a term as described below, unless otherwise terminated as provided for herein, the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the Public Rights-of-way of the City, a Cable System and Transmission Network to provide Cable Service and Information Services; in addition, Grantee is authorized to lease capacity on its Cable System and its Transmission Network to other service providers, including Affiliates.

2.2. The term of this franchise shall commence on August 12, 1996 and shall extend for a period of nine years until August 12, 2005. Grantee may request an extension of the term of this franchise for an additional six years until August 12, 2011 provided that Grantee shall have complied with the conditions set forth in this Section and shall have notified the City of the request for the extension on or before December 12, 2002, as set forth below. The City may deny the extension of the term if Grantee has failed to comply with the conditions set forth in this Section. The City shall notify Grantee of its denial and the basis therefore on or before June 12, 2003.

Grantee shall have a right to obtain such extension only if Grantee is 1) in substantial compliance with the material terms and conditions of this franchise, including without limitation Sections 14 and 18; 2) Grantee provides written notice to the City by December 12, 2002 that it seeks the six (6) year extension (and agrees not to give formal renewal notice under 47 U.S.C. 546(a), before such time); and 3) Grantee's performance is consistent with current overall industry technical practices and range and level of services, existing and planned in the 100 largest U.S. cable

systems that have been renewed or entered into since December 12, 1997 (“Survey”), taking due consideration of the then current practices and trends in the industry and Grantee has the ability and agrees to perform consistently with the industry practice in the six year extension period by implementing improvements that have been demonstrated to be commercially feasible in the Survey. An expert or experts in the area of cable television shall be designated by the City Manager to conduct the Survey and to assess, in full consultation with Grantee, and advise the City whether Grantee meets these requirements of item number 3.

Notwithstanding the above designation by the City Manager, at Grantee’s request, a panel of experts in the cable industry shall recommend to the City whether Grantee complies with item number 3. The designation of such experts shall be agreed upon by both Grantee and the City Manager promptly upon Grantee’s request for an extension; if they are unable to do so, each party shall designate an expert within one (1) month after Grantee’s request and the two experts so designated shall designate a third, all of whom shall have the qualifications above stated. The reasonable costs of such experts shall be borne equally by the Grantee and the City. No one serving as an expert as designated in the immediately preceding paragraph shall be an agent or employee of Austin CableVision, or an affiliate of Austin CableVision or have been employed within the last year by a municipal franchise authority or a multiple systems operator or a telecommunication provider or the City of Austin.

In the event an improvement identified in the Survey is requested by the City, then the Grantee shall agree to make the improvement in order to obtain the extension. However, upon request Grantee shall be afforded the opportunity to demonstrate to the City that the improvements requested by the City as a condition for the extension are not commercially feasible (i.e. provides a reasonable expectation for a reasonable return on Grantee’s investment to make the improvements in the remainder of the original term, and the six year extension.)

In the event that an improvement identified in the Survey is requested by the City and is not commercially feasible, then the Grantee may obtain the extension without providing the improvement.

The City of Austin may waive the requirement of expert assistance and stipulate that Grantee has met the conditions.

2.3. Grantee shall not allow the use of its Cable System nor Transmission Network by any service provider (including cable television), unless the service provider warrants that it has obtained all the authorizations required by the City in order to provide such service. Grantee or Affiliates shall not install or construct facilities within Public Rights-of-Way to be used for services which are not authorized by this Franchise, or by applicable law or by another franchise.

2.4 Nothing in this Franchise shall authorize Grantee to attach any part of its Cable System to the City Electric Utility infrastructure or to use any City-owned conduits or facilities until

Grantee has entered into a separate agreement with the City, supported by independent consideration, for such rights of attachment or use.

2.5. Any other franchise granted by the City which allows the provision of Cable Service , Information Service, and capacity leases shall be on a competitively neutral basis, taking into account without limitation Grantee's obligations with respect to PEG Access and the Institutional Network. To the extent within the City's control, this provision shall apply to all other similarly situated multichannel video providers, including without limitation, open video system providers.

SECTION 3. SERVICE AVAILABILITY

3.1 Throughout the term of this Franchise, the Grantee covenants and agrees to construct, operate, maintain and upgrade the Cable System so as to make all Cable and Information Services distributed over the Cable System and/or Transmission Network available to any person within the Franchise Area in accordance with the terms, schedule, sequence and procedures established in this Franchise, except for any such service which is provided on a test basis and provided, however, that a new Cable Service or Information Service may be introduced on a phased basis in different areas of the City over a period no longer than two years, except as may be dependent on the Rebuild. In Services authorized by this Franchise on the Transmission Network , neither the Grantee nor any Affiliate shall unreasonably discriminate, nor permit unreasonable discrimination between or among any Persons, in the availability of Cable Services or Information Services or in the rates, terms and conditions thereof. Further, the Grantee and each Affiliated Person shall ensure that access to any Cable Service or Information Service is not denied to any group of potential Subscribers because of the income of the residents of the area in which such group resides or geographic location (subject to Section 3.2). It shall be the right of all Subscribers to receive continuously all available Cable Services and Information Services insofar as their financial and other obligations to the Grantee are honored. The Grantee shall continuously monitor the implementation of the commitments set forth in this Section.

3.2 Line Extension Policy. Grantee shall extend its cable system in the Franchise Area pursuant to the following requirements:

3.2.1 Grantee shall extend its cable system and make cable service available to every existing residential area within the Franchise Area whenever density of at least thirty (30) Residential Dwelling Units per cable mile (or any proportionate amount thereof measured over a shorter or longer distance) is realized, as measured from the existing facilities of Grantee's cable system in the Franchise Area. For purposes of this section, density per cable mile shall be computed by dividing the number of Residential Dwelling Units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the Residential Dwelling Units in such area in accordance with Grantee's system design parameters. The cable length shall be measured from the nearest point of access to the then-existing system, provided

that extension is technically feasible from that point of access, and located within the Public Rights-of-Way.
The total cable length shall exclude the drop cable necessary to serve individual Subscriber premises.

3.2.2 Grantee shall extend its cable system necessary for the provision of cable service and make cable service available to any business in the Franchise Area when the business subscriber agrees to pay for the labor costs incurred and materials used in making the extension.

SECTION 4. PROVISION OF ACCESS CHANNELS AND ACCESS SUPPORT

4.1 **Minimum Channel Capacity.** In addition to the current nine (9) activated Access Channels and commencing no later than ninety (90) days after the completion of each phase of the Rebuild, as described in Section 9, the Grantee shall make available to the City and activate upon request of the City Council, without charge, four (4) additional activated Access Channels in the areas where the Rebuild has been accomplished. Upon review of a request to the City, the City Council shall, in accordance with the provisions of Section 4.6, determine the number of Access Channels to be used and allocate to various entities the access to meet their requirements. The request by the institution or organization must provide sufficient plans for operating expenses, technical configuration, channel use, and public purpose. In the event that making available a channel for access requires displacement of other programming, the City shall give Grantee at least 90 days written notice.

4.2 **Additional PEG Channels.** If Grantee provides more than 40 channels on its Basic Service Tier and digitally transmits such service or if Grantee provides less than 40 channels on its Basic Service Tier and digitally transmits the most popular tier of programming service other than Basic Service Tier, then the City Council may require Grantee to provide up to 10% of such digitally transmitted channels up to a maximum of 10 digitally transmitted channels as PEG Access Channel purposes, including audio services with Grantee's consent (which shall not be unreasonably withheld). PEG programming shall be provided to Grantee in a digitized format as required of other digital programmers. The City Council shall require the provision of such channels consistent with the standards of Section 4.6. Grantee and the City agree that such Channels shall be included on the lowest digitally transmitted service tier, (not necessarily on the Basic Service Tier). Notwithstanding the above, in the event that these additional channels are distributed on a tier other than the Basic Service Tier (because the Basic Service Tier is not digitally transmitted), Grantee may cease providing such additional channels until such time as the Basic Service Tier is digitally transmitted if (i) it is determined by a final non-appealable order of a court of competent jurisdiction or by a non-appealed order of another court or a government agency that these additional channels must be provided on the Basic Service Tier or that the tier on which these channels are carried is an additional Basic Service Tier as a consequence of such carriage; or (ii) Grantee is subject to any sanction, penalty or other prejudice as a result of carrying these additional channels on such tier, then such channels need not be provided if in the ordinary course of business Grantee does not distribute any Basic Service Tier signal digitally.

4.3. **Allocation of PEG Channels.** The City Council may designate PEG Channels for use by public, educational or governmental access users or organizations at its sole discretion. The City may designate one Channel for several uses or users on a shared basis.

4.4. **Rights to PEG Programming.** Grantee shall have no rights to PEG Channel Programming by virtue of cablecasting or distributing such programming over its Cable System, except for Grantee's right to transmit such programming to all the Subscribers receiving a signal from the Cable System headend serving the Austin Franchise Area. All rights to programming content and intellectual property of any type transmitted by Grantee shall remain the property of the owner, regardless of the individual or entity requesting transmission. No intellectual property transmitted over PEG Channels or bandwidth shall be retransmitted by Grantee or any Affiliates in whole or in part without the consent of its owner.

4.5. **Use of Public, Educational and Governmental Channels.** The PEG Access Channels shall be placed under the authority of the City for use related to governmental and educational purposes or individual expression. Access Channel use shall include sponsorships and underwriting as set forth in Exhibit E . No restrictions shall be placed on the use of these Channels for a public purpose of a governmental entity or curriculum requirement of an educational institution, except as provided in this Franchise. As provided by law, Grantee shall not exercise editorial control over programming of any Access Channel. At no time shall the Grantee interrupt at its headend or hub site the signal provided on any PEG Access Channel without the express consent of the City, except in circumstances beyond Grantee's control.

In the event it becomes both technologically and economically feasible to provide over the same Channel video, audio, and/or data signals, Grantee will meet and discuss with the City those alternative uses for the PEG Channels.

4.6. For the purposes of this Section, the following shall apply:

An Educational or Government Access Channel shall be considered to be minimally utilized when fifty percent (50%) of the eighteen (18) available cablecast hours per day are programmed, of which at least twenty percent (20%) is for non-repeat programming. An Educational or Government Access Channel shall be considered to be fully utilized when eighty percent (80%) of the eighteen (18) available cablecast hours are programmed (of which at least fifty percent (50%) is for non-repeat programming). The calculation of the minimum and maximum described shall be measured in each one-week period averaged over one (1) calendar year. The available cablecast hours for purposes of this paragraph do not include the hours between midnight and 6:00 a.m.

A Public Access Channel shall be considered to be minimally utilized when twenty-five percent (25%) of the programming is non-repeat programming (over 24 hours). A Public Access Channel shall be considered to be fully utilized when eighty percent (80%) of the

programming is for non-repeat programming (over 24 hours). The calculation of the minimum and maximum described shall be measured in each one-week period averaged over one (1) calendar year.

Provided that all the access channels have not been designated, when an access Channel is fully utilized the PEG manager may begin the process of identifying future needs for the next 12 month period to seek an additional channel. The needs assessment will identify future programming requirements. Should the assessment results show that full utilization will be exceeded, the manager may formally request an additional channel. Initial request by an entity will be based on the ability to meet the minimum utilization standard within six months. An evaluation will be made of all existing channel utilization by each of the same type managers and the feasibility to enter into an agreement to share channel space with the same type manager. If existing channel space is not available or an agreement to share a Channel can not be reached, the manager may formally request the City to designate an additional Channel for Access, up to the maximum number of PEG Channels set in Section 4.1 or 4.2 as applicable.

4.7. **Access Resources.** The Grantee shall provide technical assistance necessary to transmit access programming on the Access Channels as directed by the City, as applicable, on an as-needed basis. In no event, however, shall this obligation include assistance with the production of programming.

4.8. **Grantee Contributions for PEG Access.** Grantee shall provide funds for production facilities and equipment for PEG Access in an amount up to \$1.5 million in the period January 1, 1997 through August 12, 2005 and up to \$500,000 in the period August 13, 2005 to August 12, 2011. The City may increase or decrease the amounts of support provided by the Grantee under this paragraph and Section 7.3 and reallocate such amounts, provided that in no event shall Grantee's combined obligations thereunder exceed \$3 million from the period January 1, 1997 through August 12, 2005 and \$1 million in the period August 13, 2005 through August 12, 2011. All such facilities and equipment shall be for the benefit of the City and its residents and shall be subject to the sole control of the City, but Grantee may hold legal ownership title.

Grantee shall continue to provide playback services for Access Channels and shall provide all its equipment currently located at 1143 Northwestern Avenue, Austin, Texas, George Washington Carver Branch Library and 309 W. 2nd Street, Austin, Texas for PEG Access purposes and shall maintain the equipment, provided that any replacement of such equipment or repair of an item of equipment costing more than 25% of the purchase price of the item shall be credited against the PEG Access contribution required in this Section.

The Grantee also agrees to provide ongoing annual support grants, as provided in Exhibit B to this Franchise, for the operation of Public, Educational and Government Access.

The Grantee acknowledges that all contributions, grants, services, equipment, facilities, support, resources, and other activities to be paid for or supplied by the Grantee pursuant to or in connection with its performance under this Section and Exhibit B to this Franchise are for the benefit of all Subscribers and the public. For purposes of this Franchise the Grantee agrees that such contributions, services, equipment, facilities, support, resources, and other things of value are not deemed to be (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by the Grantee pursuant to Section 14 hereof, or (ii) part of the compensation to be paid to the City by the Grantee pursuant to Section 14. The City shall provide Grantee by August of each year the amount to be expended by Grantee in the following calendar year for expenditures under this Section and Section 7.

4.9. If Grantee provides interactive analog or digital services in connection with other video services, including, if practicable, capability which will allow for the selection of programs on a daily basis, or on a program basis or for other periods shorter than a day, Grantee shall, at the City's request, cooperate in a six month trial project to provide comparable interactive services in connection with the programming on one PEG channel (selected by the City). The terms and conditions (including financial arrangements) of this project shall be comparable to those with other programmers and/or subscribers for the provision of such interactive services in connection with other programming services and shall be consistent with applicable law. Any capital costs in connection therewith may be credited against the funds provided in Subsection 4.8, at Grantee's discretion, with reasonable documentation to be furnished to the City on such expenditures. At the conclusion of the trial project, the City and Grantee shall evaluate whether such project shall continue, giving due consideration to subscriber acceptance of such services and provided, however, the Grantee shall have no obligation to continue the provision of these interactive services if they are not profitable or if they adversely affect the technical operations of the system. Such trial projects shall not be more frequent than once every twenty-four (24) months.

4.10. **Interconnection.** For the purpose of making PEG Channels available, Grantee's Cable System shall be capable of being interconnected with other Cable Systems throughout the City, and actual interconnection shall be implemented upon request of the City Council provided that 1) interconnection is technically feasible; 2) Grantee and the other operator agree upon reasonable interconnection arrangements, including an allocation of the costs of interconnection between Grantee and such other operator that is reasonable in light of the relative benefits and burdens, including consideration of support (capital and operational) provided for PEG Access purposes, including equipment in use for PEG Access purposes at the time of interconnection. Interconnection with multi-channel video providers who are not cable systems shall not be required unless the building where a multi-channel video provider requesting interconnection is in compliance with an open access ordinance to be enacted by the City.

4.11. **Demographics Research.** The Grantee shall promptly provide to the City copies of any viewership and/or demographics information it obtains concerning Access Channels and results and analyses of that portion of any Subscriber surveys conducted by or at the request of the Grantee which deal with programming on Access Channels, provided, however, that with respect

to any such ratings and results and analyses , the Grantee shall redact any personally identifiable information and information concerning other programming services prior to providing such information to the City. The information provided under this subsection shall be subject to the provisions of Section 16.9

4.12. **Grant of Additional Cable Franchises.** In the event that another franchise to offer cable service within the Franchise area is granted by the City of Austin, Grantee's financial obligations under this Section and the grants set forth in Exhibit B shall be borne in part by such other franchise-holder, so that neither franchise holder is competitively advantaged or disadvantaged. To the extent within the City's control, this provision shall apply to all other similarly situated multichannel video providers including without limitation open video system providers.

SECTION 5. SERVICE TO COMMUNITY FACILITIES

5.1. **Public Primary and Secondary Schools.** If requested to do so by the school authorities, Grantee shall provide during the life of this Franchise each primary and secondary public school located in the Franchise area, and within one cable mile of the Cable System one (1) free cable television service outlet at the most popular service level. Each free outlet shall include a free Converter, if necessary, and maintenance thereof by Grantee. The hardware and the installation thereof for an internal video distribution system requested by primary and secondary public school authorities shall be provided at Grantee's cost. In addition, Grantee will continue to provide the existing free outlets and equipment (as set forth in Exhibit F).

Grantee will, at the school's request, provide an appropriate interface to any internal video distribution system in the school, so long as the school insures that such internal system complies with the FCC's signal leakage and signal quality standards and does not interfere with or adversely affect the system, including the upstream capacity. There will be no charge for cable service on any additional outlets in the school except for a pass through of any charge imposed on Grantee by a program supplier, and Grantee may impose a charge for equipment for additional outlets.

Grantee will provide each connected school with a free connection to a Time Warner on-line service for personal computers to the extent it is available on Grantee's Cable System and Transmission Network. Upon request each connected school will receive one free modem and free access to the Time Warner on-line service for use during the school year. Additional modems will be made available, upon request, at cost. Free access to the Time Warner on-line service will be provided through each such modem for use during the school year. In addition, the Grantee will sponsor a workshop to educate teachers about the Time Warner on-line service and to provide them with an opportunity for hands-on training.

5.2. **Public Institutions of Higher Education.** If requested to do so by the public institutions of higher education authorities, Grantee shall provide during the life of this Franchise, each

campus of a public institution of higher education located within the City of Austin and located within two hundred (200) feet of Grantee's plant one (1) free cable television service outlet at the most popular service level. Each free outlet shall include if necessary a free Converter and maintenance thereof by Grantee. In addition, Grantee will continue to provide the existing free outlets and equipment (as set forth in Exhibit F).

5.3. **City Facilities.** Upon the request of City authorities Grantee shall provide during the life of this Franchise each municipal facility owned or operated by the City and located within the City of Austin and located within two hundred (200) feet of Grantee's plant one (1) free cable television service outlet at the most popular service level. Each free outlet shall include if necessary a free Converter and maintenance thereof by Grantee. All additional cable television hardware and the installation thereof requested by City shall be provided at Grantee's Direct cost. In addition, Grantee will continue to provide the existing free outlets and equipment (as set forth in Exhibit F).

Grantee will, at the City's request, provide an appropriate interface to any internal video distribution system in the City building, so long as the City insures that such internal system complies with the FCC's signal leakage and signal quality standards and does not interfere with or adversely affect the system, including the upstream capacity. There will be no charge for cable service on any additional outlets in the City facilities except for a pass through of any charge imposed on Grantee by a program supplier, and Grantee may impose a charge for equipment for additional outlets.

5.4. **County Facilities.** Upon the request of County authorities Grantee shall provide during the life of this Franchise each County facility owned or operated by the County and located within the City and located within two hundred (200) feet of Grantee's plant one (1) free cable television service outlet at the most popular service level. Each free outlet shall include if necessary a free Converter and maintenance thereof by Grantee. In addition, Grantee will continue to provide the existing free outlets and equipment (as set forth in Exhibit F).

SECTION 6. COMMUNITY PROGRAMMING NEEDS

6.1. In addition to the service requirements in this Franchise, Grantee agrees to provide programming responsive to the Austin community's needs and interest for Spanish language programming.

6.2. This programming shall consist of at least two (2) Spanish language channels.

6.3. The parties expressly agree that the programming described in paragraphs 6.2 and 6.5 represent broad categories of video programming within the meaning of 47 U.S.C. 544(b) (2) (B).

6.4. Grantee shall retransmit all closed-captioned signals made available by programmers in conjunction with programming in its line-up and which are provided in order to facilitate viewing by handicapped persons. Grantee shall maintain the necessary head-end equipment to make SAP features available to Subscribers. Grantee's obligations under this subsection do not extend to providing customer premises equipment.

6.5. Grantee believes there is significant interest on the part of its customers in locally based music. Grantee intends to make available one full-time channel for the exhibition of programming concerning Austin music. Grantee intends to include in its program offering, a channel dedicated to local music throughout the full term of the Franchise, provided quality programming is available and customer interest continues.

6.5.1. Grantee does not intend to undertake any obligation to produce such programming itself, but rather the administration of this channel shall be performed by the City or its designee. Nothing herein shall prevent Grantee, the City, or the channel's programmer from selling commercial advertising time on this channel as agreed by the parties.

6.5.2. During the period that Grantee provides such channel, the maximum number of PEG Access Channels shall be reduced by one.

6.5.3. Notwithstanding any other provision in this Franchise, the Grantee agrees that the programming for this Channel may be transmitted over the Institutional Network to enable distribution to Cable System Subscribers, and all equipment provided for PEG Access may be used for the production of programming pursuant to Subsection 6.5.

SECTION 7. PROVISION OF INSTITUTIONAL NETWORK

7.1. Current System. The Institutional Network presently consists of approximately 257 miles of 400 MHz broadband coaxial cable mid-split two-way plant, switching, routing equipment, monitoring equipment, network management equipment, and user drops. Grantee shall provide to the City the Institutional Network including maintenance, operation, monitoring and provisioning at Grantee's Direct Cost.

7.2. Grantee Capital Obligations. Grantee shall provide the City a design for upgrading the Institutional Network within sixty (60) days of the effective date of this Franchise. The City will review, negotiate any changes and approve the design within thirty days of delivery. Grantee shall commence the INet upgrade in conjunction with the Rebuild. Grantee shall provide the City with quarterly construction updates indicating work completed, planned construction for next quarter, and projected time-line for project completion. The Institutional Network upgrade, shall be completed within forty months of the effective date of this agreement.

7.2.1. Upon request of the INet/XNet Authority and approval by the City Council, Grantee shall provide up to fifty (50) miles of extensions to the Institutional Network.

This mileage shall be in addition to the upgrading of the present 257 mile Institutional Network. Any extensions in excess of the fifty (50) miles provided by this Franchise shall be paid for by the user, however overall system mileage shall not exceed 325 miles during the term of this agreement. Grantee shall reconfigure and/or replace with optical fiber all amplifier cascades sufficient to attain a carrier to noise ratio of 46 dB and all applicable FCC standards.

7.2.2. Grantee shall upgrade the INet system to provide benchmark reliability of 99.5% and benchmark accuracy of 10^{-6} bit error rate for data signals, excluding any external factors such as end user equipment. Grantee shall not be subject to any penalty or sanction due to failure to meet the bit-error rate standard, provided that Grantee is meeting all other INet technical performance standards and is working in good faith with the City to meet the bit-error rate standard.

7.2.3. Grantee shall take appropriate measures to ensure that video signals arriving at the switching point (Master Control) for insertion into distribution channels meet all FCC standards and maintain a minimum of 46 dB carrier-to-noise ratio, excluding any external factors such as end-user equipment. Grantee shall not be subject to any penalty or sanction due to failure to meet the carrier-to-noise standard, provided that Grantee is meeting all other INet technical performance standards and is working in good faith with the City to meet the carrier-to-noise standard.

7.2.4. Grantee shall install monitoring and testing equipment on the INet sites so that Grantee can electronically detect and isolate network malfunctions. Grantee shall consult with the City to explore feasibility of providing remote read-only access to network management equipment so as to allow users to isolate network problems from user equipment problems.

7.3. Grantee Contributions for INet. Grantee shall expend funds to provide:

7.3.1. The upgrade of the INet as specified above over the period of 40 months commencing with the adoption of this Franchise;

7.3.2. User drops upon request of the INet/XNet Authority and approval by the City Council;

7.3.3. All other requirements of this Section.

Grantee's expenditures under this Section 7 shall not exceed \$1.5 million in the period January 1, 1997 through August 12, 2005 and \$500,000 in the period August 13, 2005 through August 12, 2011. The City may increase or decrease the amounts of support provided by the Grantee under this paragraph and Section 4.8 and reallocate such amounts, provided that in no event shall

Grantee's combined obligations thereunder exceed \$3 million in the period January 1, 1997 through August 12, 2005 and \$1 million in the period August 13, 2005 through August 12, 2011.

Grantee shall provide a written report to the City every quarter as to the INet upgrade and expenditures.

7.4. **Maintenance.** Grantee shall provide demand maintenance twenty-four hours a day seven days a week and shall maintain the network to operate at or above FCC standards at all times. Grantee may charge the City a fee for use of the Inet ("Maintenance Fee"). The amount of the fee shall be limited to Grantee's Direct Cost to maintain and operate the Inet and shall not exceed \$250,000 annually which may be adjusted no more frequently than every twelve months indexed to the Austin Regional Annual Consumer Price Index ("CPI").

In the event there are Direct Cost increases appreciably above the CPI, which result in the overall Direct Cost to be appreciably above the Maintenance Fee, the Grantee may request that the City grant an adjustment to the Maintenance Fee, due to such increases in Direct Cost which shall not be unreasonably denied. Such an adjustment in accordance with this paragraph may not be requested more frequently than every 24 months.

The fee to maintain the INet shall be paid as allocated by the City.

Grantee shall submit to the City an annual estimate of the Direct Cost for operation and maintenance for the next calendar year on March 1st of each year. Before January 31st of each year, Grantee shall submit documentation of the preceding year's actual Direct Cost. The documentation submitted will be subject to audit upon request by the City. The City will reimburse Grantee for its Direct Cost estimated for each calendar year, on a quarterly basis; such payments coinciding with the schedule outlined in Section 14 herein. The difference between amounts paid and the actual Direct Cost shall be paid or credited in the subsequent calendar year. The initial payment year shall be 1998.

Under normal operating conditions, Grantee shall respond to all outage reports within two hours and make necessary repairs within four hours of notification Monday through Friday, 6 a.m. to 10 p.m. Grantee shall provide a four hour response time and six hour repair time Monday through Friday, 10 p.m. through 6 a.m. and Saturday and Sunday. Under normal operating conditions, Grantee shall respond to degradation reports within twenty four hours. Grantee shall provide stand-by powering capable of four hours of operation in the event of failure of the power grid. Grantee shall operate the network to provide at least 99.5% reliability. For the purposes of this section, reliability means the ratio of the number of hours per year that the network is functioning and available to users divided by the total number of hours in a year, computed for each user location.

7.5. **Interconnection.** Grantee shall provide a direct fiber connection between Grantee's headend and the Greater Austin Area Telecommunications Network (GAATN) network control center in order to provide for GAATN video feeds or data that need to be routed to the subscriber PEG access channels. The capital cost of providing interconnection shall be counted against the capital amount set forth in Section 7.3.

7.6. Grantee shall continue to own and maintain the Institutional Network. The Institutional Network shall be for the use of the City as set forth herein and no portion thereof shall be used by any other person at any time, whether for payment or not. The Institutional Network shall be used only for non-commercial educational and governmental purposes and for Public Access Channels, subject to Sections 7.6 and 6.5. The Institutional Network shall not be extended to any location except as permitted by this Agreement and may not be used to transmit or receive any communication (in whatever form, whether video, audio, data, voice or otherwise) destined to or originating from any other switched network, including without limitation the facilities of any local or long-distance telephone company, except for programming for use on the PEG channels. Any use of the Institutional Network other than as permitted herein shall be on terms and conditions agreed to by Grantee and the City.

SECTION 8. CONSTRUCTION WORK REGULATION BY CITY AND UNDERGROUND CONDUIT USE BY GRANTEE

8.1. All work done by Grantee in connection with the construction, expansion, reconstruction, maintenance or repair of its facilities in the Public Rights-of-Way shall be subject to and governed by all City Requirements, and applicable federal and state rules and regulations. Grantee shall place certain facilities underground according to applicable City Requirements.

8.2. All excavations and other construction in the Public Rights-of-Way shall be performed in accordance with all applicable City Requirements, including the obligation to use trenchless technology whenever possible. Furthermore, all such construction shall be undertaken so as to minimize interference with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

8.3. Grantee may be required by the City to attach portions of its facilities to poles or duct trench space maintained by any other person or entity franchised by the City. Grantee shall not be required to attach its facilities to the poles or duct trench space of any other person or entity franchised by the City if it can be shown to the City's satisfaction that Grantee shall be subjected thereby to increased risks of interruption to its service or to increased liability for accidents, or unreasonably delay construction or availability of service, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice, or are not available to Grantee on reasonable terms, including without limitation a reasonable fee.

SECTION 9. REBUILD AND UPGRADE OF SYSTEM

9.1. The Grantee has submitted a construction schedule and specific construction sequencing plans and completion dates for each sequence of the Rebuild, "Upgrade Plan," attached hereto as Exhibit C. This Plan includes or will include as updated a separate map of the franchise area showing: (a) the location of the master headend, all subheadends/hubs, headend to hub interconnect network, fiber backbone; and (b) the proposed distribution of all principal trunk and distribution lines throughout the Cable System (including termination points of all lines). The Grantee must submit an updated construction schedule to the Director on a quarterly basis until the completion of the Rebuild. The Rebuild shall be completed on or before forty (40) months of the effective date provided herein, unless the schedule for completion is amended in accordance with the terms of this Franchise. The time set for completion of the upgrade is based on Grantee's past experience of the time required to obtain necessary permits or other permission from the City and/or other pole owners for the work required.

No less than thirty (30) days prior to completion of the Rebuild, the Grantee shall notify the Director that the Rebuild is substantially complete. The Director and the Grantee shall arrange for such inspections as shall enable the Director to ascertain whether the Rebuild has been completed as scheduled. The Director shall accept the completion of the Rebuild upon the Director's satisfaction that the obligations of the Grantee to complete the Rebuild have been fulfilled in all respects.

9.2. **Completion of Rebuild.** The Grantee agrees to fulfill its obligations pursuant to the Rebuild Plan . One hundred and twenty (120) days following completion of the Rebuild, the Grantee shall submit to the Director a certification that the Grantee is then in compliance with all obligations pursuant to the Upgrade Plan. Notice will be given to the Director of any material changes in such construction schedule, milestones or sequence, but no such changes shall adversely affect the operations or completion date of the Rebuild. Upon completion of the Rebuild, the Grantee shall submit to the City, in written and in computer form, "as built" maps for the entire System as upgraded.

Upon completion of the Rebuild, the Grantee shall be capable of providing the upgraded Cable Service to every potential subscriber in the Franchise Area except as provided in this Franchise. Upgraded Cable Services shall be made available to each Upgrade phase within 90 days of the Upgrade completion date shown in Exhibit C.

9.3. **General Requirement.** The Grantee agrees to comply with each of the terms set forth in Sections 8, 10 and 12 of this Franchise governing construction and technical requirements for the Cable System Rebuild, in addition to any other City Requirements or procedures reasonably specified by the Director and consistent with this Franchise.

9.4. **Quality.** All work involved in the construction, operation, maintenance, repair, upgrade, and removal of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the City or any

other agency or authority of competent jurisdiction that any part of the Cable System, including, without limitation, any means used to distribute signals over or within the Cable System, is harmful to the health or safety of any person, then the Grantee shall, at its own cost and expense, promptly correct all such conditions.

9.5. Technical Specifications of Cable System. The Grantee shall install all aerial and underground cables and wires in a manner consistent with City Requirements and in compliance with all applicable laws, ordinances, and safety Requirements including but not limited to the Federal Communications Commission, Federal Aviation Administration, National Electric Code, National Electric Safety Code, National Cable Television Association Standards of Good Engineering Practices, American Telephone & Telegraph Construction Procedures (Blue Book).

9.5.1. As provided in this Franchise, the Grantee shall comply with all applicable federal, state and City laws, rules, regulations, codes, and other requirements in connection with the construction of the Cable System.

9.5.2. The installation of all cables, wires, or other component parts of the Cable System in any structure shall be undertaken in a manner which does not interfere with the operation of any signal distribution system in said structure, including any conduit used in connection with such other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all Cable System cabling and wiring in any structure shall be accessible from the "tap side" in a public hallway, roof, basement, stairwell, outside wall or other public area in said structure.

9.5.3. The Grantee must comply with, and shall ensure that its subcontractors comply with the City Requirements. If the installation, construction or operation of the Cable System does not comply with such rules, regulations and standards, the Grantee must, at its sole cost take steps necessary to ensure compliance with such rules, regulations and standards.

SECTION 10. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT

10.1. The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work, and any attachment, restructuring or changes in aerial facilities that may be deemed necessary or proper by the City Manager in, across, along, over or under any public street, alley or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages not directly caused by the willful misconduct or negligence of the City; provided, however, nothing herein shall relieve any other person or entity, including any contractor, subcontractor, or agent from liability for damage to Grantee's Cable System.

10.2. In the event that, during the term of this Franchise, the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley or right-of-way, which contains any portion of Grantee's Cable System, any conveyance of land contained in such closed or abandoned public street, alley, or right-of-way shall be subject to the rights herein granted.

10.3. During the term of this agreement, Grantee shall be liable for the acts or omissions of any entity used by Grantee (including an Affiliate) when such entity is involved directly or indirectly in the construction and installation of Grantee's Cable System to the same extent as if the acts or omissions of such entity were the acts or omissions of Grantee.

10.4. Relocation or Removal of Facilities: Within thirty (30) days following written notice from the City, the Grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any of its Cable System or other of its facilities that are within the Public Rights-of-Ways whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

10.4.1. The construction, repair, maintenance or installation of any City or other public improvement in or upon the Public Rights-of-Way.

10.4.2. The operations of the City or other governmental entity in or upon the Public Rights-of-Way.

SECTION 11. COMPLIANCE WITH CITY CHARTER

Grantee recognizes, accepts and agrees that the terms, conditions and provisions of this Franchise are subject to the applicable provisions of the Austin City Charter. Any request by Grantee for a modification of this Franchise shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

SECTION 12. CONSTRUCTION, MAINTENANCE, EXPANSION, RECONSTRUCTION, AND EXCAVATION

1.2.1 In furtherance of the public interest in safety, health and public welfare and to facilitate the safe management of Public Rights-of-Way, the construction, expansion, reconstruction, excavation, use, maintenance and operation of Grantee's Cable System and property shall be subject to all generally applicable City Requirements as determined by the City Manager, or designee. In addition to any other City Requirements, forty-five (45) days prior to the commencement of construction which involves any alteration to the surface or beneath the surface of the Public Rights-of-Way, to the extent generally required, Grantee shall provide the Public Works Director (or such other officials as the City may designate from time to time) with construction plans and maps showing the routing of any new construction and construction plans.

Grantee shall not commence construction until the plans and drawings have been approved in writing by the Public Works Director. Such approval shall not be unreasonably delayed. Grantee shall participate in the Austin Area Utility Coordination Council (“AAUCC”) meetings and coordinate all new construction with the AAUCC. Grantee’s facilities shall bear identification marks as may be established by the AAUCC, to the extent such facilities are installed after the AAUCC establishes such. Grantee shall not be held in non-compliance with any other requirement of this Franchise, including without limitation, the consumer service standards, due to its compliance with this Section.

12.2. Upon request by written notice of the City, Grantee shall remove and abate any facility that is declared an Emergency. Grantee and the City shall cooperate to the extent possible to assure continuity of service. If Grantee, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee.

12.3. Upon completion of initial or any subsequent construction work, Grantee shall promptly restore the Public Rights-of-Way in accordance with applicable City Requirements. Grantee may excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its facilities.

12.4. Except in an Emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved Public Right-of-Way without first complying with all applicable City Requirements.

12.5. Within one hundred twenty (120) days of completion of each segment of Grantee's facilities , Grantee shall supply the City with a complete set of "as built" drawings for that segment in a format to be prescribed by the Public Works Director. Grantee shall provide every six (6) months a complete set of “as-built” drawings incorporating any changes to Grantee’s facilities in the Public Rights-of-Way, in a format to be prescribed by the Public Works Director. Grantee will obtain the City's approval before any relocation of Grantee’s Facilities in the Public Rights-of-Way. Such approval shall not be unreasonably withheld. In addition, Grantee shall provide annually to the City a map of its facilities.

SECTION 13. CONSUMER SERVICE STANDARDS

The Grantee agrees to abide by the Consumer Service Standards attached hereto as Exhibit A.

SECTION 14. COMPENSATION TO THE CITY

14.1. **General Compensation.** For the reason that the Public Rights-of-Way to be used by Grantee in the provision of services within the boundaries of the Franchise Area are valuable public properties, acquired and maintained by the City at great expense to its taxpayers, and because the grant to Grantee of the use of said Public Rights-of-Way is a valuable property right

without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as General Compensation during each year of this Franchise, a franchise fee consisting of 5% (five percent) of Grantee's Gross Revenue derived within the Franchise Area. Any other franchise granted by the City to a similarly-situated service provider for services allowed herein shall be granted on a competitively neutral basis.

14.2. Calculation and Payment on a Quarterly Basis of Annual Franchise Fee. Grantee shall pay to the City for each quarter this franchise remains in effect an amount equal to five percent (5%) of Gross Revenue, referred to as the "Quarterly Payment." Grantee shall make this payment by wire transfer to the account designated by the Director by 12:01 P.M. on the forty-fifth (45) day following the close of the calendar quarter for which the Quarterly Payment is calculated, provided that necessary information in order to pay by wire transfer is or has been provided to Grantee at least ten (10) days prior to the payment date. Any necessary prorations shall be made.

14.3. To the extent consistent with federal law, the compensation set forth in this Section shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes, street cut permits, inspection fees and assessments for recovery of costs incurred by the City.

14.4. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment charge of the greater of (i) \$100 or (ii) simple interest at ten percent (10%) annual percentage rate of the total amount past due.

14.5. Payment of money under this Section shall not in any way limit or impair any of the privileges or rights of the City of Austin, whether under this Franchise or otherwise. No acceptance of any payment shall be construed as an accord that the amount paid is the correct amount, nor shall such acceptance be construed as a release of any claim which the City may have for additional sums payable under the provisions of this Section.

14.6. Grantee shall file annually with the Director no later than one hundred and twenty (120) days after the end of the Grantee's fiscal year, a statement of Gross Revenue for that year within the Franchise Area pursuant to this Franchise. This statement shall present, a detailed classification of Gross Revenue and uncollectible accounts for the year in a reasonable form prescribed by the Director after consultation with Grantee.

14.7. Any transaction or arrangement which has the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collection, non-reporting of Gross Revenue, collection of revenues by Affiliates, bartering, or any other means which evade the actual collection of revenues by Grantee for services delivered over the Cable System or businesses Grantee pursues derived from the operation of the Cable System is prohibited.

SECTION 15. CITY'S RIGHT TO PURCHASE GRANTEE'S CABLE SYSTEM

15.1. The City shall have the right to purchase Grantee's Cable System and Transmission Network (which for purposes of this Section means the Cable System which is owned by Grantee in the Public Rights-of-Way) at any time within five (5) years of the expiration of this franchise at a price to be determined in accordance with Subsection 15.2 below. For purposes of the calculations of this Section only, the term of this Franchise shall be considered fifteen (15) years. Notwithstanding the provisions of this Section, Grantee shall have the right to operate its Cable System and receive all revenue therefrom for the term of this Franchise as set forth in Section 2. The City may not sell the purchased Cable System within three (3) years of its purchase from Grantee.

15.2. In the event City elects to exercise its right to purchase Grantee's Cable System, City shall notify Grantee in writing at least ninety (90) days prior to the effective date of such purchase. Upon such written notification, Grantee and City shall each designate an appraiser experienced and knowledgeable in the valuation of similar networks. Each appraiser shall conduct an independent appraisal of the fair market value of Grantee's Cable System as a going concern as of the effective date of the purchase by the City, each party shall be responsible for the appraisal fees of its own appraisers. In conducting the appraisals, the appraisers shall consider, among other factors, the book value of the assets constituting Grantee's Cable System, the age and condition of the physical plant and equipment and the discounted future revenue stream considering the customer base, discounted in accord with general appraisal practice, for the remaining useful life of the assets constituting Grantee's Cable System.

If the two independent appraisals result in purchase prices which are within five percent (5%) of each other, the purchase price to be paid by the City shall be the average of the two appraisals. Nothing herein shall be in derogation of any rights Grantee may have under applicable law including, without limitation, 47 U.S.C. 547.

15.3. Upon exercise of this option at the end of the original term, and the payment of the above sum by the City and its service of official notice of such action upon Grantee, Grantee shall immediately transfer to the City title to all Cable System and property, real and personal, of Grantee's Cable System, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above, subject to Grantee's right to continue to operate and maintain its Cable System within the City for the duration of the term provided in Subsection 15.1 above; and Grantee shall execute and deliver such warranty deeds or other instruments of conveyance to City as shall be necessary for this purpose.

Grantee recognizes that the provisions of the City Charter require inclusion of this Section in the Franchise. Grantee, however, does not waive but reserves the right to challenge the Charter provision, this Section, or any application of this Section on any basis, including as a violation of the Constitution and laws of the United States and/or the State of Texas.

SECTION 16. ACCOUNTS, RECORDS, REPORTS AND INVESTIGATIONS

16.1. Promptly upon request (not later than ten (10) days, if not reasonably available sooner), Grantee shall provide the City information as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Grantee's Cable System (and any other facilities) in the Public Rights-of-Way. The City shall extend the time for provision of such information upon a reasonable showing by Grantee that such extension is justified.

16.2. Grantee shall keep complete and accurate books of accounts and records of its business and operations pursuant to this Franchise in accordance with generally accepted accounting principles. After consultation with Grantee, the Director may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting Gross Revenue and uncollectibles for purposes of Section 14. To the extent practicable, Grantee shall keep its books of accounts and records in such a way that identification of revenues by type within the Franchise Area is straightforward.

16.3. In order to determine the Gross Revenue received by the Grantee which in accordance with Section 14 is subject to franchise fee, Grantee agrees that on the same date that payment is made, it will file with the City Clerk a sworn copy of a report to be prescribed and acceptable to the Director in sufficient detail to itemize revenues which comprise Gross Revenue. Without limitation on the discretion of the Director to require additional information, this report shall:

16.3.1. Incorporate a statement reflecting the market value of all "trade" revenue (revenues from exchanges or barter which do not involve monetary compensation);

16.3.2. Show all local, regional and national advertising revenue allocated to the operation of the Cable System in the Franchise Area in accordance with Section 1.2 (Allocation Percentage).

16.4. The City may, if it sees fit, have the books and records of Grantee examined by a City representative to ascertain the correctness of the reports agreed to be filed herein.

16.5. Grantee shall report to the City such other information relating to this Franchise as the Director may reasonably require and shall comply with the City's reasonable determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

16.6. Upon the Director or designee's twelve (12) day written request, Grantee shall make available to the City, in Austin during regular business hours, its books and records to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to all revenue derived by Grantee and Affiliates from the operation of the Cable System and Transmission Network in order to verify the accuracy of payments under Section 14. Grantee shall fully cooperate in making available its records and otherwise assisting in

these activities. The City shall extend the time for the provision of such information upon a reasonable showing by Grantee that such extension is justified.

16.7. The Director may, at any time, make inquiries pertaining to Grantee's performance of the terms and conditions of this Franchise. Grantee shall respond to such inquiries on a timely basis.

16.8. Promptly and timely, Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted to or received from Grantee or Affiliates and the FCC, Securities and Exchange Commission and the Public Utility Commission (PUC), or their successor agencies, relating to any matter affecting the use of Franchise Area Public Rights-of-Way and/or the operation of a Cable System authorized pursuant to this Franchise. Upon written request from City, Grantee shall provide the Director with copies of all such documentation.

16.9. The City will maintain confidentiality of information provided by Grantee to the extent permitted by law when Grantee has notified the City of the confidential nature of the information. The City will provide Grantee copies of any Attorney General opinion request under the Texas Open Records Act which pertains to such information.

SECTION 17. ASSIGNMENT OF FRANCHISE

17.1 Neither this Franchise, the assets held by Grantee for use under this Franchise which are in the Public Rights-of-Way, any rights or privileges of Grantee under this Franchise, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, Affiliate or entity, without the prior written consent of the City by ordinance or resolution. Such approval shall not be unreasonably withheld. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this Franchise, including Grantee's Cable System or capacity on its Cable System, or attempt to do so, without the City's prior consent, the City may revoke this Franchise for default, in which event all rights and interest of the Grantee shall cease. Any transfer in violation of this Section shall be null and void and unenforceable. Any change of Control of Grantee shall constitute a transfer under this Section. There shall be a rebuttable presumption of a change of Control of Grantee upon a change of 10% or greater in the ownership of Grantee. A mortgage or other pledge of assets to a bank or lending institution in a bona fide lending transaction shall not be considered an assignment.

SECTION 18. VIOLATIONS

18.1. If the City has reason to believe that Grantee is in violation of this Franchise, the Director or designee shall notify Grantee in writing of the violation setting forth the nature of such violation. Within twenty-one (21) days of receipt of such notice, or such longer period specified by the Director, Grantee shall respond in writing that the violation has been cured or provide a cure plan or schedule that satisfies the Director or provide explanations in refutation or excuse with documentation to support that an alleged violation did not occur.

18.2. Notwithstanding Subsection 18.1 above, Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City, by taking appropriate steps to comply with the terms of this franchise ordinance and any lawful regulations. If the nature of the violation is such that it cannot be fully cured within 30 days due to circumstances not under Grantee's control, the period of time in which Grantee must cure the violation shall be extended by the Director in writing for such additional time reasonably necessary to complete the cure, provided that (i) Grantee shall have promptly commenced to cure, and (ii) Grantee is diligently pursuing its efforts to cure in the Director's reasonable judgment.

18.3. If the violation has not been cured within the time allowed under Subsection 18.2 above, Grantee shall be liable for liquidated damages for the following violations:

18.3.1. failure to perform the Cable System Rebuild according to the sequence and schedule outlined in Section 9: fifteen cents (\$0.15) per affected household for each day that such delay continues (not to exceed one thousand dollars (\$1000) per day);

18.3.2. failure to provide and maintain requested Cable Service to any household within the Franchise Area as required by this Franchise: fifteen cents (\$0.15) per affected household, for each day that such failure continues; (not to exceed one thousand dollars (\$1000) per day);

18.3.3. failure to promptly provide data, documents, reports or information to the City, in accordance with Section 16: two hundred and fifty (\$250) per day, for each day such failure continues;

18.3.4. failure to provide an Access Channel in accordance with the guidelines in Section 4 hereof: three hundred dollars (\$300) per day for each day such failure continues;

18.4.5. failure to comply with City Requirements concerning construction in the Public Rights-of-Way: two hundred dollars (\$200) per day for each day such failure continues.

18.3.6. failure to substantially comply with a material requirement of Exhibit A : two hundred dollars (\$200) per day for each day such failure continues.

18.4. Grantee agrees that each of the foregoing failures shall result in injuries to the City and its citizens and institutions, the compensation for which would be difficult to ascertain and to prove. Accordingly Grantee agrees that the foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term "franchise fee" provided by federal law at 47 U.S.C. 542 (g) (2) (A-D) and therefore in no way part of the compensation paid to the City pursuant to Section 14 herein.

18.5. If Grantee fails to make full and complete payments required by this Franchise under Section 14.2, Section 7 or Section 4 within ten (10) days after receipt of written notice from the

Director or designee, then the Director may immediately withdraw without further notice to Grantee the amount thereof from the letter of credit maintained in accordance with Section 19.

18.6. Notwithstanding any other provision of this Franchise, upon Grantee's request, Grantee shall be afforded an opportunity to show that a violation has not occurred. This opportunity shall consist of an administrative hearing upon thirty (30) days' notice before an impartial hearing examiner jointly designated by the City Attorney and Grantee within thirty (30) days of Grantee's request.

If as a result of the administrative hearing, the hearing examiner determines that a violation has not occurred, the City shall pay all of the expenses related to the administrative hearing. If a violation has occurred, Grantee shall pay the expenses. After the conclusion of the administrative hearing either party may seek any and all remedies which it may have at law.

18.7. Upon evidence being received by the City that violations of this Franchise, any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of its Cable System have occurred, or continue to occur after the thirty (30) day period, and any additional time necessary to cure, as allowed under 18.2, the City may cause an investigation to be made. If the City finds that such a violation continues to exist or has occurred, then the City or Grantee may take any action authorized by law, subject to Section 30, including forfeiture of this franchise and a suit in court to compel compliance. In any such proceeding the non-prevailing party shall be required to pay the reasonable expenses incurred by the prevailing party in such suit and all damages and costs (including attorney fees), but Grantee may be allowed, either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

18.8. Failure by the City or the Grantee to enforce any rights under this franchise does not constitute a waiver of such rights.

SECTION 19. BOND AND LETTER OF CREDIT

19.1. Grantee shall obtain and maintain, at its sole cost and expense, and file with the City Clerk, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City Attorney, in the amount of one million dollars (\$1,000,000) to secure Grantee's performance of its obligations and faithful adherence to all requirements of this Franchise. Grantee shall provide this corporate surety bond at the time of filing the acceptance of this Franchise, as required by Section 28 herein. This bond may be drawn upon by the City in accordance with Section 18.

19.2. Grantee shall also provide a letter of credit on behalf of the City, at a bank in Austin, in the amount of three hundred fifty thousand dollars (\$350,000) in a form acceptable to the Director. Said letter of credit is to guarantee payment of liquidated damages as set forth in Section 18.

19.3. The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this franchise ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect the City's rights to demand full and faithful performance under this Franchise or limit Grantee's liability for damages.

19.4. The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent."

If the letter of credit is called, and there is a good faith dispute concerning the performance of Grantee's obligations hereunder and Grantee has invoked Section 30, or has instituted a legal action in court to resolve the dispute in court, then the letter of credit does not have to be replenished.

SECTION 20. INSURANCE

20.1. Grantee shall obtain and maintain in full force and effect throughout the term of this Franchise insurance with an insurance company licensed to do business in the State of Texas and acceptable to the City's Risk Manager. All companies will be required to be rated A-VII or better by A.M. Best or A or better by Standard and Poors. Grantee shall provide City with proof of such insurance so required at the time of filing the acceptance of Franchise, as required by Section 28 herein. The City reserves the right to review these insurance requirements during the effective period of the Franchise, and to reasonably adjust insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

20.2. Subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City's Risk Manager, Grantee shall obtain and maintain in full force and effect for the duration of this Franchise, at Grantee's sole expense, insurance coverage in the following type and minimum amounts:

<u>Type</u>	<u>Amount</u>
20.2.1. Workers' Compensation and Statutory Employers Liability:	\$100,000/\$500,000/\$100,000
20.2.2. Commercial General (public) Liability - to include coverage for the following where the exposure exists:	
	29
<ul style="list-style-type: none"> • Premises operations • Independent contractors 	Combined single limit for bodily injury and property
	29

- Products/completed operations
 - Personal injury
 - Contractual liability
 - Explosion, collapse and underground property damage
- damage \$10,000,000 per occurrence or its equivalent

20.2.3. Comprehensive Automobile insurance coverage for loading and unloading hazards, for:

- Owned/leased automobiles
 - Non-owned automobiles
 - Hired automobiles
 - ..
- Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent

20.2.4. Coverage for programming on channels that are directly or indirectly controlled by Grantee for:

- Libel and slander
 - Copyright violations
- Combined single limit of \$10,000,000 per occurrence or its equivalent

20.3. The City’s Risk Manager shall be entitled, upon request and without expense, to receive copies of certificates of insurance evidencing coverage stated above. The City’s Risk Manager may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City’s Risk Manager, Grantee shall exercise reasonable efforts to accomplish the changes and shall pay the cost thereof.

20.4. Grantee agrees that with respect to the above-required insurance, all insurance certificates will contain the following required provisions:

- Name the City of Austin and its officers, employees, board members and elected representatives as additional insured parties (as the interests of each insured may appear) as to all applicable coverage (except worker’s compensation);
- Provide for thirty (30) days notice to the City for cancellation, non-renewal, or material change;

- Provide for notice to both the Director and the Office of Risk Management by certified mail at:

City of Austin, HRD, Risk Management Division
II Commodore Plaza
209 E. 9th Street
Austin TX 78701; and

- Provide that all provisions of the Franchise ordinance, as amended, concerning liability, duty, and standard of care, including the Indemnity, Section 21, of this Franchise ordinance, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to policy terms and conditions.

20.5. The policy clause "Other Insurance" shall not apply to the City of Austin where the City is an insured on the policy. It is the intention that insurance policies protecting the Grantee and the City shall be primary coverage for all losses covered by the policies.

20.6 Companies issuing the insurance policies shall have no recourse against the City of Austin for payment of any premiums or assessments which all are set at the sole risk of the Grantee. Insurance policies obtained by Grantee shall provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with any damage covered by these policies.

SECTION 21. INDEMNITY

21.1. Grantee shall defend, indemnify and hold City harmless from and against all damages, cost, loss or expense for the repair, replacement, or restoration of City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of Grantee's negligence, willful misconduct or strict liability.

21.2. Grantee, for itself and its agents, employees, subcontractors, and the agents and employees of said subcontractors, shall defend, indemnify, and hold the City, its successors, assigns, officers, employees and elected officials harmless from and against any and all claims, demands, suits, causes of action, and judgments for: (i) Damage to or loss of the property of any person (including, but not limited to Grantee, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or (ii) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of Grantee, Grantee's subcontractors and City, and third parties), arising out of, incident to, concerning or resulting from the negligence, willful misconduct or strict liability of Grantee, its agents, employees, and/or subcontractors, in the performance of all activities and services pursuant to this Franchise, no matter how, or to whom, such loss may occur.

21.3. In the event that any such damage, claim or loss is found by a court of competent jurisdiction to be caused by the concurrent fault of both Grantee and City, then Grantee shall indemnify City to the full proportionate extent that Grantee is determined to be at fault. It is the intention of the parties, and Grantee expressly agrees, that the provisions of this section shall not exclude claims, damages, and losses caused in part, but not wholly, by the negligence of City, even if the City is more negligent than Grantee.

21.4. The terms of each contract awarded by Grantee for activities pursuant to this ordinance shall contain Indemnity provisions whereby the contractor shall indemnify City to the same extent as described above.

21.5. City shall give Grantee prompt written notice of any claims or suits. Grantee shall have the right to investigate, defend and compromise same to the extent of its own interests.

SECTION 22. NOTICES

All notices from Grantee to the City pursuant to this Franchise shall be directed to the City Attorney and the Director, individually, at P.O. Box 1088, Austin, Texas 78767, or to such officer as designated by the City Council. All notices to Grantee pursuant to this Franchise shall be to such local corporate officer within the Austin City limits designated by Grantee in writing. Grantee shall maintain within the Austin City limits throughout the term of this Franchise an address for service of notices by mail. Grantee shall also maintain within the Austin City limits a local telephone number operational during normal business hours for the conduct of matters related to this Franchise. Any change in address or telephone number shall be furnished to the City ten (10) days prior to the change.

SECTION 23. FORFEITURE AND TERMINATION

23.1. In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to forfeit and terminate this Franchise and all rights and privileges of Grantee hereunder in the event of a material breach of its terms and conditions, subject to reasonable notice and opportunity to cure, as provided in Section 18 as well as the provisions of Section 30.

23.2. Material breaches of this Franchise specifically include, but are not limited to any violations set forth in Subsections 4.8, 7.2, 7.3, 14.1, 14.2, 14.7 and 18.3.4 and the provision of services not authorized by this Franchise.

23.3. The foregoing shall not constitute a material breach if the violation occurs without the fault of Grantee or occurs as a result of circumstances beyond its control. Grantee shall not be excused from performance of any of its obligations under this Franchise by mere economic hardship, nor misfeasance or malfeasance of its directors, officers or employees.

23.4. A termination shall be declared only by a written decision of the City Council after an appropriate public proceeding before the City Council, which shall accord the Grantee due process and full opportunity to be heard and to respond to any notice of grounds to terminate. All notice requirements shall be met by providing the Grantee at least fifteen (15) days prior written notice of any public hearing concerning the proposed termination of this Franchise. Such notice shall state the grounds for termination alleged by City.

23.5. The City Council, after public hearing, and upon finding the existence of grounds to terminate, may either declare this Franchise terminated or excuse such grounds upon a showing by the Grantee of mitigating circumstances or good cause for the existence of such grounds.

23.6. Neither Grantee's acceptance of this Franchise, Grantee's appearance before the City Council at any public hearing concerning proposed termination of this Franchise nor any action taken by the City Council as a result of any such public hearing, including a declaration of termination or a finding of grounds to terminate, shall be construed to waive or otherwise affect the Grantee's right to seek judicial determination of the rights and responsibilities of the parties under this Franchise.

SECTION 24. EMERGENCY OVERRIDE

24.1. Emergency Override. The Grantee shall maintain systems, equipment, and procedures permitting preempting of the regular signal on all channels with emergency warning signals originating from the City of Austin Office of Emergency Management. The following stipulations shall apply, except where and to what extent they may be preempted by FCC regulations:

24.2. The Director of the Office of Emergency Management (OEM) shall determine when the Emergency Cable Override is to be activated in response to actual or impending emergency conditions.

24.3. The Grantee shall provide and maintain all equipment, systems, software, services, security provisions, and procedures required for a fully operational emergency cable override warning system in accordance with FCC rules. Any equipment necessary for activation of the system by the Office of Emergency Management shall be provided by the Cable Operator. Activation points shall be, at minimum, the Austin-Travis County Emergency Operations Center and one other backup point within the Austin area specified by OEM.

24.4. The cable override shall consist of audio and crawler text signals as required by the Federal Communications Commission rules governing the new Emergency Alert System (EAS).

24.5. The system shall be tested as determined by the Office of Emergency Management not more than monthly and not less than annually.

24.6. The Grantee shall cooperate fully with the Office of Emergency Management in all other matters pertaining to a functioning emergency cable override system.

SECTION 25. GOVERNING LAW

This Franchise is passed subject to the provisions of the Constitution and laws of the United States of America and the State of Texas and the Charter and ordinances of the City of Austin.

SECTION 26. FORCE MAJEURE

The time within which Grantee shall be required to perform any act under the Franchise shall be extended by a period of time equal to the number of days performance is delayed due to a force majeure, nor shall Grantee be subject to any penalty hereunder because of acts or failure to act due to "force majeure." The term "force majeure" shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, failure of supplier(s), or for other similar causes beyond the control of Grantee.

SECTION 27. SEVERABILITY AND PREEMPTION

27.1. Except as provided in 27.2 below, if any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Franchise shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection sentence, clause, phrase, provision, condition, covenant and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.

27.2. If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate a replacement provision to fulfill the purpose and intent of the superseded provisions consistent with applicable law. For purposes of this Section, the following provisions shall be considered material: Sections 2, 4,13, 14 and 17.

27.3 In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, and any amendments to this Franchise negotiated pursuant to

Subsection 27.2 as a result of such provision being preempted shall no longer be of any force or effect.

SECTION 28. ACCEPTANCE OF FRANCHISE

Grantee shall, within thirty (30) days after the passage of this Franchise, file in the office of the City Clerk a written instrument accepting this Franchise and all terms and conditions thereof, signed and acknowledged by its proper officers in a form acceptable to the City.

SECTION 29. EFFECTIVE DATE

This Franchise shall take effect sixty (60) days from its passage by Council, and acceptance in accordance with the provisions of the Charter of the City of Austin and it is accordingly so ordained.

SECTION 30. ARBITRATION

30.1. Any controversy or dispute between Grantee and the City concerning the performance of either party under this Franchise and/or calculation of any monetary payment due to the City by Grantee shall on the written request of one party served on the other, be submitted to non-binding arbitration.

30.2. The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association (“AAA Rules”), and shall take place in Travis County, Texas. The parties may agree on a single arbitrator, but if they are unable to agree, there shall be three arbitrators, one named by each of the parties in writing within thirty days after the demand for arbitration is made, and a third to be chosen within thirty days by the two named by each party. If there are three arbitrators, the decision of any two shall be conclusive on all matters properly before the panel. Neither the sole nor the third arbitrator may be a resident of, or maintain his/her principal office in, Travis or-Williamson Counties, but this limitation shall not apply to arbitrators selected by the respective parties in a three arbitrator panel. To the fullest extent permitted by the AAA Rules, the arbitrators selected by the parties for a three arbitrator panel shall not be required to be certified by the AAA, but the third arbitrator must comply with all AAA requirements.

30.3. The cost and expenses of arbitration, including the fees of a single or panel of three arbitrators, and all fees and expenses related to both parties’ attorneys, consultants and expert witnesses shall be paid by the non-prevailing party; provided that in cases where neither party prevails these expenses shall be divided evenly between the parties.

