



**City of Hampton, Virginia**  
**Ordinances – Non-Coded**

22 Lincoln Street  
Hampton, VA 23669  
www.hampton.gov

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**An Ordinance Granting A Franchise To Cox Communications Hampton Roads, LLC To Construct And Operate A Cable System In The City Of Hampton, Virginia And Authorizing And Directing The Mayor To Execute And The Clerk To Attest On Behalf Of The City Of Hampton.**

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**AN ORDINANCE GRANTING A FRANCHISE TO COX COMMUNICATIONS HAMPTON ROADS, LLC TO CONSTRUCT AND OPERATE A CABLE SYSTEM IN THE CITY OF HAMPTON, VIRGINIA AND AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AND THE CLERK TO ATTEST ON BEHALF OF THE CITY OF HAMPTON**

**THIS FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Hampton, Virginia, a duly organized City under the applicable laws of the Commonwealth of Virginia (the Local Franchising Authority or “City Of Hampton”) and Cox Communications Hampton Roads, LLC, a limited liability company duly organized under the applicable laws of the State of Delaware (the “Franchisee”).**

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

**WHEREAS, the City of Hampton is a “franchising authority” in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to the Code of Virginia, Va. Code Ann. § 15.2-2108;**

**WHEREAS, the City of Hampton intends to exercise the full scope of its municipal powers to the extent not prohibited by Commonwealth of Virginia law, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens of the City of Hampton, Virginia;**

**WHEREAS, the Cable System will occupy the Public Rights-of-Way within the City Of Hampton, and Franchisee desires to use portions of the Cable System to provide Cable Services (as hereinafter defined) in the Franchise Area;**

**WHEREAS, the City of Hampton has identified the future cable-related needs and interests of the City of Hampton and its community, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee’s Cable System is adequate, in a full public proceeding affording due process to all parties;**

**WHEREAS, the City of Hampton has found Franchisee to be financially, technically and legally qualified to operate the Cable System;**

**WHEREAS, the City of Hampton has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and**

**WHEREAS, the City of Hampton and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.**

NOW, THEREFORE, BE IT ORDAINED THAT THE CITY COUNCIL OF THE CITY OF HAMPTON, VIRGINIA HEREBY GRANTS A FRANCHISE TO COX COMMUNICATIONS HAMPTON ROADS, LLC TO OCCUPY THE PUBLIC RIGHTS OF WAY TO CONSTRUCT AND OPERATE A CABLE SYSTEM PURSUANT TO THE FOLLOWING TERMS AND CONDITIONS AND HEREBY AUTHORIZES AND DIRECTS THE MAYOR TO EXECUTE AND CLERK TO ATTEST ON BEHALF OF THE CITY OF HAMPTON:

1. **DEFINITIONS**

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. References in this section to any federal or state law shall include amendments thereto as may be enacted from time-to-time. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel for the transmission of non-commercial Public, Educational, or Governmental access programming as directed by the City of Hampton.

1.2. *Affiliate*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning in relation to any Person, another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3. *Basic Service or Basic Service Tier*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the Cable Service tier that includes (i) the retransmission of local television broadcast Channels and (ii) PEG Channels required to be carried in the basic tier.

1.4. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

1.5. *Cable System or System*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide

Cable Service that includes Video Programming and that is provided to multiple Subscribers within the Service Area, except that such term shall not include (i) a system that serves fewer than twenty (20) Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any Public Rights-of-Way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric system; (vi) any portion of a system that serves fewer than fifty (50) Subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

1.6. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), meaning a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, as defined by the Federal Communications Commission by regulation.

1.7. *City of Hampton or City*: The City of Hampton, Virginia or the lawful successor, transferee, or assignee thereof.

1.8. *Communications Act*: The Communications Act of 1934, as amended.

1.9. *Educational Access Channel*: An Access Channel available for the non-commercial use by local schools and educational institutions in the Franchise Area.

1.10. *Equipment*: Means the cables, optical fiber, poles, wires, electrical conductors, conduits, manholes, fixtures, appliances and appurtenances that are owned, physically controlled, or physically maintained by the Franchisee in, on, over, or under the Public Rights-of-Way to provide Cable Services.

1.11. *FCC*: The United States Federal Communications Commission or successor governmental entity thereto.

1.12. *Force Majeure*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee's facilities are attached or to be attached or conduits in which

Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

1.13. *Franchise Area*: The incorporated area of the City of Hampton and such additional areas as may be included in the corporate limits of the City of Hampton during the term of this Franchise.

1.14. *Franchisee*: Cox Communications Hampton Roads, LLC, and its lawful and permitted successors, assigns and transferees.

1.15. *Government Access Channel*: An Access Channel available for non-commercial use by the City of Hampton.

1.16. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), meaning 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.

1.17. *Non-Cable Services*: Any service that does not constitute the provision of Cable Services.

1.18. *Normal Business Hours*: Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(i), meaning those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.19. *Normal Operating Conditions*: Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(ii), meaning those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

1.20. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or limited liability entity.

1.21. *PEG*: Means Public, Educational, and Governmental access channels or programming.

1.22. *Public Access Channel*: An Access Channel available for the non-commercial use by Subscribers.

1.23. *Public Rights-of-Way*: Shall mean the surface of, and the space above and below, any public street, lane, alley, sidewalk, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the City of Hampton in the Franchise Area. Notwithstanding the foregoing, Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.24. *Service Area*: All portions of the Franchise Area where Cable service is being offered in the City of Hampton in accordance with paragraph 3.1

1.25. *Service Interruption*: The loss of picture or sound on one or more cable channels.

1.26. *Subscriber*: A Person or governmental entity who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.27. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), meaning the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

1.28. *Transfer of the Franchise*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one person or group of persons to another person or group of persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise are transferred or assigned to another person or group of persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the cable franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another affiliate of the Franchisee; (b) transfer of an interest in the cable franchise granted under this article or the rights held by the Franchisee under the Franchise to the parent of the Franchisee or to another affiliate of the Franchisee; (c) any action that is the result of a merger of the parent of the Franchisee; (d) any action that is the result of a merger of another affiliate of the Franchisee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the Cable System used to provide Cable Services in order to secure indebtedness.

1.29. *Video Programming*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

## 2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement, and applicable provisions of Section 15.2 of the Code of Virginia and the

Communications Act, the City of Hampton hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. This Agreement grants no additional authority for Franchisee to utilize the City Of Hampton's Public Rights-of-Way for any other purpose unless otherwise expressly provided herein or provided by law. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *Term:* This Franchise shall become effective on the date of adoption by the City of Hampton (the "Effective Date"). The term of this Franchise shall be until **July 15, 2023**. Consistent with Section 11, the Franchisee, at its option, shall notify the City of Hampton in writing of its intent to renew the franchise not less than thirty (30) months from the expiration date of the term of this Franchise.

2.3. *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and City of Hampton reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not be inconsistent with the rights granted to the Franchisee under this Franchise or under applicable federal or state law. Consistent with Section 15.2-2108.21 of the Code of Virginia, Franchisee shall have the right to opt into the terms of an ordinance cable franchise pursuant to Section 15.2-2108.26 of the Code of Virginia. Further, to the extent permitted by applicable federal and state law, no franchise granted for the provision of Cable Services or Video Programming shall be less burdensome nor more favorable than the obligations imposed upon the Franchisee hereunder, in order that one operator not be granted an unfair competitive advantage over another. If a franchise or other authorization is granted that creates an unfair competitive advantage as described herein, Franchisee and City of Hampton shall discuss the discrepancy and City of Hampton shall consider amendments to this agreement in accordance with state law to provide a level playing field.

2.4. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.5. *No Waiver:*

2.5.1. The failure of City of Hampton on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City Of Hampton, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.



2.5.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse City of Hampton from performance, unless such right or performance has been specifically waived in writing.

2.6. *Construction of Agreement:* The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.7. *Police Powers:* Except as otherwise provided in this Section 2.7, Franchisee's rights under this Franchise shall be subject to the lawful police powers of the City of Hampton to adopt and enforce ordinances of general applicability necessary to protect and preserve the health, safety and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances lawfully enacted by City of Hampton pursuant to such police powers. The City of Hampton agrees that ordinances which it adopts that impact this Agreement must be enacted upon reasonable conditions and of a character appropriate to the public purpose justifying enactment. Nothing herein prohibits the Franchisee from challenging any future ordinances enacted by the City of Hampton as may be permitted under applicable law.

### 3. PROVISION OF CABLE SERVICE

3.1. *Customer Service:* Customer Service Requirements are set forth in Exhibit B, which shall be binding unless amended by written consent of the parties.

#### 3.2. *Service Area:*

3.2.1. Franchisee shall make Cable Service available to all of the occupied residential dwelling units in the Service Area. Franchisee may make Cable Service available to businesses in the Service Area. Notwithstanding the foregoing, Franchisee shall not be required to make Cable Service available: (a) by reason of Force Majeure; (b) for periods of delay caused by the City Of Hampton; (c) for periods of delay resulting from the Franchisee's inability to obtain authority to access Public Rights-of-Way in the Service Area; (d) in areas where developments or buildings are subject to legally enforceable exclusive arrangements; (e) in developments or buildings that the Franchisee cannot access under industry standard terms and conditions after good faith negotiation; (f) in developments or buildings that the Franchisee is unable to provide Cable Service for technical reasons or that require facilities that are not available or cannot be deployed on a commercially reasonable basis; (g) in areas where it is not technically feasible to provide Cable Service due to the technology used by the Franchisee to provide Cable Service; (h) in areas where the average occupied residential household density is less than twenty-five (25) occupied residential dwelling units per mile within one (1) linear mile from Franchisee's energized distributed network and, (i) when the Franchisee's prior service, payment, or theft of Service history with a Subscriber or potential Subscriber has been unfavorable. Should, through new construction, an area within the Franchisee's Service Area meet the density requirement as set forth in this subsection, Franchisee shall, subject to exclusions (a) though (i) set

forth in this Subsection and Subsection 3.2, provide Cable Service to such area within six (6) months of receiving notice from the City of Hampton that the density requirements have been met.

3.2.2. Franchisee shall have the right but not the obligation to extend its Cable System and/or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any renewals thereof, not meeting the density requirements described in Section 3.2.1

3.2.3. *Line Extensions to Residential Subscriber.* If a potential Subscriber resides in an area of the Service Area that does not meet the density requirements of Section 3.1.1(h) above (*i.e.*, the subscriber's residence is located where there are fewer than twenty-five (25) occupied residential dwelling units per mile within one (1) linear mile from Franchisee's energized distribution network), the Franchisee shall only be required to extend the Cable System if the Subscribers in that area are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction including cost of material, design, labor and easements. Subscribers who request service hereunder shall bear the construction costs on a pro rata basis (Example: Five (5) owners of residential dwelling units within one (1) linear mile of Franchisee's energized distribution network request service. Extending the Cable System to serve those residential units costs \$20,000. The cost divided by 25 homes per mile is \$800 per 25 residential dwelling units. Franchisee will pay \$4,000 (5 residential dwelling units times \$800) and each owner of the residential dwelling units will likewise pay \$3,200 of those costs.) The Franchisee may require that the payment of the capital contribution in aid of construction borne by potential subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

3.2.4. Franchisee agrees that, upon request and with no less than thirty (30) days' written notice, but no more than once per year, a representative of the Franchisee will meet with representatives of the City of Hampton to confirm compliance with the requirements set forth in this Subsection 3.2. Nothing herein shall prevent the City of Hampton from contacting at any time the single point of contact identified in Section 13.5 with respect to other matters regarding this Agreement.

3.3. *Availability of Cable Service:* Franchisee shall make Cable Service available to all occupied residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.2 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all occupied residential dwelling units that are within two hundred-fifty (250) feet of trunk or feeder lines not otherwise already served by Franchisee's Cable System. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed two hundred-fifty (250) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.4. *Cable Service to Municipal Buildings*: Subject to 3.2 and so long as such requirement applies to all other cable operators in the Franchise Area, Franchisee shall provide, without charge within the Service Area, one service outlet activated to received the Basic Service Tier and any other tier of service at the Franchisee's discretion and one (1) set top box, if necessary to receive the services provided (the outlet, service, and set top box are collectively referred to as "Courtesy Service"), to each fire station, public school, police station, public library, and any other local government building as set forth in Exhibit A, and to no more than two (2) newly constructed or acquired local government buildings eligible for service pursuant to this Section 3.4 ("Additional Buildings") in any given calendar year, up to a maximum total number of Additional Buildings equivalent to one (1) per year over the Term of this Agreement (including any permitted extensions). If it is necessary to extend Franchisee's trunk or feeder lines more than two hundred-fifty (250) feet solely to provide service to any such school or public building, the City of Hampton shall have the option either of paying Franchisee's direct costs for such extension in excess of two hundred-fifty (250) feet, or of releasing Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any school or other public building owner entitled to receive Courtesy Service the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred-fifty (250) feet of drop cable or an underground installation; provided, however, that the Franchisee shall not charge for a monthly fee for the service component of Courtesy Service to the additional service outlets once the outlets are installed, but may charge for any equipment required, including additional set top boxes, at then-commercial rates. If Franchisee chooses not to perform the inside wiring and/or additional outlet installation in public buildings, the City of Hampton or building owners may retain qualified third party contractors to perform such work. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights or obligations with respect to third parties. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged. The requirements of this Section 3.4 shall not apply in cases where it is not technically feasible for the Franchisee to comply.

#### 4. SYSTEM FACILITIES

4.1. *System Characteristics*: The Franchisee's Cable System shall meet or exceed the following requirements:

4.1.1. The System shall be an active two-way plant for Subscriber interaction, if any, required for selection or use of Cable Service.

4.1.2. The System shall utilize a state-of-the-art architecture that permits additional improvements necessary for high quality and reliable service throughout the term of this Agreement.

4.1.3. The System shall have protection against outages due to power failures with back-up power available for at least twenty-four (24) hours at each headend and, in conformance with industry standards, back-up power at each power supply site rated for at least four (4) hours.

4.1.4. The System shall use facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

4.1.5. The Franchisee shall maintain facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Subsection 4.1.17 below.

4.1.6. The Franchisee shall maintain facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such, standards may be amended from time to time.

4.1.7. The System shall utilize facilities and equipment capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

4.1.8. The System shall be designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber.

4.1.9. The System shall be designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

4.1.10. The Franchisee shall maintain sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Franchisee to substantially comply with applicable law, including applicable customer service standards and including requirements for responding to system outages.

4.1.11. The Franchisee shall maintain facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems.

4.1.12. The System shall be capable of interconnecting with other cable systems in the Service Area as set forth in Section 4.2 below.

4.1.13. The Franchisee shall maintain facilities and equipment at the headend to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

4.1.14. The System shall be capable of transmitting in standard and high definition format any channels that are received in standard or high definition format. Actual carriage of any such high definition Channels will be at the Franchisee's sole discretion.

4.1.15 The System shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System consistent with federal law.

4.1.16. The provision of additional Channels, increased Channel capacity, and/or upgrades of any kind to the Cable System is solely within the control and discretion of the Franchisee.

4.1.17. The System shall conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which the City of Hampton is permitted by a change in law to enforce, and shall substantially conform in all material respects to applicable provisions of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

4.1.17.1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

4.1.17.2. National Electrical Code;

4.1.17.3. National Electrical Safety Code (NESC);

4.1.17.4. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;

4.1.17.5. Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and

4.1.17.6. Requirements set forth in the Virginia Uniform Statewide Building Code.

4.2. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Service Area. The City of Hampton may request, in writing, that the Franchisee interconnect with another cable operator authorized by the City of Hampton provide Cable Service in the Service Area. All decisions regarding whether to interconnect and the terms and conditions of any such interconnect shall be a matter agreement between the cable operators involved. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods, at the sole discretion of the Franchisee and the interconnecting cable operator. The interconnection capabilities created pursuant to this Section 4.2 shall be solely for the exchange of PEG programming required to be provided

on the Cable System pursuant to this Franchise. Franchisee shall not be required to build such interconnection if it is not economically feasible nor be required to connect with another cable operator or other video services provider.. Franchisee may charge the connecting cable operator in advance for any construction costs and/or monthly charges associated with the interconnection.

4.3. *Emergency Alert System:*

Franchisee shall comply with the Emergency Alert System (“EAS”) Federal Emergency Alert System regulations, 47 C.F.R. Sec. 76 Part 1

In the event of a state or local civil emergency, the EAS shall be remotely activated as set forth in the Virginia EAS plan.

5. **PEG CHANNELS**

5.1. *PEG Channel Capacity:*

5.1.1. *PEG Channels:* Franchisee shall provide one (1) non-commercial Public Access Channel (1) non-commercial Educational Access Channel, and one (1) non-commercial Government Access Channel (collectively, “PEG Channels”) If a PEG Channel provided under Section 5.1.1 is not being utilized by the City Of Hampton, Franchisee may utilize such PEG Channels, in its sole discretion, until such time as City of Hampton elects to utilize the PEG Channels for its intended purpose. The City of Hampton shall notify Franchisee not less than one hundred eighty (180) days prior to reclaiming an unused PEG Channel.

5.1.2. *Additional PEG Channel:* If the City substantially utilizes all active PEG Access Channels provided pursuant to Section 5.1.1., above, it may require Franchisee to provide one (1) additional PEG Access Channel (the “Additional PEG Channel”) by the enactment of an ordinance, after a public hearing, so long as the ordinance applies equally to all cable operators within the Franchise Area. Franchisee’s costs to activate the Additional PEG Channel, including but not limited to equipment and construction to an origination point, shall not exceed Sixty Thousand Dollars (\$60,000).

5.1.3. *Unutilized Channel:* Any PEG Channel provided pursuant to this Section 5 that is not utilized by the locality for at least eight (8) hours per day shall no longer be made available to the City and may be programmed at the Franchisee’s discretion. At such time as the City can certify to the Franchisee a schedule for at least eight (8) hours of daily programming for a period of three months, the Franchisee shall restore the previously re-allocated PEG Access Channel. For purposes of this Section 5, an Initial or Additional PEG Channel shall be considered to be substantially utilized when twelve (12) hours are programmed on such PEG Access Channel each calendar day; in addition, at least thirty-three percent (33%) of the twelve (12) hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. For purposes of this Section 5.1.2, nonrepeat programming shall include the first three videocastings of a program and shall include programming on other PEG Access Channels in the Franchise Area. Programming for purposes of

determining substantial utilization shall include an alphanumeric scroll for not more than one (1) PEG Access Channel.

## 5.2. PEG Transmission

5.2.1. City of Hampton shall provide and maintain upstream equipment and facilities necessary to transmit the current PEG signals from the following PEG signal origination points located at (i) Hampton City Hall, 22 Lincoln Street, 8<sup>th</sup> Floor, (ii) Jones Middle School, 1819 Nickerson Blvd., and (iii) HCC TV Channel 47 (Mercury Studio), 418 W. Mercury Blvd. However, should the City decide to relocate the current PEG signal origination points described herein or request additional PEG signal origination points, the City shall be solely responsible for all related costs and expenses. Franchisee shall maintain equipment capable of receiving and processing the PEG signals transmitted by the City Of Hampton.

5.2.2. Notwithstanding the obligations in 5.1.1, Franchisee shall not be obligated to provide City of Hampton with either cablecast equipment and facilities or personnel responsible for maintaining and operating such cablecast equipment and facilities used to generate any such PEG signals.

5.2.3. The Franchisee may transmit such PEG programming within and without the City Of Hampton's jurisdictional boundaries without further authorization from the City Of Hampton. Franchisee specifically reserves its right to make or change channel assignments in its sole discretion.

5.2.4. The Franchisee may, to the extent permissible under applicable law, require all users of any PEG facilities or Channels, other than the City of Hampton and the School Board, to defend and hold harmless Franchisee from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel.

## 5.3. PEG Grant:

5.3.1. Franchisee shall provide a PEG Capital Fee to the City of Hampton (the "PEG Capital Fee") on a quarterly basis. The PEG Capital Fee shall be used by the City of Hampton to support the capital costs of PEG Access Channel facilities consistent with the Communications Act (47 U.S.C. § 542).

5.3.2. The PEG Capital Fee shall be an initial sum equal to forty-five cents (\$0.45) per month for each Subscriber to the Basic Service Tier for the first year of the franchise term. The PEG Capital Fee shall increase by one cent (\$0.01) on the first anniversary of the franchise term and thereafter shall increase by one cent

(\$0.01) each anniversary until the sixth anniversary of the franchise term. The PEG Capital Fee shall increase by two cents (\$0.02) on the sixth anniversary of the franchise term, and shall increase by two cents (\$0.02) each anniversary thereafter until the Franchise expiration date of July 23, 2023. Franchisee shall commence payment of the PEG Capital Fee at the first full calendar quarter after the Effective Date of this Franchise.

5.4. Franchisee may recover from Subscribers any costs related to providing the PEG Channels, including the PEC Capital Fee, if any, to the extent permitted by law.

## 6. COMMUNICATIONS SALES AND USE TAX

The parties shall comply with all applicable requirements of the provisions of Section 58.1-645 of the Code of Virginia (the "Communications Sales and Use Tax") in its current form and as it may be amended. Should at any time during the term of this Agreement the Communications Sales and Use Tax be repealed or amended to reduce or eliminate the payment of taxes by the Franchisee on the provision of Cable Services over the Cable System, the City of Hampton may, to the extent allowable under applicable law, require, upon sixty (60) days written days notice, that the Franchisee pay to the City of Hampton a franchise fee based on Gross Revenue in an amount established by the City of Hampton that is no greater than that allowed by federal law; provided, however, that: (1) any such requirement to pay a franchise fee applies equally to all franchised cable operators in the City; (2) the Franchisee shall not be compelled to pay any higher percentage of gross revenue as franchise fees than any other franchised cable operator providing service in the City; and (3) Franchisee shall not be obligated to pay franchise fees on revenues not included in gross revenues by any other franchised cable operator in the City. Any payment of franchise fees to the City of Hampton pursuant to this Article 6 shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each quarter.

## 7. RIGHT-OF-WAY CONSTRUCTION

7.1 *Use of Public Rights-of-Way:* Consistent with Section 2.1 the City's grant of this Franchise authorizes the Franchisee to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. Franchisee is not authorized to sublicense or sublease to any person the right to occupy or use the Public Rights-of-Way to install, construct, or maintain facilities for any purpose, if such person does not itself have authority from the City to occupy the Public Rights-of-Way.

7.1.1 *Licenses and Permits:* Except during emergency situations, the Franchisee will secure, prior to commencing construction activities, all necessary permits and licenses in connection with the construction of Equipment within, on, over, or under the Public Rights-of-Way. Prior to construction, the Franchisee shall first file with the city plans showing the location of proposed facilities. The location of the proposed facilities shall be subject to review by the Director of Public Works, or his



designee, who may impose such additional conditions, requirements or restrictions as reasonably necessary to prevent or minimize interference with Public Rights-of-Way or other public places. During emergency situations, the Franchisee may take all reasonable measures to restore service and alter its Equipment as necessary to ensure the safety of the citizens of the City. Nothing in this Franchise waives any City ordinance or regulation or the right of the City to require the Franchisee to secure appropriate permits or approvals for use of the Public Rights-of-Way.

*7.1.2 Compliance with Laws; Licenses and Permits:* The Franchisee shall comply with all reasonable and lawful local laws, rules, regulations, orders, or other directives of the City issued pursuant to this Franchise or with respect to the City's management of its Public Rights-of-Way, provided they are applied in an equitable and nondiscriminatory fashion to all users of the Public Rights-of-Way. The Franchisee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to install, maintain, upgrade, repair and remove Equipment within, on, over and under the Public Rights-of-Way.

*7.1.3 Quality of Work:* All work involved in the installation, maintenance, upgrade, repair and removal of Equipment shall be performed in a safe, thorough and reliable manner in accordance with industry, professional, state and federal mandated standards and using materials of good and durable quality. If, at any time, it is determined by an agency or authority of competent jurisdiction that any Equipment is harmful to the health or safety of any Person or property, then the Franchisee shall, at its own cost and expense, promptly correct all such conditions.

*7.1.4 Restoration:* The Franchisee shall, at its own cost and expense, replace, repair or restore any damaged property as close as reasonably possible to its prior condition. The Franchisee shall be liable, at its own cost and expense, to reasonably replace or repair, within a reasonable time to the condition that existed prior to the commencement of Franchisee's activities, any Street or structure thereon, thereunder or thereover that may become disturbed or damaged as a direct result of the Franchisee's activities. If Franchisee does not commence such replacement or repair within a reasonable time period as agreed to by the parties and after notice by the City to the Franchisee, the City may make such replacement or repair and the Franchisee shall pay the reasonable cost of the same.

*7.1.5 No Obstruction:* Except in the case of an emergency involving public safety, in connection with the installation, maintenance, upgrade repair or removal of Equipment, the Franchisee shall not obstruct the Public Rights-of-Way within the corporate limits of the City without the prior consent of the City. Equipment of the Franchisee in the Public Rights-of-Way shall be located so as to cause minimum interference with any use of the Public Rights-of-Way and adjoining property. As soon as practicable, the Franchisee shall notify the City Manager or Public Works Director, or their designee, of any emergency necessitating an obstruction under this Section, and as necessary to protect the public safety, Franchisee shall coordinate its activities in

responding to the emergency with the City Manager or Public Works Director or their designee.

7.1.6 *Safety Precautions:* The Franchisee shall, at its own cost and expense, undertake to prevent accidents at its work sites in, at or on the Public Rights-of-Way, including the placing and maintenance of proper guards, fences, barricades, watchmen and suitable and sufficient lighting, in accordance with federal and state law.

7.1.7 *Emergency Activity:* The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City in its sole reasonable discretion, cut or move equipment, in which event the City shall not incur any liability to the Franchisee unless such liability is due to the negligent or willful acts or omissions of the City. The City will make every reasonable effort to consult with the Franchisee prior to any such cutting or movement of Equipment and Franchisee shall be given the opportunity to perform such work itself. The City shall have the obligation to protect Franchisee's Equipment to the maximum extent reasonable under the circumstances. Absent City negligence or willful misconduct, all costs to repair or replace such Equipment shall be borne by the Franchisee.

7.1.8 *Tree Trimming:* The Franchisee shall have the right to remove, trim, cut and keep clear of its Equipment the trees in the Public Rights-of-Way, but in the exercise of such right the Franchisee shall not cut or otherwise injure these trees to any greater extent than is reasonably necessary for the installation, upgrade, construction, repair, maintenance and removal of the Equipment. The Franchisee shall not trim, cut or remove any tree from any Public Rights-of-Way unless prior written notice of its intention so to do is given to the department or agency of the City as shall be designated by the City Manager and permission in writing so to do is granted by such department or agency, except in cases of emergency or when this requirement is waived by this department or agency. Any trimming, cutting or removal of trees by the Franchisee shall be done in accordance with industry standards in urban forestry.

7.2 *Right of City to Use Public Rights-of-Way:* Nothing in this Franchise affects the right of the City to occupy and use the Public Rights-of-Way to install, construct, maintain, operate, upgrade, repair and remove its equipment, poles, wires, electrical conductors, optical fibers, conduits, subways, manholes, fixtures, appliances and appurtenances or to engage in any other activity in the Public Rights-of-Way, provided that the exercise of such right will not require any existing facilities of the Franchisee to be unreasonably interfered with or relocated.

7.3 *Street Repair and Relocation of Equipment:* Whenever the City or any of its departments, agencies, and/or agents, servants, or employees shall grade, regrade, construct, reconstruct, widen, or alter any street, except for the benefit of a third party, or the benefit of the City to compete as a communications provider, it shall be the duty of the Franchisee, upon written request of the City, within a reasonable time as may be agreed to by the parties based on the size and scope of the work, to alter or relocate its

Equipment in the street, at the Franchisee's own expense. In the event the Franchisee must relocate Equipment pursuant to this Section, the City shall provide, at no cost to Franchisee, permits and alternative space in the Public Rights-of-Way or within private easements for such relocation of Equipment, provided that (1) such alternative space need not be in the exact same Public Rights-of-Way but shall be in reasonable proximity to the previous location; and (2) such space shall be reasonably economically and technologically feasible for the relocation of such Equipment.

7.3.1 If the Franchisee refuses or neglects to so protect, alter or relocate Equipment within thirty (30) days after a notice to the Franchisee by the City, the City may remove, alter or relocate such Equipment. In the event such removal, alteration or removal is undertaken by the City the Franchisee shall pay the reasonable, actual costs incurred by the City in connection with such action.

7.3.2 The Franchisee shall be entitled to an apportioned amount of State or federal funds made available to the City in conjunction with the relocation or protection of work. If two or more communications service providers are eligible for relocation reimbursement, then available funds shall be shared by those eligible providers by prorating the reimbursement based on the total reimbursement to which each provider would be entitled. The Franchisee shall be given access to the street plans and specifications, and any proposed modifications to such, in the possession of the City, subject to existing law.

7.3.3 *Requested Relocation of Franchisee Facilities:* Except for the relocation of facilities at the Franchisee's expense to make way for new street construction as specified above, if any third party requests that the Franchisee move, change, alter, or relocate Franchisee facilities, then the third party requesting the relocation shall reimburse the Franchisee for all such relocation costs.

7.3.4 *Temporary Raising and Lowering of Wires:* The Franchisee shall, upon sixty (60) days prior written notice by the City or any third party holding a permit to move any structure or within the time that is reasonable under the circumstances, temporarily raise its cables and wires or otherwise move Equipment to permit the moving of said structure. The Franchisee may impose a reasonable charge based on its actual costs and industry standards on any person, other than the City, for any such temporary movement of its Equipment and may require payment of such charge prior to such movement.

7.4 *Removal if Threat to Health or Safety:* If the City determines at any time that any of the Franchisee's facilities or equipment pose a threat to the health or safety of any person or property, the City may order the Franchisee to remove, relocate or alter Franchisee facilities. The Franchisee shall promptly take action necessary to fix any unsafe condition necessary to protect public health or safety. If such action is not commenced within a reasonable period of time, as determined by the City, to protect public health or safety the City may undertake to repair such unsafe conditions at Franchisee's expense.

7.5 *Street Closings:* Nothing in this Agreement waives or releases the rights of the City in and to the Public Rights-of-Way. If all or part of the Public Rights-of-Way are eliminated, discontinued, closed or demapped in accordance with applicable law, the Franchise shall cease its use of such Public Rights-of-Way upon the later occurrence of the following: (a) the effective date that such Public Rights-of-Way become eliminated, discontinued, closed or demapped and any conditions specified by the City are met; or (b) in the case of any transfer of title to such Public Rights-of-Way to a private entity, the closing date of such transfer. If the elimination, discontinuance, closing or demapping of all or part of the Public Rights-of-Way is undertaken for the benefit of any private entity, the City shall condition its consent to the elimination, discontinuance, closing or demapping on the agreement of the private Person on (i) granting the Franchisee the right to continue to occupy and use the Public Rights-of-Way or (ii) reimbursing the Franchisee for the reasonable costs of relocating the affected Equipment.

7.6 *Undergrounding of Franchisee's Equipment:* Franchisee shall not be required to relocate its Equipment underground, at its own expense, unless, and until, all utility companies at the same location in the Public Rights-of-Way place their facilities underground. Notwithstanding the foregoing, in the event public funds are available to reimburse users of the Public Rights-of-Way for relocation expenses, and Franchisee qualifies for such funds, Franchise shall be entitled to a pro-rata share to recover all or part of its costs to relocate its equipment underground.

7.6.1 *New Equipment to be Placed Underground:* Where financially and technically reasonable, the Franchisee shall place its new Equipment underground in locations serving new subdivisions or other areas within the City where Equipment currently does not exist to the extent the City makes the same undergrounding requirement applicable to all users of the Public Rights-of-Way. Existing overhead Equipment may remain overhead when repaired, replaced, upgraded, or increased in capacity.

7.7 *Use of CITY Structures:* This Franchise does not grant to the Franchisee use of City-owned structures, poles or conduits. The terms and conditions of the Franchisee's use of any City-owned structures, pole or conduits shall be set forth in a separate ordinance, agreement, lease or other document, as appropriate.

## 8. REPORTS AND RECORDS

8.1. *Open Books and Records:* Upon not less than thirty (30) business days written notice to the Franchisee, the City of Hampton shall have the right, at any time during Normal Business Hours as reasonably determined by the parties, to inspect the Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area as reasonably necessary to ensure compliance with the terms of this Franchise; provided, however, that inspections of financial records including audits performed pursuant to Section 8.2 shall be performed no more frequently than once every twenty-four (24) months. Such notice shall specifically reference the section or

subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City Of Hampton. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than two (2) years. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

8.2. *Audit:* Inspections performed pursuant to Section 8.1 of this Agreement may include an audit of all records reasonably necessary to confirm the accurate payment of the PEG Capital Fee. Franchisee shall bear the City Of Hampton's reasonable, documented out-of-pocket expenses of any such audit performed by a qualified, independent third-party auditor, up to a maximum of twenty thousand dollars (\$20,000), if such audit discloses an underpayment by Franchisee of more than three percent (3%) of any quarterly payment and five thousand dollars (\$5,000) or more. The City of Hampton shall not audit Franchisee more frequently than once every twenty-four (24) months. The City of Hampton shall have no more than two (2) years from the time Franchisee delivers a payment to provide a written, detailed objection to or dispute of that payment, and if the City of Hampton fails to object to or dispute the payment within that time period, the City of Hampton shall be barred from objecting to or disputing it after that time period. Franchisee shall be provided a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to the City Of Hampton. In the event that Franchisee disputes any underpayment discovered as the result of an audit conducted by the City Of Hampton, the City of Hampton shall work together with Franchisee in good faith to promptly resolve such dispute. The City of Hampton and Franchisee maintain all rights and remedies available at law regarding any disputed amounts. The City of Hampton may require Franchisee to pay any additional undisputed amounts due to the City of Hampton as a result of an audit performed by the City of Hampton pursuant to this Section 8.2 within thirty (30) days following receipt by Franchisee of written notice by the City Of Hampton. Notwithstanding the foregoing, Franchisee shall not be obligated to bear any audit expenses for any auditor utilized by the City of Hampton that is compensated on a success-based formula, *e.g.*, payment based on a percentage of underpayment, if any.

8.3. *Proprietary and Confidential Information:* Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature except in accordance with the following procedures, or to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. If Franchisee believes that any requested information is confidential and proprietary, Franchisee must provide the following documentation to the City Of Hampton: (i) specific identification of the information; (ii) a statement attesting to the reason(s) Franchisee believes the information is confidential and/or proprietary; and (iii) a statement that the document(s) are available for inspection by the City Of Hampton. Franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains any "confidential" or "proprietary" information. Unless otherwise ordered by a court or agency of competent jurisdiction, the City of Hampton agrees that, to the extent permitted by applicable law, it shall deny

access to any of Franchisee's information marked "Confidential" as set forth in this Section 8.3 to any Person or governmental entity. If, in the course of enforcing this Franchise or for any other reason, the City of Hampton believes it must disclose any information marked "Confidential" as set forth in this Section 8.3, the City of Hampton shall provide reasonable advance notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. If the City of Hampton receives a demand from any Person or governmental entity for disclosure of any information identified as "Confidential" pursuant to this Section 8.3, the City of Hampton shall, so far as consistent with applicable law, advise Franchisee and provide Franchisee with a copy of any written request prior to granting the Person or governmental entity access to such information.

8.4. *Inspection Location:* Books and Records produced for inspection pursuant to Sections 8.1 and 8.2, and documents produced for inspection pursuant to Section 8.3 shall be produced at a mutually agreed location.

8.5. *Records Required:* Franchisee shall at all times maintain:

8.5.1. Records of all written complaints for a period of two (2) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy;

8.5.2. Records of outages for a period of two (2) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.5.3. Records of service calls for repair and maintenance for a period of two (2) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.5.4. Records of installation/reconnection and requests for service extension for a period of two (2) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended.

## 9. INSURANCE AND INDEMNIFICATION

9.1. *Insurance:*

9.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

9.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000.00) combined single limit and two million dollars (\$2,000,000) aggregate for property damage and bodily injury. Such insurance

shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the City Of Hampton.

9.1.1.2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000.00) combined single limit for bodily injury and property damage.

9.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the Commonwealth of Virginia.

9.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: one hundred thousand dollars (\$100,000.00); (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000.00) employee limit; and (C) Bodily Injury by Disease: five hundred thousand dollars (\$500,000.00) policy limit.

9.1.1.5. Umbrella Liability Insurance shall be maintained above the primary Commercial General Liability, Automobile Liability, and Employers' Liability policies required herein. The limit of such Umbrella Liability Insurance shall not be less than two million dollars (\$2,000,000.00) each occurrence and in the annual aggregate.

9.1.2. The limits required above may be satisfied with a combination of primary and excess coverage.

9.1.3. The City of Hampton shall be included as an additional insured under each of the insurance policies required in this Article 10 except Workers' Compensation and Employers' Liability Insurance.

9.1.4. Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

9.1.5. Each of the required insurance policies shall be with insurers qualified to do business in the Commonwealth of Virginia, with an A.M. Best Financial Strength rating of A- or better.

9.1.6. Franchisee shall deliver to the Risk Manager of the City of Hampton Certificates of Insurance showing evidence of the required coverage as well as copies of endorsements to each insurance policy which names the City as an additional insured.

## 9.2 Indemnification:

9.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend the City Of Hampton, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System,

provided that upon receipt of a claim or action pursuant to this subsection the City of Hampton shall give Franchisee written notice of its obligation to indemnify the City of Hampton in a timely fashion so as not to materially prejudice Franchisee. Notwithstanding the foregoing, Franchisee shall not indemnify the City Of Hampton, for any damages, liability or claims resulting from the willful misconduct or negligence of the City Of Hampton, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person or governmental entity other than Franchisee in connection with PEG Access or EAS, or the distribution of any Cable Service over the Cable System.

9.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 9.2.1, Franchisee shall provide the defense of any claims brought against the City of Hampton by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the City Of Hampton, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the City of Hampton from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the City Of Hampton, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the City of Hampton and the City of Hampton does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the City of Hampton shall in no event exceed the amount of such settlement.

9.2.3. The City of Hampton shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the City of Hampton for which the City of Hampton is legally responsible, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the City of Hampton for acts of the City Of Hampton, which constitute willful misconduct or negligence on the part of the City Of Hampton, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

### 9.3 Performance Bond

9.3.1 Franchisee shall furnish and file with the City a performance bond which shall run to the City in the penal sum of One hundred thousand Dollars (\$100,000). The bond shall be conditioned upon the faithful performance of Franchisee of all terms and conditions of this Franchise. The company providing such bond must be licensed to do business in the State of Virginia.

9.3.2 Upon request by Franchisee and review by the City, the bond may be reduced to an amount adequate to protect the City based on Franchisee's faithful performance of all terms and conditions of this Franchise.



10. **TRANSFER OF FRANCHISE**

Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the City Of Hampton, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for transactions excluded under Section 1.27 above.

11. **RENEWAL OF FRANCHISE**

11.1. The City of Hampton and Franchisee agree that any proceedings undertaken by the City of Hampton that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546, or Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.30, as applicable.

11.2. Notwithstanding anything to the contrary set forth herein, Franchisee and the City of Hampton agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City of Hampton and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the City of Hampton may grant a renewal thereof.

12. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

12.1. *Notice of Violation:* If at any time the City of Hampton believes that Franchisee has not substantially complied with the terms of the Franchise, the City of Hampton shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the issue, the City of Hampton shall then notify Franchisee in writing of the exact nature of the alleged noncompliance (for purposes of this Article, the "Noncompliance Notice").

12.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have fifteen (15) business days from receipt of the Noncompliance Notice to: (i) respond to the City of Hampton, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such fifteen (15) day period, initiate all reasonable steps to remedy such noncompliance as quickly as possible and notify the City of Hampton of the steps being taken and the projected date by which cure is projected to be completed. Upon cure of any noncompliance, the Franchisee shall notify the City of Hampton in writing and the City of Hampton shall provide written confirmation that such cure has been accepted by the City Of Hampton.

12.3. *Public Hearing:* The City of Hampton shall schedule a public hearing if the City of Hampton seeks to continue its investigation into the alleged noncompliance in the event that: (1) Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (2) in the event that

Franchisee has not remedied the alleged noncompliance within fifteen (15) days or the date projected pursuant to Section 12.2(iii) above. The City of Hampton shall provide Franchisee at least thirty (30) days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

12.4. *Enforcement:* Subject to applicable federal and state law, in the event the City Of Hampton, after the public hearing set forth in Section 12.3, determines that Franchisee is in default of any provision of this Franchise, the City of Hampton may:

12.4.1. Seek specific performance of any provision that reasonably lends itself to such remedy, as an alternative to damages; or

12.4.2. Commence an action at law for monetary damages or seek other equitable relief; or

12.4.3. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 12.7

12.5. *Revocation:*

12.5.1. Should the City of Hampton seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 12.3., the City of Hampton shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the City of Hampton has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The City of Hampton shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

12.5.2. At the designated hearing, consistent with applicable federal and state law, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence consistent with applicable federal and state law, to compel the relevant testimony of persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing, the cost of which shall be shared by the Franchisee and the City Of Hampton.

12.5.3. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the City of Hampton shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The City of Hampton shall also determine whether to revoke the Franchise based on the information presented, or,

where applicable, grant additional time to the Franchisee to affect any cure. If the City of Hampton determines that the Franchise shall be revoked, the City of Hampton shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the City of Hampton to an appropriate court. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the franchising authority.

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

### 13. MISCELLANEOUS PROVISIONS

13.1. *Actions of Parties:* In any action by the City of Hampton or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

13.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

13.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only 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 of Hampton.

13.4. *Force Majeure:* Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

13.5. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

Notices to Franchisee shall be mailed to:

Cox Communications Hampton Roads, LLC  
1341 Crossways Blvd.  
Chesapeake, VA 23320  
Attn: General Manager

with a non-binding courtesy copy to:

Cox Communications  
1400 Lake Hearn Drive  
Atlanta, GA 30319  
Attn: Government Affairs/Legal

Notices to the City of Hampton shall be mailed to:

City of Hampton  
22 Lincoln Street  
Hampton VA 23669  
Attn: City Manager

With a non-binding courtesy copy to:

City of Hampton  
22 Lincoln Street  
Hampton VA 23669  
Attn: City Attorney

13.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the City of Hampton, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

13.7. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

13.8. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

13.9. *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other

section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

13.10. *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

13.11. *Single Point of Contact for City of Hampton*: Franchisee shall provide the City of Hampton with contact information for an individual who shall be the single point of contact for Franchisee on Cable Services and issues. Contact information shall include the contact's name, address, business telephone and facsimile numbers, and e-mail address. If any contact information changes, Franchisee will inform the City of Hampton as soon as reasonably possible.

13.12. *Independent Review*: City of Hampton and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

13.13. *Duplicate Originals*: This Agreement may be executed in duplicate, and each such duplicate shall be deemed an original, and the parties may become a party hereto by executing any such duplicate, so long as such duplicate contains an original signature of both parties. This Agreement and any duplicate so executed shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any duplicate hereof to produce or account for any other duplicate. .

### SIGNATURE PAGE FOLLOWS

Adopted at the regular meeting of the City Council of the City of Hampton, Virginia held on May 12, 2010.

Signed by Molly Joseph Ward Date MAY 12 2010  
Molly Joseph Ward, Mayor

Attested by Katherine K. Glass Date MAY 12 2010  
Katherine K. Glass  
Clerk of the Council

AGREED TO THIS 12<sup>th</sup> DAY OF May, 2010.

CITY OF HAMPTON, VIRGINIA

By: *Molly Jean Ward*  
Mayor

COX COMMUNICATIONS HAMPTON ROADS, LLC

By: Dary J. McAllen  
6/15/2010

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Courtesy Cable Service

Exhibit B: Customer Service Standards

## EXHIBIT A

### MUNICIPAL BUILDINGS TO BE PROVIDED COURTESY CABLE SERVICE

#### City of Hampton - List of Public Buildings

GISLRSN	Full Add	CITY	ZIP	Place Name
1006406	3501 KECOUGHTAN RD	HAMPTON	236661	Senior Citizens Center
2002977	136 KINGS WAY	HAMPTON	23669	Carmel Center
2000245	1320 LASALLE AVE	HAMPTON	23669	Social Services
2002911	100 OLD HAMPTON LN	HAMPTON	23669	Healthy Families Partnership
1002870	1815 SHELL RD	HAMPTON	236661	Hart McAllister Community Center
2003225	600 SETTLERS LANDING RD	HAMPTON	23669	Virginia Air & Space Center
1000718	1928 W PEMBROKE AVE	HAMPTON	236661	City Jail Annex
12002681	249 W CHAMBERLIN AVE	HAMPTON	23663	North Phoebus Community Center
2002910	120 OLD HAMPTON LN	HAMPTON	23669	Hampton History Museum
12001370	1 S MALLORY ST	HAMPTON	23663	Phoebus Branch Library
2003230	710 SETTLERS LANDING RD	HAMPTON	23669	Cousteau Society
2003048	26 WINE ST	HAMPTON	23669	Court Services Unit
2001736	4205 VICTORIA BLVD	HAMPTON	23669	Charles Taylor Arts Center
2002993	35 WINE ST	HAMPTON	23669	Juvenile Intake Office
1003293	2315 VICTORIA BLVD	HAMPTON	236661	Kenny Wallace Resource Center
12001344	125 E MELLEN ST	HAMPTON	23663	American Theatre
1006423	3130 VICTORIA BLVD	HAMPTON	236661	Health Department
1002553	1430 KECOUGHTAN RD	HAMPTON	236661	Fire Station 3 - Wythe
2000961	201 LINCOLN ST	HAMPTON	23669	Old Hampton Community Center
12006931	2412 E PEMBROKE AVE	HAMPTON	23664	Fire Station 4 - Buckroe
2002990	602 SETTLERS LANDING RD	HAMPTON	23669	Carousel Park
8000004	1501 BETHEL AVE	HAMPTON	23669	Police Firing Range
12001409	122 S HOPE ST	HAMPTON	23663	Fire Station 2 - Phoebus
2002877	3922 KECOUGHTAN RD	HAMPTON	23669	Newtown Neighborhood Learning Center
2003238	40 LINCOLN ST	HAMPTON	23669	Public Safety Building
2003238	220 N KING ST	HAMPTON	23669	Juvenile & Domestic Relations Court
2003238	22 LINCOLN ST	HAMPTON	23669	City Hall
2000759	419 N ARMISTEAD AVE	HAMPTON	23669	Solid Waste, Traffic Ops, & Drainage
2000759	306 W PEMBROKE AVE	HAMPTON	23669	FS 1 - Downtown Hampton
2000759	550 N BACK RIVER RD	HAMPTON	23669	Street Operations & Wastewater
2001733	4207 VICTORIA BLVD	HAMPTON	23669	Main Library
4001444	936 BIG BETHEL RD	HAMPTON	23666	Northampton Branch Library
2002968	101 KINGS WAY	HAMPTON	23669	Circuit Court
2002968	101 KINGS WAY FL 2	HAMPTON	23669	George Wythe Law Library
8000282	1306 THOMAS ST	HAMPTON	23669	Mary Peake Center
8000281	1300 THOMAS ST	HAMPTON	23669	Adult & Alternative Learning Center
6001242	1248 LANGLEY BLVD STOP 209	HAMPTON	23666	Fire Station 8 - NASA
1000275	1590 BRIARFIELD RD	HAMPTON	23666	Fire Station 9 - Briarfield
12000817	9 WOODLAND RD	HAMPTON	23663	Woodland Golf Course
2000403	1135 LASALLE AVE	HAMPTON	23669	Jones Community Center
4001413	1435 A TODDS LN	HAMPTON	23666	Northampton Community Center
2002947	1 FRANKLIN ST	HAMPTON	23669	Ruppert Sargent Building
2002967	135 HIGH COURT LN	HAMPTON	23669	Hampton City Jail
2003238	236 N KING ST OFC CA	HAMPTON	23669	Commonwelath Attorney



2003238	236 N KING ST	HAMPTON	23669	General District Court
2002968	101 KINGS WAY RM 103	HAMPTON	23669	Voier Registrar
7001268	1919 COMMERCE DR STE 290	HAMPTON	23666	Convention & Visitor Bureau
2000960	101 N ARMISTEAD AVE STE 200	HAMPTON	23669	Virginia Cooperative Extension
2000759	413 N ARMISTEAD AVE	HAMPTON	23669	Fleet Operations
2000845	231 SPRINGFIELD AVE	HAMPTON	23669	Facilities
8005835	418 W MERCURY BLVD	HAMPTON	23669	Parks Athletics Office
6001242	50 WYTHE CREEK RD	HAMPTON	23666	Steam Plant
8003571	227 FOX HILL RD	HAMPTON	23669	Willow Oaks Branch Library
5000005	2001 NORTH PARK LN	HAMPTON	23666	Landfill
13001171	1000 COLISEUM DR	HAMPTON	23666	Hampton Coliseum
13001172	1610 COLISEUM DR	HAMPTON	23666	Hampton Roads Convention Center
10000604	100 GRUNDLAND DR	HAMPTON	23664	Grundland Park
2001673	4111 VICTORIA BLVD	HAMPTON	23669	Darling Stadium
12008074	2028 NICKERSON BLVD	HAMPTON	23663	Nickerson Police Field Office
1000481	1638 BRIARFIELD RD	HAMPTON	23661	West Hampton Community Center
10000330	416 BEACH RD	HAMPTON	23664	Fire Station 5 - Fox Hill
8000007	413 W MERCURY BLVD	HAMPTON	23669	Air Power Park
1000436	2203 MINGEE DR	HAMPTON	23661	Parks Operations
4000554	1221 TODDS LN	HAMPTON	23666	Fire Station 6 - Northampton
5000002	1255 BIG BETHEL RD	HAMPTON	23666	Sandy Bottom Nature Park
8002741	176 FOX HILL RD	HAMPTON	23669	Fire Station 7 - Willow Oaks
2001674	4111 VICTORIA BLVD	HAMPTON	23669	Darling Stadium
2000012	60 PINE CHAPEL RD	HAMPTON	23666	Bluebird Gap Farm
7001663	204 MARCELLA RD	HAMPTON	23666	Fire Station 10 - Mercury Central
7001858	320 BUTLER FARM RD	HAMPTON	23666	Hamptons Golf Course
8001552	85 E MERCURY BLVD	HAMPTON	23669	Ridgway Park
9000453	901 E LITTLE BACK RIVER RD	HAMPTON	23669	Gosnolds Hope Park
13000657	903 E LITTLE BACK RIVER RD	HAMPTON	23669	Gosnolds Hope Park
3003969	1424 ABERDEEN RD	HAMPTON	23666	Aberdeen Elementary School
1006571	3401 MATOAKA RD	HAMPTON	23661	Armstrong Elementary School
10000138	140 BEACH RD	HAMPTON	23664	Asbury Elementary School
8002464	45 FOX HILL RD	HAMPTON	23669	Barron Elementary School
1002419	671 BELL ST	HAMPTON	23661	Bassette Elementary School
4004559	1067 BIG BETHEL RD	HAMPTON	23666	Bethel High School
8003547	160 APOLLO DR	HAMPTON	23669	Booker Elementary School
12005514	1021 N MALLORY ST	HAMPTON	23663	Bryan Elementary School
7001579	40 TIDE MILL LN	HAMPTON	23666	Burbank Elementary School
12004108	2009 ANDREWS BLVD	HAMPTON	23663	Cary Elementary School
7001660	200 MARCELLA RD	HAMPTON	23666	Cooper Elementary School
4001413	1435 TODDS LN	HAMPTON	23666	Davis Middle School
7001539	2108 CUNNINGHAM DR	HAMPTON	23666	Eaton Middle School
3001225	1406 TODDS LN	HAMPTON	23666	Forrest Elementary School
1001219	1491 W QUEEN ST	HAMPTON	23669	Hampton High School
	3120 VICTORIA BOULEVARD	HAMPTON	23661	Hunter B. Andrews School
12008577	1819 NICKERSON BLVD	HAMPTON	23663	Jones Middle School
11001886	522 WOODLAND RD	HAMPTON	23669	Kecoughtan High School
4002629	600 CONCORD DR	HAMPTON	23666	Kraft Elementary School
9000454	16 ROCKWELL RD	HAMPTON	23669	Langley Elementary School
1000483	1646 BRIARFIELD RD	HAMPTON	23669	Lee Elementary School
1000481	1636 BRIARFIELD RD	HAMPTON	236661	Lindsay Middle School
6000617	20 SACRAMENTO DR	HAMPTON	23666	Machen Elementary School
3003405	331 BIG BETHEL RD	HAMPTON	23666	Mallory Elementary School
11003254	2113 WOODMANSEE DR	HAMPTON	23663	Merrimack Elementary School
12002672	339 OLD BUCKROE RD	HAMPTON	23663	Moton Elementary School

7001873	520 BUTLER FARM RD	HAMPTON	23666	New Horizons Regional Education Center
4004559	1061 BIG BETHEL RD	HAMPTON	23666	George P. Phenix Middle School
11000693	703 LEMASTER AVE	HAMPTON	23669	Phillips Elementary School
12003987	100 IRELAND ST	HAMPTON	23663	Phoebus High School
10000455	14 WIND MILL POINT RD	HAMPTON	23664	Schools Facilities
12000239	379 WOODLAND RD	HAMPTON	23669	Smith Elementary School
12000245	339 WOODLAND RD	HAMPTON	23669	Spratley Middle School
8002740	170 FOX HILL RD	HAMPTON	23669	Syms Middle School
3005228	1589 WINGFIELD DR	HAMPTON	23666	Tarrant Elementary School
3000081	113 WELLINGTON DR	HAMPTON	23605	Tucker - Capps Elementary School
8005825	57 SALINA ST	HAMPTON	23669	Tyler Elementary School
1005036	200 CLAREMONT AVE	HAMPTON	236661	Wythe Elementary School

## EXHIBIT B

### CUSTOMER SERVICE STANDARDS

These standards shall apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

#### SECTION 1. DEFINITIONS

A. Respond: Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

B. Service Call: The action taken by the Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

C. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

D. Standard Installation: Installations where the subscriber is within two hundred-fifty (250) feet of trunk or feeder lines.

#### SECTION 2. TELEPHONE AVAILABILITY

A. The Franchisee shall maintain a toll-Courtesy number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty (40) hours per week. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

B. The Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by the Franchisee.

C. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

D. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

### **SECTION 3. INSTALLATIONS AND SERVICE APPOINTMENTS**

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after order has been placed. "Standard" Installations are those that are located up to two hundred fifty feet (250) from existing distribution system that does not require location of underground utilities and/or direct bore or trenching

C. The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At the Franchisee's discretion, the Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

D. The Franchisee may not cancel an appointment with a Subscriber after close of business on the business day preceding the appointment. If Franchisee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, under Normal Operating Conditions the Subscriber will be contacted and the appointment rescheduled as necessary.

E. Franchisee service representatives will have the ability to issue service credits, at Franchisee's sole discretion, to address customer complaints related to miss appointments.

F. The Franchisee shall use due care in the process of installation and shall substantially restore the Subscriber's property to its prior condition. Such restoration shall be undertaken and completed as soon as reasonably possible after the damage is incurred.

### **SECTION 4. CUSTOMER SERVICE, SERVICE INTERRUPTIONS AND OUTAGES**

A. The Franchisee shall notify the City of Hampton of any Significant Outage of the Cable Service.

B. The Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable

System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the City of Hampton and each affected Subscriber in the Service Area have been given fifteen (15 ) business days prior notice of the proposed Significant Outage. Notwithstanding the forgoing, Franchisee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual subscriber notice.

C. Franchisee representatives who are capable of responding to Service Interruptions must be available to respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, the Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.

(2) The Franchisee must begin actions to correct all other Cable Service

problems the next business day after notification by the Subscriber or the City of Hampton of a Cable Service problem.

E. Under Normal Operating Conditions , the Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

F. The Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

H. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue an automatic credit to the affected Subscribers in the amount

equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

I. With respect to service issues concerning Cable Services provided to City of Hampton facilities, Franchisee shall respond to all inquiries from the City of Hampton within six (6) hours and shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions. If such repairs cannot be completed within twenty-four (24) hours, the Franchisee shall notify the City of Hampton in writing as to the reason(s) for the delay and provide an estimated time of repair.

## **SECTION 5. CUSTOMER COMPLAINTS**

Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by the City of Hampton within five (5) business days. The Franchisee shall notify the City of Hampton of those matters that necessitate an excess of five (5) business days to resolve, but those matters must be resolved within fifteen (15) business days of the initial complaint. The City of Hampton may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

## **SECTION 6. BILLING**

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items the Communications Sales and Use Tax, and/or other taxes or governmentally imposed fees. The Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and
- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
- (4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, the Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee.

G. The Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its' discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Franchisee, the payment alternative may be limited.

## **SECTION 7. DEPOSITS, REFUNDS AND CREDITS**

A. The Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to the Franchisee, or 3) who rent Subscriber equipment from the Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Franchisee may charge for Subscriber equipment is the cost of the equipment which the Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. The Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Franchisee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by the Franchisee or its authorized agent. Appropriate time considerations shall be included in the Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

#### **SECTION 8. RATES, FEES AND CHARGES**

A. The Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Franchisee's equipment (for example, a dog chew).

B. The Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

#### **SECTION 9. DISCONNECTION / DENIAL OF SERVICE**

A. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of the Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Franchisee's equipment, abusive and/or threatening behavior toward the Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow the Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.



**SECTION 10.            COMMUNICATIONS WITH SUBSCRIBERS**

A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee shall wear a clearly visible identification card bearing their name and photograph. The Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have the Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

B. All contact with a Subscriber or potential Subscriber by a Person representing the Franchisee shall be conducted in a courteous manner.

C. The Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the City of Hampton.

D. All notices identified in this Section shall be by either:

(1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or

(2) A separate electronic notification.

E. The Franchisee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Franchisee, and the Franchisee shall provide a copy of the notice to the City of Hampton including how and where the notice was given to Subscribers.

F. The Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:

(1) Products and Cable Service offered;

(2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address and telephone number of the City of Hampton, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

(7) The availability of a parental control device;

(8) Franchisee practices and procedures for protecting against invasion of privacy; and

(9) The address and telephone number of the Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.F. will be given to the City of Hampton at least fifteen (15) days prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not within the control of Franchisee.

G. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

H. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

I. Every notice of termination of Cable Service shall include the following information:

(1) The name and address of the Subscriber whose account is delinquent;

(2) The amount of the delinquency for all services billed;

(3) The date by which payment is required in order to avoid termination of Cable Service; and

(4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

