

CABLE TELEVISION FRANCHISE ORDINANCE

FOR THE

CITY OF HOT SPRINGS, ARKANSAS

AND

RESORT TELEVISION CABLE COMPANY, INC.

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ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO RESORT TELEVISION CABLE, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF HOT SPRINGS, ARKANSAS; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN; AND FOR OTHER PURPOSES.

WHEREAS, the City intends, by the adoption of this Franchise, to continue the operation and further development of a Television Cable System; and that

WHEREAS, such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally; and that

WHEREAS, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System; and that

WHEREAS, adoption of this Franchise is in the best interests of City and its residents; and that

WHEREAS, in the review of the request for renewal by Resort Television Cable Company, Inc. and negotiations related thereto, and as a result of a public hearing, the Board of Directors makes the following findings:

1. Resort's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Resort's plans for constructing, upgrading, and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. This Franchise complies with the existing applicable state statutes, federal laws and regulations; and
4. This Franchise is nonexclusive.

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Hot Springs, Arkansas:

SECTION ONE. A non-exclusive Cable Television Franchise is hereby granted to Resort Television Cable Company, Inc., in accordance with the terms and conditions as enumerated within the attached Cable Television Franchise Agreement.

SECTION TWO. All ordinances or parts of ordinances in conflict herewith are hereby repealed including, but not limited to, Ordinance No. 5162 and Ordinance 5590 in their entirety.

SECTION THREE. This ordinance shall be codified in the Code of Ordinances and the ARTICLES may be renumbered or relettered to accomplish such intention.

PASSED: _____

APPROVED: _____
MIKE BUSH, MAYOR

ATTEST: _____
LANCE HUDNELL, CITY CLERK

ARTICLE 1.
SHORT TITLE AND DEFINITIONS

1.1 Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance and Agreement.

1.2 Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

Applicable Laws means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

Basic Cable Service means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).

Board of Directors means the governing body of the City of Hot Springs.

Cable Service or Service means:

(a) The one-way transmission to Subscribers of

(1) Video Programming or

(2) Other Programming Service, and

(b) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. §522(6).

Cable System or System means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

(a) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(b) A facility that serves Subscribers without using any public right-of-way;

(c) A facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) 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;

(d) An open video system that complies with 47 U.S.C. § 573; or

(e) Any facilities of any electric utility used solely for operating its electric utility systems.

Channel or Cable Channel means 6 MHz of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering an analog television Channel as defined by the FCC.

City means City of Hot Springs, a municipal corporation, in the State of Arkansas, acting by and through its Board of Directors, or its lawfully appointed designee.

Converter means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.

Drop means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

FCC means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

Franchise or Cable Franchise means this franchise ordinance and the regulatory and contractual relationship established hereby.

Franchise Fee includes any tax, fee, or assessment of any kind imposed by the City on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17.

Grantee means Resort Television Cable Company, Inc., a subsidiary of WEHCO Video, Inc., its lawful successors, transferees or assignees.

Gross Revenue means all revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent, or Person in which Grantee has financial interest of five percent (5%) or more, from the operation of its Cable System within City including, but not limited to, all Cable

Service fees, Franchise Fees, late fees, Installation and re-connection fees, upgrade and downgrade fees, advertising revenue, Converter rental fees and Lockout Device fees. The term Gross Revenue shall not include any taxes on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.

Installation means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.

Lockout Device means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain Channel, or certain Channels provided by way of the Cable System.

Normal Business Hours means those hours during which most similar businesses in City are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours, at least one (1) night per week and/or some weekend hours.

Normal Operating Conditions means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee 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 Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

Other Programming Service means information that a cable operator makes available to all Subscribers generally.

Pay Television means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.

Person is any Person, firm, partnership, association, corporation, company, limited liability entity or other legal entity.

Right-of-Way or Rights-of-Way means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.

Right-of-Way Ordinance means any ordinance presently existing or which may be adopted in the future codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.

Service Area or Franchise Area means the entire geographic area within the City as it is now constituted or may in the future be constituted.

Service Interruption means the loss of picture or sound on one or more Cable Channels.

Standard Installation means any residential Installation which can be completed using an aerial Drop of one hundred fifty (150) feet or less.

Subscriber means any Person, lessee, tenant, or occupant within the corporate limits of the City who lawfully receives Cable Service via the System.

Video Programming means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

ARTICLE 2.
GRANT OF AUTHORITY AND GENERAL PROVISIONS

2.1 Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.

2.2 Grant of Nonexclusive Authority.

a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in the City, a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.

b. This Franchise shall be nonexclusive, and City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service.

c. The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City; provided, however, that no such franchise or similar lawful authorization shall contain material terms or conditions which, when considered as a whole, are substantially more favorable or less burdensome to the competitive provider than the material terms and conditions herein. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the overall regulatory and financial burdens on each entity are generally equivalent.

d. Notwithstanding any provision to the contrary, should any entity provide Cable Service within the Franchise Area during the term of this Franchise without a Franchise granted by the City and the City has the legal authority under State and Federal law to impose a Franchise on such entity, then Grantee shall have all rights which may be available to assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

2.3 Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.

2.4 Franchise Term. This Franchise shall be in effect for a term of ten (10) years commencing on April 1, 2009 and ending on March 31, 2019 (original term). Thereafter, the

franchise may be extended for one additional term of 5 years (extension) subject to concurrence by both the City and the Grantee at the end of the original term and each extension thereof.

2.5 Previous Franchises. Upon acceptance by Grantee as required herein, this Franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to Grantee.

2.6 Compliance with Applicable Laws, Resolutions and Ordinances.

a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in the City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of the City. This Franchise may also be modified or amended with the written consent of the City and Grantee as provided herein.

b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within the City, which may have the effect of superseding, modifying or amending the terms herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

c. In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

d. In the event any City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in this Franchise, Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

e. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to the City, in accordance with ARTICLE 2.9. The City shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question. The City will use all reasonable best efforts to ensure that no Right-of-Way ordinance provisions unduly slow Grantee's construction unless necessary to address health safety and welfare concerns.

2.7 Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.

2.8 Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides.

2.9 Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's manager of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to the City: Office of the City Manager
133 Convention Blvd., P.O. Box 700
Hot Springs, Arkansas 71902

If to Grantee: Resort Television Cable Company, Inc.
c/o WEHCO Video, Inc.
Attn: Vice President of Administration
P.O. Box 2221
Little Rock, Arkansas 72203

Such addresses may be changed by either party upon notice to the other party given as provided in this ARTICLE.

**ARTICLE 3.
CONSTRUCTION STANDARDS**

3.1 Registration, Permits, Construction Codes, and Cooperation.

a. Grantee shall comply with the construction requirements of local, state and federal laws.

b. Grantee agrees to obtain a permit as may be required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities; provided such permit shall be required of all public utility companies operating in City. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.

c. Reimbursement paid through the permitting process is separate, and in addition to, any other fees included in the Franchise.

d. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the City Administrator or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.

e. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.

f. Grantee shall meet with developers and be present at City sponsored pre-construction meetings to ensure that the newly constructed Cable System facilities are installed in new developments within City in a timely manner.

g. Upon request, Grantee shall provide a status report to City regarding its progress toward completion of System construction, whenever such construction is undertaken pursuant to annexation or expansion into previously unserved areas.

3.2 Ongoing Construction. Grantee shall notify City at least ten (10) days prior to the commencement of any construction in any Right-of-Way when such construction will impede or interfere with traffic. Grantee shall not open or disturb the surface of any Right-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

3.3 Use of Existing Poles or Conduits.

a. Grantee shall utilize existing poles, conduits and other facilities whenever commercially reasonable.

b. The facilities of Grantee shall be installed underground in those areas of the City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground. If City requires utilities to bury lines which are currently overhead, and City financially participates in said undergrounding, then City will consider providing the same cost sharing to Grantee.

3.4 Minimum Interference.

a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.

b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.

3.5 Disturbance or Damage. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as reasonably determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee's work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice therefore.

3.6 Temporary Relocation.

a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary or less expensive for City.

b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than thirty (30) days advance notice to arrange such temporary wire alterations.

3.7 Emergency. Whenever, in case of fire or other emergency, it becomes reasonably necessary in the judgment of the City Manager, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages.

3.8 Tree Trimming. Grantee shall have the authority to trim trees on public Rights-of-Way at its own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by City. Any trimming of trees by the Grantee in the Rights-of-Way and public ways shall be subject to such regulation as the City Manager or other authorized official may establish to protect public health, safety and convenience.

3.9 Protection of Facilities. Nothing contained in this ARTICLE shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

3.10 Installation Records. Each Grantee shall keep accurate records of the location of its' fiber, trunk, and distribution facilities in the Rights-of-Way and public ways and furnish them to City upon request. Grantee shall cooperate with City to furnish such information in an electronic mapping format, if possible, compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City with records in an electronic format, if possible, compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities.

3.11 Locating Facilities.

a. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either:

- (1) locate and, if necessary, expose its facilities in conflict or
- (2) use a location service under contract with City to locate or expose its facilities.

Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.

b. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way

and public ways, aerial, surface, or subsurface improvement including, but not limited to, water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of the city limits.

3.12 City's Rights.

a. When City uses its prior superior right to the Rights-of-Way and public ways, Grantee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as City directs.

b. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

3.13 Facilities in Conflict. If, during the course of a project, City determines Grantee's facilities are in conflict with those of other entities, Grantee shall, within a reasonable time, but in no event exceeding three (3) months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by Grantee of written notice from City. However, if both City and Grantee agree, the time frame may be extended based on the requirements of the project.

3.14 Relocation Delays.

a. Subject to Grantee's compliance with ARTICLE 3.13 above, if Grantee's relocation effort so delays construction of a public project causing City to be liable for delay damages, Grantee shall reimburse City for those damages attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City Engineer for a decision. In the event that Grantee disagrees with the City Engineer's decision, the matter shall be submitted to the City Manager or the City Manager's designee for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts.

b. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay.

3.15 Interference with City Facilities. The Installation, use and maintenance of the Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by City.

3.16 Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this ARTICLE is

meant to limit any rights Grantee may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

3.17 Collocation. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.

3.18 Safety Requirements.

a. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.

b. Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of the City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

**ARTICLE 4.
DESIGN PROVISIONS**

4.1 System Upgrade/Construction: Minimum Channel Capacity.

a. The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The System shall operate with 750 MHz of bandwidth, capable of delivering a minimum of eighty (80) Channels of programming. The System will be two-way active, and it will have a return capacity of 35 MHz. The design will provide the benefits of proven eighty (80) Channel electronics while positioning the System for expansion of bandwidth and Channel capacity as technology and future services develop.

b. The design of the System shall be based upon a "fiber to the node" architecture. Grantee will place fiber optic cables throughout the City, delivering the signals to an optical node placed in each neighborhood area. This architecture will deliver the signals by fiber optics directly to each neighborhood. Neighborhood groups must average not more than five hundred (500) homes each in order to ensure that the System has maximum reliability while delivering a high quality picture. Stand-by power supplies, shall be strategically placed throughout the System including all hubs, to reduce the likelihood of service interruptions. In addition, the System will be designed with the capability to transmit return signals upstream in the 5-40 MHz spectrum. The Cable System shall be designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current additions of the National Electrical Code and the National Electrical Safety Code.

c. Grantee shall develop, construct and operate a System capable of providing non-video services such as high-speed data transmission, Internet access, and Other Programming Services.

d. Grantee shall provide information to any business or other Subscriber within City which desires information regarding non-video services offered by Grantee.

e. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers thirty (30) days prior to any Channel deletions or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. §531-536, and further subject to City's rights pursuant to 47 U.S.C. §545. Location and relocation of the PEG Channels shall be governed by ARTICLE 6.

4.2 Interruption of Service. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than twenty-four (24) continuous hours in any thirty (30) day period, Subscribers shall be entitled to a pro rata credit for such interruption.

4.3 Emergency Alert Capability. Grantee shall provide the capability to allow the City to transmit from a location determined by the City, an emergency alert signal to all participating

Subscribers, in the form of an audio message on all Channels simultaneously in the event of disaster or public emergency. In addition, Grantee shall at all times comply with the Emergency Alert System standards pursuant to Title 47, ARTICLE 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time.

4.4 Technical Standards. The technical standards used in the operation of the System shall comply with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, ARTICLE 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. At present, Grantee is subject to the following technical standards:

- a. The System shall be capable of meeting the following distortion parameters:

(1)	Carrier to RMS Noise	43 dB
(2)	Carrier to Second Order	51 dB
(3)	Carrier to Cross Modulation	51 dB
(4)	Carrier to Composite Triple Beat	51 dB

- b. The frequency response of a single Channel as measured across any 6 MHz analog Channel shall not exceed +/- 2 dB.

- c. The visual signal level on each channel, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall not vary more than 8 decibels within any six-month interval and shall be maintained within:
 - (i) 3 decibels (dB) of the visual signal level of any visual carrier within a 6 MHz nominal frequency separation;
 - (ii) 14.5 dB of the visual signal level on any other channel on the system; and
 - (iii) A maximum level such that signal degradation due to overload in the subscriber's receiver or terminal does not occur.

- d. The System shall be designed such that at a minimum all technical specifications of this Franchise Agreement are met.

- e. The System shall be designed such that no noticeable degradation in signal quality will appear at the Subscriber terminal.

4.5 Special Testing.

a. City shall have the right to inspect and test all construction or Installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System as desired at any time during the term of this Franchise. Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance or for routine verification

of Grantee's compliance with FCC technical standards. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

b. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which may be the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed, the tests shall be conducted at City's expense by a qualified engineer selected by City. Grantee shall participate and cooperate in such testing and shall not assess City or Subscribers any fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing.

4.6 FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall, upon request of City, also be filed with City or its designee within ten (10) days of the conduct of such tests.

4.7 Interconnection. At the request of the City, Grantee shall enter into negotiations with adjacent Cable Systems regarding interconnecting PEG Access Channels and/or Institutional Network. All decisions regarding whether to interconnect and the terms and conditions of any such interconnect shall be a matter of agreement between the cable operators involved

4.8 Annexation. Upon the annexation of any additional land area by the City, if the annexed area is not currently served by a cable operator, said annexed area shall be served in accordance with the applicable provision of this ARTICLE. If the annexed area is served by another cable operator, Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days written notification by the City to Grantee of the annexation.

A cable operator other than Grantee whose Cable System already passes homes in an annexed area shall not extend its Cable System beyond those homes which it passes at the time the annexation occurs unless it otherwise obtains a franchise from the City.

4.9 Line Extension.

a. Grantee shall construct and operate its Cable System so as to provide Service to all parts of the City as provided in this Franchise and having a density equivalent of twelve (12) residential units per one-quarter (1/4) cable mile of System, as measured from the nearest tap on the Cable System.

b. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.

c. Any residential and/or commercial unit, which can be serviced by a Standard

Installation, shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in the City beyond the one hundred fifty (150) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs.

4.10 Lockout Device. Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout.

ARTICLE 5. SERVICE PROVISIONS

5.1 Regulation of Service Rates. Grantee and City hereby acknowledge that as of the initial date of this Franchise, Grantee is considered to have “effective competition” under FCC rules and regulations and, therefore, rates are not regulated by the City. Provided, however, the City reserves the right to regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent that such regulation may be allowed under federal or state law(s) in the future as long as such regulation will not deprive Grantee of a reasonable return on the regulated services.

5.2 Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet all technical and other specifications contained herein and all payment and policy obligations are met.

5.3 Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its Services within the city. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

5.4 Consumer Protection and Service Standards. Grantee shall maintain a convenient local customer service and bill payment location in the City for receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee shall also provide, under normal operating conditions, the necessary facilities, equipment and personnel to comply with the consumer protection standards established by this Article as well as all applicable federal or state regulations relating to customer service obligations, including those set forth at C.F.R. § 76.309.

a. Cable System office hours and telephone availability:

(1) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

(a.) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(b.) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

(2) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the

time under Normal Operating Conditions, measured on a quarterly basis.

(3) Grantee shall acquire equipment and/or perform surveys to measure compliance with the telephone answering standards above.

(4) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (5%) of the time.

(5) Customer service center and bill payment locations will be open at least during Normal Business Hours.

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

(1) Standard Installations will be performed within seven (7) business days after an order has been placed.

(2) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.

(3) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

c. Communications between Grantee and Subscribers:

(1) Notifications to Subscribers:

(a.) Grantee shall provide information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

i. Products and Services offered;

ii. Prices and options for programming services and conditions of subscription to programming and other services;

iii. Installation and Service maintenance policies;

- iv. Instructions on how to use the Cable Service;
- v. Channel positions of the programming carried on the System; and
- vi. Billing and complaint procedures, including the address and telephone number of the City.

(b.) Grantee shall strive to provide notice of any changes of programming services or Channel positions as soon as possible. In addition, Grantee shall notify Subscribers at least thirty (30) days in advance of rate changes, however, Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber.

d. Billing:

(1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(3) Refunds: Refund checks will be issued promptly, but no later than thirty (30) days following resolution of the request.

(4) Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

5.6 Refund Policy. In the event a Subscriber terminates Service, Grantee shall prorate the final billing on the basis of the number of days in the period for which Service was rendered compared to the number of days billed.

5.7 Late Fees. Fees for the late payment of bills shall comply with all federal and state laws and regulations and shall not be assessed until after the due date of the amount owed.

5.8 Local Office Policy.

a. Grantee shall maintain a location in the city for receiving Subscriber inquiries, bill payments, and equipment transfers. The location must be staffed by a Person capable of receiving inquiries and bill payments and the location shall be open a minimum of forty (40) hours per week. In addition, Grantee shall maintain a drop box within the Service Area for receiving Subscriber payments after hours.

a. Payments at Grantee's drop box location shall be deemed received on the date such payments are picked up by Grantee which shall occur no less than twenty-four (24) hours after each and every due date for Subscriber bills.

ARTICLE 6.
PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS
CHANNELS, FACILITIES AND EQUIPMENT

6.1 PEG Channels. Grantee shall initially make three (3) video channels available exclusively for PEG use (“PEG Channels”) as follows:

Community Access channel 5;
Educational Access channel 14; and
Government Access - channel 15.

The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may, upon written request to City, utilize any PEG Channels for commercial or non-commercial programming when they are not scheduled for PEG use. City and Grantee shall establish rules and procedures for such scheduling in accordance with ARTICLE 611 of the Cable Act (47 U.S.C.§ 531). The Grantee shall make available additional PEG channels upon ninety (90) days advance written notice from the City or other qualifying PEG institution should the need for such additional channels arise in accordance with Applicable Laws.

6.2 PEG Operations & Programming. The local government, educational institutions or community groups utilizing PEG channels shall be responsible for all programming requirements including, but not limited to, scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair. Grantee shall provide such programming assistance as may be mutually agreed by the using party and as provided in this Franchise, including commercially reasonable efforts to provide an audio feed of either a local radio station or music service to provide background sound for the City’s character generated bulletin board to be cablecast on one (1) or more of the PEG Channels. City may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG Channels. City shall retain title to all PEG equipment currently in use for PEG purposes which may have been purchased by Grantee for the benefit of the City during the preceding franchise term.

6.3 Relocation of PEG Channels. Grantee shall not relocate any PEG access Channel to a different Channel number, as listed in paragraph 6.1 above, unless specifically required by Applicable Law s or unless otherwise agreed to in writing by City. Grantee shall provide City and all Subscribers with at least sixty (60) days prior written notice of any legally required relocation.

6.4 Relocation Expense. In the event any PEG access Channel(s) is relocated, Grantee shall reimburse City up to Five Thousand and No/100 Dollars (\$5,000) for all reasonable costs associated with such move including change of letterhead, promotion of new Channel location and promotional spots for the new location and inform Subscribers of the new Channel location through bill inserts and newspaper advertisements.

6.5 PEG Promotion. To the extent permitted by Grantee’s billing process, Grantee shall allow the City to place bill stuffers in Grantee’s Subscriber statements at a cost to the City not to

exceed Grantee’s cost, no less frequently than once per year upon the written request of the City and at such times that the placement of such materials would not materially and adversely effect Grantee’s cost for the production and mailing of such statements. The City agrees to pay Grantee in advance for the actual cost of such bill stuffers. Grantee shall also make available PEG access information provided by City in Subscriber packets at the time of Installation and at the counter in the System’s business office serving the Service Area. Grantee shall also distribute, at no charge to City, through advertising insertion equipment, fifteen (15) weekly promotional and awareness commercial spots, on a “run of schedule” basis, produced at the City’s cost and submitted by the City in a format compatible with such advertising insertion equipment if Grantee has such capability. Grantee shall also include a listing of the known programming to be cablecast on PEG access Channels in or on any electronic program guide of Services for the Cable System provided that Grantee has the ability to do so.

6.6 PEG Grant & Fees. Grantee shall provide City with a capital grant of Twenty Five Thousand and No/100 Dollars (\$25,000.00), payable upon acceptance of the Franchise. Upon ninety (90) days written notice by City, Grantee shall collect, on behalf of City, such monthly fees per account as may be established from time to time by resolution of the Board of Directors as permitted by applicable FCC regulations (hereinafter “Access Fee”), but in no event more than the following:

<u>Account Size</u>	<u>Maximum Access Fee</u>
1 – 11 Units	\$.25
12 – 99 Units	\$.50
100 – 199 Units	\$.75
200 – 399 Units	\$1.00
400 – 599 Units	\$1.25
600+ Units	\$1.50

Said Access Fee, if established, to be used solely to fund public, educational and governmental access related expenditures. Any increase in the Access Fee by City shall occur not more than once every year upon approval of the Board of Directors and upon ninety (90) days advance written notice to Grantee.

Grantee and City agree that the PEG Access Fee and all payments by Grantee to City in support of PEG access programming will not be deemed to be “Franchise Fees” within the meaning of ARTICLE 622 of the Cable Act (47 U.S.C. § 542), and such obligations shall not be deemed to be (i) “payments in kind” or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to ARTICLE 8 hereof or (ii) part of the Franchise Fees to be paid to City by Grantee pursuant to ARTICLE 8 hereof.

6.7 Two-Way Service to Public Buildings. Grantee shall provide a two-way connection to one public building within the city as designated by the City to facilitate the exchange of programming, including live cable-cast programming from said building on the Grantee’s Cable System and the Grantor’s network. Grantee shall further provide, free of charge, all necessary interface equipment (modulator/demodulator) at the agreed-upon point of interconnection to allow the City to cablecast programming to Grantee’s head-end for cable-cast on Grantee’s Cable System.

6.8 Cable Television Drops. Grantee shall provide, or continue to provide, free of all monthly charges, one (1) cable service outlet of the standard level of Cable Service offered by Grantee, excluding pay-per-view, pay-per-channel (premium) programming, high-speed data services or non-video Cable Services, to the following institutions as may now or hereafter exist:

- a. All city office buildings and leaseholds, located within the city, as designated by the City;
- b. The City police station and sub-stations;
- c. The City fire stations; and
- d. All public school and colleges, located within the city, as designated by the authorized representative of the respective educational institutions.

6.9 Drop Charges. For any sites listed above not serviced pursuant to a former Franchise Agreement or for any new sites to be designated in the future, Grantee shall be responsible for the costs of extension to subsequently designated institutions for the first five hundred (500) feet as measured from Grantee's nearest active plant. The requesting institution shall pay the net additional drop or extension costs beyond said five hundred (500) feet.

6.10 Additional Outlets. Additional subscriber network drops and/or outlets in any other governmental or public educational locations not included in paragraph 6.1 will be installed by Grantee at the lowest actual cost of Grantee's time and material upon request from a qualifying institution under FCC regulations. Alternatively, said institutions, including those listed in paragraph 6.1, may add outlets at their own expense, as long as such installation meets Grantee's standards and approval which shall not be unreasonably withheld.

6.11 Construction Notice. Grantee shall have three (3) months from the date of request from a qualifying accredited school or public institution for new service pursuant to the Article or relocation of established service, to complete construction of the Drop and the outlet unless weather or other conditions beyond the control of Grantee requires additional time.

ARTICLE 7
DEDICATED FIBER OPTIC NETWORK (CITY-NET)

7.1 Network Description. Grantee shall provide the City institutional data and communication connectivity by means of a fiber optic network, hereinafter termed “City-Net.” City-Net shall consist of fiber optic strands dedicated to the sole and exclusive use of the City and such additional strands as may be necessary to provide continued or backup service in the event of a service disruption in the dedicated strands. City-Net shall be capable of carrying not less than one (1) gigabyte of data per second. At no cost to City, Grantee shall initially City-Net to the following locations:

- a. Municipal Annex – 111 Opera;
- b. Transportation Depot – 100 Broadway Terr.;
- c. Central Fire Station – 310 Broadway St.;
- d. Municipal Court – 607 Ouachita Ave;
- e. Finance – 517 Airport Rd; and
- f. CHS Airport Terminal – 525 Airport Rd.

Thereafter, City-Net shall be extended to all city facilities within the corporate limits of the City and to all traffic signals within the city under the terms and conditions as specified hereinafter. Location of such City facilities and traffic signals to be determined by the City from time to time and communicated to the Grantee pursuant to an annual program of projects as discussed hereinafter.

7.2 Program of Projects. Grantee shall construct or extend the City-Net to such city facilities and traffic signals as may be determined by City from time to time. The City-Net construction shall be in such phases as mutually agreed by City and Grantee. In this regard, City and Grantee shall establish an annual program of projects to prioritize construction of the City-Net during any given calendar year subject to the resources of City and Grantee. Provided, however, that Grantee hereby agrees to construct not less than five (5) miles of the City-Net each year if so funded by City until the City-Net is built out.

7.3 Expense & Charges. Beyond the initial locations stipulated in 7.1, the obligations to construct or maintain City-Net shall not arise under the terms of this Franchise absent payment to Grantee of the cost of construction and operation of the network to the additional locations. Said costs shall be determined to be the Grantee’s actual time and material expense in constructing, maintaining, and operating the City-Net, including payments to third-parties for needed items and services such as conduit access fees and pole rent (if any needed). With the exception of reimbursing Grantee for its direct expense associated with City-Net, there shall be no monthly service fees or charges.

7.4 Maintenance. City-Net shall be maintained by Grantee consistent with the then current prudent business practices. Grantee shall use best efforts to repair the City-Net following any discontinuation to any location served by Grantee under this ARTICLE; provided, however, that in the event of service discontinuation for reasons not within the control of Grantee or as a result of any act of God or nature, war, riot, period of public insurrection, or any other, similar event, repairs to and service of City-Net shall be restored as soon as may be practicable understanding that important governmental functions may be dependent on the operation of City-Net.

7.5 Ownership. Grantee and City agree that City-Net shall be the sole and exclusive property of Grantee and that the use of City-Net is given pursuant to the license, terms and other agreements contained herein and that the City has no property interest in or to the City-Net. The obligations of Grantee shall end upon the delivery of a continuous, uninterrupted pathway for the transmission of data, VoIP communications or other information through the City-Net to the locations specified by the City and Grantee shall not be responsible for any loss, damage, injury or claim resulting from the use or operation of City-Net and the cost, responsibility and obligation to operate and maintain any equipment employed to transmit data or other information over the City-Net.

7.6 City-Net Revenue. To the extent Grantee shall provide services for the transmission of voice, VoIP data or other communication through or over any portion of the City-Net, the City may recover from Grantee, from sums actually received by Grantee, or from any affiliate or entity related or associated with Grantee, the amount of Fifty Percent (50%) of the cost of the shared asset.

7.7 Assignment & Access. Access to City-Net is for the operation of the City and the provision of governmental services to the residents thereof; therefore, access to use of the City-Net shall be restricted to the City and its authorized personnel, agents, contractors or service personnel.

ARTICLE 8.
OPERATION AND ADMINISTRATION PROVISIONS

8.1 Administration of Franchise. The City Manager or his/her designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise; provided, however, that the Board of Directors shall retain the sole authority to take enforcement action pursuant to this Franchise.

8.2 Delegated-Authority. The City may appoint a citizen advisory body or may delegate to any other body or Person authority to monitor the performance of Grantee pursuant to the Franchise and federal law. Grantee shall cooperate with any such delegates of City.

8.3 Franchise Fee.

a. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in a maximum amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute and as set by resolution of the Board of Directors. Prior to any adjustment in the Franchise Fee the City shall provide the Grantee with sixty (60) days notice of its intention to adjust. Any such adjustment shall not become effective until sixty (60) days after adoption by the City's Board of Directors.

b. Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the maximum rate permitted under state law, or twelve percent (12%) if no such rate is legally specified.

c. All amounts paid shall be subject to audit and re-computation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Grantee's books and records pursuant to Article 8.5 of this Franchise and such review indicates a Franchise Fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable documented costs of such audit, and pay same upon demand by the City.

8.4 Not Franchise Fee.

a. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this ARTICLE shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and that the Franchise Fees provided for in this ARTICLE of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which Grantee shall be required to pay to City and/or to any other governmental authority, all of which shall be separate and

distinct obligations of Grantee.

b. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or imposed by City or any other governmental authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.

c. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments or general applicability levied or imposed by the City or any other governmental authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to City to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

8.5 Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records. City acknowledges that some of the records which may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to Applicable Laws. Grantee shall produce such books and records for City's inspection at Grantee's local office within the Service Area or at such other mutually agreed upon location within the City. To the extent it is necessary for City to send representatives to a location outside of the City to inspect Grantee's books and records, Grantee shall be responsible for all reasonable travel costs incurred by City representatives.

8.6 Reports and Maps to be Filed with City.

a. Grantee shall file with the City, at the time or payment of the Franchise Fee, a report of all Gross Revenues in form and substance as may be mutually agreeable to City and Grantee from time to time.

b. City and Grantee shall mutually agree, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise.

c. If required by City, Grantee shall furnish to and file with City Manager the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.

8.7 Periodic Evaluation.

a. City may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to Grantee. Provided however, that Grantee agrees that, as a minimum, Grantee shall participate in a public forum in the first quarter of each calendar year to review its rate structure, operating policies, current operations, programming and short and long

term capital improvement plans. Said forum shall be hosted by the City Manager or his designee, at a time and place to be mutually agreeable to the City Manager and Grantee. Grantee shall cause notice of said forum to be given not less than ten (10) calendar days prior to said meeting. Said notice to be placed in a newspaper of general circulation in Garland County and by distribution to area news media including but not limited to posting on Grantee's public service channel.

b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.

c. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible as measured over the remaining life of the Franchise.

ARTICLE 9.
GENERAL FINANCIAL AND INSURANCE PROVISIONS

9.1 Default.

a. In the event that the City has reason to believe that the Grantee has defaulted in the performance of any provision of this Franchise, except as excused by force majeure, the City shall notify the Grantee in writing, by certified mail, of the provision or provisions of which the City believes Grantee to be in default and the details relating thereto (“Alleged Default Notice”).

b. The Grantee shall have thirty (30) days from the receipt of an Alleged Default Notice to:

(1) Respond to the City in writing, contesting the City’s assertion of default and providing such information or documentation as may be necessary to support the Grantee’s position; or

(2) Cure any such default. The time for Grantee to correct any violation or liability shall be extended by City if the necessary action to correct such violation or liability is of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.

c. In the event that the City finds that Grantee failed to respond to such an Alleged Default Notice to cure the default or to take reasonable steps to cure the default, the City shall promptly schedule a public hearing to consider that matter. The City shall provide written notice at least fourteen (14) days prior to the date of the hearing. The Grantee shall be provided reasonable opportunity to offer evidence and be heard at such public hearing.

d. In the event that the City, after public hearing, determines that a continuing state of default exists and that its cure is unlikely or untimely, the City may determine to pursue one (1) of the following:

(1) assess liquidated damages in accordance with the schedule set forth in Article 9.2 below;

(2) seek specific performance of any provision in this Franchise which reasonably lends itself to such remedy, as an alternative to damages;

(3) pursue a separate action for damages in a court of competent jurisdiction;

(4) pursue the procedures for revocation of the Franchise under Article 10.2 herein; or

(5) invoke any other lawful remedy available to the City.

e. If the City determines that a default exists after a public hearing, the Grantee shall have the right to a review of such decision in any court of competent jurisdiction

9.2 Liquidated Damages.

a. For failure to materially comply with the provisions of this Franchise, liquidated damages in the amount of One Hundred and no/100 dollars (\$100.00) for each day that such failure occurs or continues shall be paid by the Grantee to the City, subject to the due process provisions of Article 9.1 above. Any such liquidated damages shall be assessed as of the date the Grantee received the Alleged Default Notice.

b. Each of the above-mentioned cases of non-compliance result in damage to the City, its residents, businesses and institutions, compensation for which will be difficult or impossible to ascertain. The Grantee agrees that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such damage. The Grantee agrees that said foregoing amounts are liquidated damages not a penalty or forfeiture, and are within one (1) or more exclusions to the term “Franchise Fee” provided by Section 622(g)(2)(A)-(D) of the Cable Act.

c. Payment of liquidated damages mandated by the City in accordance with the terms of this Franchise shall be considered a cure and full and final resolution of the alleged violation for the time period specified and shall not thereafter be considered, for any purpose, as an event of noncompliance for such specified period. Nothing herein shall prevent the City from initiating another violation proceeding pursuant to the terms of this Franchise in the event another alleged violation of such provision of the Franchise should arise

9.3 Liability Insurance.

a. Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Arkansas, with a rating by A.M. Best & Co. of not less than “A” that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee’s vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million and No/100 Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

- (1) The policy shall provide coverage on an “occurrence” basis.
- (2) The policy shall cover personal injury as well as bodily injury.
- (3) The policy shall cover blanket contractual liability subject to the standard

universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

(4) Broad form property damage liability shall be afforded.

(5) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage.

(6) Standard form of cross-liability shall be afforded.

(7) An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to City.

(8) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Arkansas Consumer Price Index (all consumers) for such three (3) year period.

(9) Grantee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

9.4 Indemnification.

a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings. Grantee shall not be required to provide indemnification to City for programming cablecast over the public, educational and governmental access Channels administered by City.

b. The indemnification obligations of Grantee set forth in this Franchise not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.

c. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by

City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

e. Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees.

9.5 Grantee's Insurance. Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

a. In order for City to assert its rights to be indemnified, defended, and held harmless, City must with respect to each claim:

(1) Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;

(2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph 2 above.

ARTICLE 10.
SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

10.1 City's Right to Revoke.

a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that after notice and an opportunity to cure as reordered herein;

(1) Grantee has violated material provisions(s) of this Franchise and has not instituted reasonable efforts to cured; or

(2) Grantee has attempted to evade any of the provisions of the Franchise; or

(3) Grantee has practiced fraud or deceit upon City.

b. City may revoke this Franchise without the hearing otherwise required herein if Grantee is adjudged as bankrupt.

10.2 Procedures for Revocation.

a. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required therein, City shall provide Grantee with the basis of the revocation.

b. Grantee shall be provided the right to a public hearing affording due process before the Board of Directors prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

c. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

10.3 Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the

abandonment, including all costs incident to removal of the System. The term “abandonment” shall not include routine replacements or consolidation of existing elements of the system.

10.4 Removal After Abandonment, Termination or Forfeiture

a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City. Provided however, that any facilities installed for the benefit of the City shall become property of the City in the event of termination or forfeiture of the Franchise or abandonment of the System and may not be removed from the Rights-of-Way and public property within the City without the City’s direct permission to do so.

b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City’s demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City’s demand for removal is given, City shall have the right to declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

10.5 Sale or Transfer of Franchise

a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee’s parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee’s assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. The City’s approval shall not be unreasonably withheld.

b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee’s parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this ARTICLE 10.5. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. In any event, as used herein, a new “controlling interest” shall be deemed to be created upon the acquisition through any transaction or group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one Person. Acquisition by one Person of an interest of five percent (5%) or more in a single transaction shall require notice to City.

c. The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, the following:

any other documents or information related to the transaction as may be reasonably requested by the City.

d. City shall have such time as is permitted by Applicable Laws in which to review a transfer request.

e. The Grantee shall reimburse City for all reasonable legal and administrative costs and fees associated with City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills.

f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this ARTICLE be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments provided by the transferor.

g. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this ARTICLE shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City. The City's approval shall not be unreasonably withheld.

ARTICLE 11.
PROTECTION OF INDIVIDUAL RIGHTS

11.1 Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and City laws, and all executive and administrative orders relating to nondiscrimination.

11.2 Subscriber Privacy.

a. No signals may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of activity planned for the purpose of monitoring individual viewing patterns or practices.

b. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

c. Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this ARTICLE.

**ARTICLE 12.
MISCELLANEOUS PROVISIONS**

12.1 Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Upon request, Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

12.2 Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to ARTICLE 8 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

12.3 Compliance with Federal, State and Local Laws**4.Compliance with Federal, State and Local Laws.**

a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.

b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

12.4 Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

12.5 Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

12.6 Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

12.7 Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; national emergencies; insurrection; riots; wars; or strikes, lockouts or work stoppages.

12.8 Acceptance.

a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the Board of Directors, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable time lines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and time lines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.

b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.

c. Grantee shall accept this Franchise in the following manner:

(1) A Certificate of Franchise Acceptance will be properly executed and acknowledged by Grantee and delivered to City.

(2) With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates, and guaranties, as required herein, that

have not previously been delivered.

CERTIFICATE OF FRANCHISE ACCEPTANCE

WHEREAS, the City of Hot Springs Board of Directors has adopted Ordinance No. _____ granting a franchise to Resort Television Cable, Inc. (Grantee) to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in the City of Hot Springs a Cable System, in accordance with the terms and conditions as stated in said Ordinance.

NOW, THEREFORE, for and in consideration of the terms and conditions as stated in Ordinance No. ____ and this Franchise Agreement, and intending to be legally bound thereby, the Grantee does hereby agree to accept said Franchise and abide by the provisions thereof.

IN WITNESS WHEREOF, the Grantee does hereby set their hands and seals on the _____ day of _____, 2009.

RESORT TELEVISION CABLE, INC. (GRANTEE)

J. P. Morbeck, Executive VP & Chief Operating

Officer

WITNESS: _____
Charlotte Dial, Vice President of Administration

SWORN TO BEFORE ME this __ day of _____, 20__.

NOTARY PUBLIC

CITY OF HOT SPRINGS, ARKANSAS (GRANTOR)

Mike Bush, Mayor

WITNESS: _____
Lance Hudnell, City Clerk

SWORN TO BEFORE ME this _____ day of _____, 2009

NOTARY PUBLIC